

VIETNAM: INCENTIVES FOR SOLAR

On 11 April 2017, the Prime Minister of Vietnam issued Decision 11/2017/QĐ-TTg ("Decision 11"), an encouraging development in the promotion of domestic solar power projects in Vietnam. Decision 11 came into effect on 1 June 2017 and is due to expire on 30 June 2019, however Power Purchase Agreements ("PPAs") for solar power projects entered into before 1 June must also be amended so as to comply. This briefing provides an overview of the key provisions of Decision 11, including the applicable Feed in Tariff ("FIT") rate and corporate investment incentives, which the country undoubtedly hopes will further drive growth in its blossoming renewables sector.

STRONG APPETITE FOR SOLAR

Vietnam is currently experiencing a period of significant growth in energy consumption, with an increase of approximately 12% per year from 2006 to 2015. Facing a forecast power demand of 265bn kWh by 2020, Vietnam's current total installed capacity (measured as of October 2016) is only 3.876m kWh. Decision 11 is therefore part of a broader effort on the part of the Vietnamese state to encourage domestic power projects, particularly in the renewables sector, which it is hoped will provide 6.5% of power by 2020 and 10.7% by 2030.

SOLAR POWER MASTER PLANS ("SPMPS")

- A solar power project will only be developed if it has been included in the relevant SPMP (national or provincial). If an investor proposes a project which is not in the relevant SPMP, then it must apply for it to be included (including providing a feasibility study and environmental assessment report). So far, no SPMPs have been issued.
- The national SPMP will be applicable solely to grid-connected solar power projects, and therefore excludes rooftop solar power projects.
- With regards to projects outside the ambit of the national SPMP and provincial SPMPs:
 - for solar power projects of 50 MW or less, the MOIT is empowered to authorise their inclusion in the relevant SPMP; and

Key points to note

- Decision 11 came into effect on 1 June 2017, and applies to domestic solar power projects established before 1 June and beyond
- Grid-connected solar power projects are entitled to a FIT at the rate of VND 2,086 VND/kWh (excl. VAT), equivalent to USD cents 9.35/kWh
- A solar power project will only be developed if it has been included in the relevant SPMP. So far, no SPMPs have been issued
- EVN (or its authorized subsidiary) will offtake electricity generated by solar power projects under a standard form PPA template which will be mandatory for all solar power projects
- The latest draft PPA template for solar power projects was circulated by the MOIT in June 2017 and has some drafting and risk allocation issues to resolve

- for solar power projects of more than 50 MW, the MOIT will put a proposal for the inclusion of the project in the SPMP to the Prime Minister for his approval.
- MOIT will shortly issue a Circular guiding Decision 11, but in the meantime has issued Official Letter 5087 dated 9 June 2017 (“OL 5087”) which guides the procedure and documentation required for inclusion of a solar power project in the relevant SPMP.

Offtake and PPA

- Vietnam Electricity (“EVN”) or its authorized subsidiary will offtake electricity generated by solar power projects.
- PPAs for solar power projects must be prepared in accordance with the standard (mandatory) PPA template, discussed further below. Under OL 5087, PPAs signed before 1 June 2017 shall follow the PPA template from 1 June 2017, and PPAs signed after 1 June 2017 shall follow the PPA template from the signing date.
- PPAs will have a fixed term of 20 years from the commercial operation date, and may be extended or renewed by the parties.

Mandatory PPA template

- The latest draft PPA template for solar power projects was circulated by the MOIT in June 2017.
- Under the template, lenders benefit from step-in rights in the event of a seller's event of default, and sellers are allowed to assign to lenders without offtaker consent.
- However, the template has some flaws which it is hoped will be addressed in later drafts. In particular:
 - the template is similar to the old-fashioned, non-BOT PPA template for windfarms, which has long been regarded as non-bankable;
 - Vietnamese law is mandated as the governing law, and it is unclear whether foreign arbitration is permitted;
 - certain provisions (such as those relating to force majeure and seller and offtaker events of default) are poorly drafted while others (for example in respect of deemed commissioning, testing, unforced outage and change in law) are missing entirely; and
 - there is no guaranteed exchange rate or concept of liquidated damages.
- It will be interesting for industry participants to see whether the terms of the template PPA are amended to address these problem areas, and we will produce a further briefing note should the template PPA be revised.

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FIT

- Grid-connected solar power projects are entitled to a FIT at the rate of VND 2,086 VND/kWh (excl. VAT), equivalent to USD cents 9.35/kWh. The reference exchange rate will be VND 22,316 to USD 1.00, as announced by the State Bank of Vietnam on 10 April 2017. Adjustment of the FIT following VND/USD exchange rate fluctuations was expected to be

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implemented in accordance with the mandatory PPA template to be issued by the MOIT. However, the latest draft PPA template does not contain provisions on FIT adjustment following exchange rate fluctuations.

- This FIT applies exclusively to grid-connected projects with a solar cell capacity of more than 16% or a solar module capacity of more than 15%.

Comparison with wind farms

- By contrast, wind farm projects are entitled to a FIT of VND 1,614/kWh, equivalent to USD cents 7.8/kWh.

Rooftop solar

- Rooftop solar power projects will be net-metered at the end of each year or at the time of termination of the relevant PPA.
- The MOIT will issue annual FIT rates for the coming year in respect of rooftop solar power projects. This rate will be based on the VND/USD exchange rate as announced by the State Bank of Vietnam in the previous year.
- Excess electricity produced will be sold to EVN at the FIT rate applicable to grid-connected projects.

Other investment incentives

- **Import duty** – Solar power projects are exempt from import duty on goods imported to create fixed assets for the project. The projects are also entitled to other import duty incentives applicable to renewable energy projects generally, including exemption from import duty for 5 years upon commencement of production in respect of raw materials and components imported for production of the project which cannot be produced domestically.
- **Corporate income tax ("CIT")** – Solar power projects are entitled to the same CIT incentives as other projects in the preferential investment sectors in Vietnam. A renewable energy project is entitled to the following:
 - **CIT rate:** 10% for 15 years, which may be extended to up to 30 years in certain cases, subject to approval by the Prime Minister; and/or
 - **CIT exemption:** full exemption for the first 4 years and 50% reduction of CIT for the subsequent 9 years.
- **Land use fee/land rental** - Solar power projects are entitled to the same land use fees/land rental incentives as other projects in the preferential investment sectors of Vietnam. Subject to the project's location, it may also be exempt from land use fees/land rental for a period ranging from 3 to 15 years, or even for the whole term.
- **Loans** - Renewables projects (including solar power) may seek a loan of up to 70% of the investment capital of the project from the Vietnam Development Bank. The maximum term of such loan is 12 years.
- **Government funding** - Government funding may be available for research and technology in respect of pilot projects.

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Solar/ renewable energy

- Highlight on solar energy tariffs in France (April 2017)
- Argentina Renewable Energy Program (August 2016)
- Global Environment Newsletter - Summer 2017 edition (June 2017)

Vietnam

- Country M&A Handbook – Vietnam (2017)
- Foreign investment regime in Vietnam (2016)

Participation in the competitive electricity market

- Decision 11, the latest draft of MOIT's Circular guiding Decision 11 and OL 5087 do not regulate the issue of participation in the competitive electricity market. However, under the Competitive Electricity Market regulations, solar power projects are not required to participate in the Competitive Electricity Market and solar power projects' electricity output and tariff are not subject to the market pool.

If you have any questions on any of the issues raised in this briefing please contact the authors below.

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