1 Introduction

The demand for electricity in Vietnam is rising rapidly to power the growing economy and forecasts predict an annual growth rate for electricity of ‘near-double’ digits in the years to come. To try and keep pace with that demand, the Government has envisioned substantial expansion to the national power generation capacity, with installed capacity planned to rise from the 2015-level of 38.6GW to 60GW by 2020 and 130GW by 2030. In terms of capital investment, it is estimated that Vietnam will need as much as US$15 billion per year for power development, a large part of which will have to come from the private sector.

While the energy mix in the foreseeable future will still be dominated by traditional sources (including coal, gas and large hydro projects), renewable energy has gradually but steadily entered the limelight. In March 2016, the Government issued the revised National Power Development Plan for years 2011 to 2020, with a vision to 2030 (Master Plan 7). Under Master Plan 7, the Government has targeted renewable energy projects (including small-sized hydro, wind, solar and biomass projects) to account for 9.9 per cent of the overall electricity capacity by 2020 and 21 per cent by 2030, generating 7 per cent of the nation’s electricity in 2020 and 10 per cent in 2030. Figure 1 illustrates the Government’s vision for specific forms of renewable energy.

In order to meet these targets for renewable energy sources, the Government has been rolling out a series of regulations aimed at clarifying the legal framework and incentives for development of renewable energy projects. Such policy developments, along with potential of renewable energy sources in Vietnam and declining global manufacturing costs for the necessary technology, have generated significant interest among prospective investors.

In this report, we discuss the key legal issues that need to be weighted in by foreign investors when considering investing in renewable projects in Vietnam.

2 Investment process

Below is a high-level chart of key steps for carrying out a renewable energy project. Many of these steps involve working with a Government authority (which are marked with an asterisk in the chart below). In this respect, the Ministry of Industry and Trade (MOIT) is the main authority in charge of enforcing electricity regulations, while the provincial People’s Committee is primarily responsible for project-related issues such as investment licensing, land, construction, environment and fire protection.
Renewable energy project investment process

- Conduct site study
- Gather data and measurements
- Prepare pre-feasibility study
- Apply for inclusion of the project in the national or provincial power development plan (if it has not been included) - usually projects over 50MW must be approved by the Prime Minister and those under that threshold by the MOIT*

**INVESTMENT AND ENTERPRISE REGISTRATION**

- Obtain investment decision (normally from provincial People’s Committee)*
- Investment Registration Certificate issued for project*
- Establish project company by obtaining Enterprise Registration Certificate*
- Make deposit (from 1 per cent to 3 per cent of project’s required capital investment)

**LAND LEASE**

- Negotiate and obtain policy agreement for project location*
- Land clearance (and reallocation of/compensation for existing land users) are undertaken*
- Sign land lease agreement - the lease term cannot exceed the project term and is likely to be around 20 years)*
- Obtain Land Use Right Certificate*

**CONSTRUCTION**

- Prepare feasibility study and designs
- Evaluate basic design/feasibility study*
- Evaluate technical design*
- Obtain fire prevention and firefighting approval*
- Conduct environmental impact assessment*
- Obtain construction permit*
- Carry out construction works
- Undertake commissioning & acceptance

**OPERATION**

- EVN’s agreement in principle to purchase power
- Grid connection agreement
- Metering agreement
- SCADA/EMS (or SCADA/DMS) agreement
- Protective relay agreement
- Power Purchase Agreement with EVN

- Obtain electricity generation licence (for the power plant)*
- Obtain operating licence (for employees holding certain operating positions)*
3 Key issues for foreign investors

3.1 Foreign ownership and investment form

Generally, there is no limitation of foreign ownership in the renewable energy sector. At present, foreign investors can own up to 100 per cent of equity in power projects. Even though some high-profile, foreign-invested, thermal power projects have been implemented in cooperation with the Government under the Build – Operate – Transfer (BOT) umbrella (a form of public private partnership (PPP)), it does not appear that the Government will offer this kind of treatment for renewable energy projects at large (except, perhaps, for very prominent ones). Therefore, it is expected that most projects will have to be carried out as independent power projects. The main implication is there will be little room for investors to negotiate special terms or incentives or obtain Government guarantees.

3.2 Financing

Power projects typically require significant capital investment and, as a result, are often financed with a significant portion of debt capital. It is unlikely that the domestic Vietnamese banks alone will be able to provide sufficient funds to finance projects to meet the Government’s targets. However, international financiers are likely to face some notable challenges in participating in the financing of renewable energy projects. Firstly, except in the rare cases of so-called ‘mega’ projects, foreign lenders cannot take security over land and other real property (even though they may be a project’s most valuable assets). Moreover, a number of issues persist that undermine a project’s viability and bankability, including:

- the tariff levels (see further Section 3.5);
- concerns surrounding EVN’s financial capability as the electricity buyer and the lack of a Government guarantee of EVN’s obligations (see further Sections 3.4 and 3.7);
- the form of statutorily mandated power purchase agreements with some core, non-negotiable, terms allocating excessive risks for investors (see further Section 3.6); and
- with regards to solar power¹, the policy framework set out by the Government (including the tariff) is only effective until 30 June 2019, creating uncertainty as to the position after this date.

Such problems will be particularly acute for investors looking to put in place project finance arrangements, which rely on the project’s assets for security and look to the project’s revenue stream for debt servicing.

3.3 Sale of electricity

Currently the national utility, Vietnam Electricity (EVN), through its subsidiaries, holds the monopoly on the transmission and distribution of electricity, and acts as the only wholesale purchaser of electricity from generators. The Government has set out its vision for a competitive power market, which will be fully implemented at the wholesale level by 2021 and at the retail level by 2023.

Despite this intended transition, there is not yet any clear legal basis for a direct power purchase agreement between renewable energy generators and customers, such as factories and industrial parks. In fact, the regulations provide that EVN will be the sole buyer responsible for purchasing all power generated from renewable sources.

3.4 EVN

Market observers have expressed concerns about EVN’s creditworthiness as it is the entity responsible for implementing massive levels of investment in electricity infrastructure, while at the same time struggles to make a profit from the low and highly regulated electricity retail tariffs (currently averaging 7.3 US cents per kWh). While this does not pose immediate problems, it could lead to long term systemic risk. The World Bank is assisting EVN with improving its financial standing and obtaining its own credit rating, which should help provide some comfort for concerned investors.

3.5 Feed-in Tariff

EVN must purchase all power generated by renewable energy projects at the Feed-in Tariff (FiT) set by law. The FiT is denominated in Vietnamese dong (an electricity purchased by EVN will be paid for in Vietnamese dong) but is linked to the Vietnamese dong - US dollar exchange rate announced by the State Bank of Vietnam, and thus, to an extent, investors will be protected from currency depreciation.

However, neither the law nor the template power purchase agreements contain any adjustment mechanism for inflation or rising production costs, meaning the FiT may remain unchanged during the whole investment term (other than as adjusted for FX). Table 1 sets out the current FiT rate for different types of renewable energy projects. It is still unclear whether the FiT for solar projects will remain the same after 30 June 2019, when the relevant regulation expires (see Section 3.2).

1 It should also be noted that current policies only cover photovoltaic (PV) and not concentrated solar power (CSP) technology.
3.6 Power purchase agreement

Renewable energy generators and EVN must negotiate and conclude their Power Purchase Agreements (PPAs) on the basis of the standard agreement forms provided by law. The MOIT has issued such forms for each of small hydro, wind, biomass and solid waste power projects, and is preparing the draft form for solar power. While the parties can agree on additional provisions to the standard form PPA, they cannot vary its ‘basic contents’. However, the standard forms contain terms that increase costs and risks for investors, and hence reduce bankability. Some key points of concern are:

- the seller (generator) must bear the costs and risks of connecting the plant to the transmission grid — this is seen as problematic, especially where the project is located in a more remote area or the connection line will need to run through land owned by a variety of owners;
- no deemed commissioning clause to protect the seller when the plant is able to generate power but the purchaser (EVN) fails to accept the same;
- if the seller terminates the PPA following a breach by the purchaser (EVN), compensation for the seller is limited to the value of generated electricity for the previous year;
- no stabilisation clause to expressly protect the seller against changes of law; and
- the governing law is automatically Vietnamese law, and the default (though negotiable) position for dispute resolution is via the forum of the MOIT.

3.7 Government guarantees and incentives

**Government guarantees**

Apart from the general assurances provided under the Investment Law (such as no nationalisation, assurance of profit repatriation, protection of existing incentives in case of change of law, etc.), the Government does not provide specific guarantees for renewable energy projects. For example, the Government does not guarantee the contractual performance of EVN as the power purchaser under the power purchase agreement or guarantee foreign currency availability to convert Vietnamese dong revenues into, for example, US dollars.

That being said, in theory, it may still be possible to obtain guarantees for large-scale and important projects (such as a PPP project).

**Investment incentives**

Renewable energy is classified as an especially encouraged sector, therefore, some incentives are available for investors as listed below.

**Table 2 - Incentives for renewables**

<table>
<thead>
<tr>
<th>Category</th>
<th>Incentives</th>
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<tbody>
<tr>
<td>Import duty</td>
<td>Exemption for:</td>
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<tr>
<td></td>
<td>• goods imported to form fixed assets; and</td>
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<tr>
<td></td>
<td>• project’s materials, components, and semi-finished products that cannot be domestically manufactured.</td>
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<tr>
<td>Corporate income tax</td>
<td>Exemption for the first four years(^{(a)})</td>
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<td></td>
<td>50 per cent reduction for the following nine years, and</td>
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<td></td>
<td>Preferred tax rate of 10 per cent for the first 15 years(^{(b)}).</td>
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<tr>
<td>Land lease</td>
<td>Exemption ranging from 14 years to the entire project life depending on the project location.</td>
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</tbody>
</table>

\(^{(a)}\) Counting from the first year of generating taxable income or from the fourth project year, whichever comes first, new project only.

\(^{(b)}\) Counting from the first year of generating income; new project only. Normal, non-preferred, tax rate is 20 per cent.
Subsidies for environmental projects

Subject to satisfaction of the relevant conditions, investors in renewable energy projects may be able to obtain preferred rate loans of up to 70 per cent of the investment costs from the Vietnam Development Bank (VDB) or the Vietnam Environment Protection Fund (VEPF), or obtain interest support from the VEPF. The VEPF also administers a subsidy scheme for renewable electricity generated from solar, wind, geothermal, tidal, or methane sources where production costs exceed the sale price. However, even though the VDB has injected capital, and the VEPF given some subsidies, for a few pioneering wind projects, it remains to be seen how easily future funding and subsidies can be obtained from these entities.

4 What’s next

While developing countries have traditionally been associated with using traditional, polluting, energy sources to power their growth, in recent years, countries such as China and India have been leading a new wave of investment that will see hundreds of gigawatts of renewable electricity being added to their capacity, to an even greater extent than is required by their Paris Agreement commitments. However, at the moment Vietnam’s renewable energy sector remains largely untapped, with, for example, the installed wind generation capacity being a mere 160MW and solar power generation levels still negligible. This reflects various challenges of a frontier market with developing regulations. However, at the same time this offers significant opportunities for early investors looking to gain a foothold for future developments and as the market matures and some of the existing legal and regulatory wrinkles and uncertainties are ironed out.

If you would like to discuss opportunities for investment in renewable energy projects in Vietnam and how Allens can assist, please get in touch with:

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