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VIETNAM INTERNATIONAL LAW FIRM

# Legal Landscape of LNG-to-Power in Vietnam

Supported by the favorable geographical and natural conditions, and constrained by the restrictions on thermal power projects in the last few years, Vietnam has been promoting the solar and wind renewable energy in the last 5 years, and now the LNG-to-power (the concept of using liquefied natural gas for power production) (**LNG**).

Fear of being late, many local and foreign investors have been lining up to find opportunities to develop large scale gas-fired power plants using LNG as fuel despite the unclear legal framework. The first LNG Project with a capacity of 3,200 MW on an area of 40ha, including a LNG floating terminal and storage FSU, a gas recycling station (FSRU), with the estimated total investment close to US\$4.0 billion, approved in January 2020 by Bac Lieu Provincial People's Committee, with planned construction commencement in early 2021 for initial commercial operations by 2023, is more than likely delayed. At the same time, various MOUs were just signed between the potential investors and the relevant provincial people's committee to start the pre-feasibility studies for big LNG Projects in the last few months while the Prime Minister has yet to approve the upcoming national power development plan for the period of 2021-2030, with a vision to 2045 (**PDP VIII**).

This brief looks at the overview of the LNG Project legal framework to provide a comprehensive picture on this very important development in Vietnam.

## I. Overview

### Strong promotion of LNG Projects under Draft PDP VIII

1. Guided by Resolution 55/2020 of the Politburo, the recent draft decision of the Prime Minister to approve the PDP VIII (the "Draft Decision"), specifies 45 big LNG Projects, with the total capacities of approximately 53,050 MW, lining up in the list of power projects which are of national importance/development priority of power industry during the period from 2021 to 2045.
2. The LNG Infrastructure is strongly promoted under PDP VIII, setting a steady foundation for the growth of LNG projects and its related businesses in Vietnam.

## II. Investment options

Under Vietnamese laws, a LNG project can be developed in either investment form:

1. Public-private partnership (**PPP**) project whereby the investors will cooperate with the State to develop and operate the LNG project through signing and performing the PPP project contracts; or
2. Independent Power Producer (**IPP**) project whereby investors will wholly develop the project by themselves.

## III. Investment in PPP form

### 1. General policies

#### 1.1. Investment capital:

For LNG project to be considered under the PPP form of investment, the total investment capital of a LNG project must be not less than VND1,500 billion (approx. USD65 million). However, the capital requirements for certain PPP LNG projects in practice, particularly involving foreign investors, can be substantially higher, normally, around US\$2.5 billion or US\$3 billion in the past, and now perhaps US\$5 billion or higher for large scale LNG projects.

#### 1.2. PPP project contract:

Investors of a PPP project shall have to sign a PPP project contract with the State agency in order to implement the project. Types of PPP project contracts under the Law on PPP are as follows:

- Build-Operate-Transfer Contract ("BOT contract")
- Build-Transfer-Operate Contract ("BTO contract")
- Build-Own-Operate Contract ("BOO contract")
- Operation and Maintenance Contract ("O&M contract")
- Build-Transfer-Lease Contract ("BTL contract")
- Build-Lease-Transfer Contract ("BLT contract")

- 1.3. The model contracts for each type of PPP project shall be further specified by the government.

## 2. Investment procedures

2.1. Generally, basic steps for implementation of a LNG Project in PPP form shall be as follows:

- Preparation and appraisal of the pre-feasibility study report, issuance of the in-principle investment approval, and public announcement of the project
- Preparation and appraisal of the feasibility study report, and approval of the project
- Selection of investors
- Establishment of the project company and signing of the PPP contract
- Commencement of implementation of the PPP contract (including both construction and operation)

2.2. The time period for the investor to be officially selected as the developer of the PPP project will be substantially long due to the heavy involvement of the government and the sophisticated requirements under the bidding procedures. In return, the investor will be entitled to better governmental support and guarantee (eg., Guarantee on foreign currency convertibility) which are required to raise project finance from foreign lenders.

## IV. Investment in IPP form

The investment and development of an IPP LNG project shall mainly be governed by the Law on Investment, its implementing regulations as well as Circular 57/2020 of the Ministry of Industry and Trade, Vietnam (MOIT) (**Circular 57/2020**).

### 1. General policies

#### 1.1. Power purchaser

At present, Vietnam Electricity (EVN) and its subsidiaries is no longer sole wholesale power purchaser from LNG power generators/sellers (**Power Seller**). Circular 57/2020 has allowed big power consumers and wholesale power purchasers to purchase power from the Power Seller, which aligns with Vietnam's plan to develop a fully competitive power market (i.e. electricity distribution and retail market).

## 1.2. Power Purchase Agreement (PPA)

If EVN or its subsidiaries is a contracting party to the PPA, based on the model PPA provided under Circular 57/2020 (Model PPA), the investor of LNG project (as the **Power Seller**) and EVN or its subsidiaries (as the power purchaser) (**Power Purchaser**) can negotiate, agree and supplement certain terms which are suitable for the actual conditions of the specific project (if necessary). This regulation may suggest that parties can have more flexibility in negotiating upon the technical clauses under the PPA.

## 1.3. Electricity generation price

1.3.1. Under Circular 57/2020, LNG projects are not entitled to enjoy the Feed-in-Tariff mechanism. Rather, Circular 57/2020 provides the basic principle to determine the electricity generation price for LNG projects (**Generation Price**).

1.3.2. The Generation Price is the aggregate of (i) the power purchase agreement price (**PPA Price**); and (ii) the specific connection price, which shall be agreed upon by the parties and determined by the method as specified under Circular 57/2020.

1.3.3. The specific connection price is a new component introduced under Circular 57/2020, which is for the LNG project to recover from the grid connection costs incurred by or allocated to the investor to build the transmission lines and the power substation(s) from the distribution yard of the power plant to the main grid connection point as (i) agreed with the Power Purchaser; or (ii) assigned by the competent State authority.

## 1.4. Construction of the transmission lines and power substation

1.4.1. Under Circular 57/2020, the competent State authority can assign the Power Seller to establish a separate project to build the transmission lines and the power substation to load electricity from their power plant to the main grid connec-

tion point. However, we have to wait for further guiding implementations to see how this mechanism will be implemented in practice.

1.4.2. However, Circular 57/2020 regards the construction of transmission lines and power substation as the Power Seller's obligations, which may cause additional liabilities to the investor. Thus, the investor should seek consultation with the Power Purchaser and local authorities upon this obligation, especially taking into account its financial/technical capacity.

## 2. Investment Procedures

### 2.1. The Investor can invest in an IPP LNG project by either options:

**Option 1 (greenfield):** Registering for investment of a greenfield LNG project and setting up an economic organization as the Project Co. to implement the project in Vietnam; or

**Option 2 (brownfield):** Investing in an existing project by way of acquiring existing shares or subscribing for new shares in the Project Co. (**Target Co.**).

### 2.2. In case the investor follows Option 1, there are four key steps as below:

#### **Step 1: Investor Selection**

The investor procedure is applied in the circumstances and methods as stipulated under the Law on Investment, which will take a substantial amount of time due to the complex bidding/auction procedures.

#### **Step 2: In-principle Approval**

Depending on the nature and scale of the project, it can be subjected to the in-principle approval authority of either, the National Assembly of Vietnam, the Prime Minister or the provincial People's Committee.

#### **Step 3: Investment Registration Certificate (IRC)**

After Step 2 above, the competent provincial Department of Planning and Invest-



ment (DPI) will issue the IRC to the Investor to formalize the registration of the LNG project.

#### **Step 4: Enterprise Registration Certificate (ERC)**

After obtaining the IRC, the Investor must set up a Project Co. in Vietnam to start implementing the LNG project.

2.3. In case the investor being a foreign investor follows Option 2, the Investor must register for the approval of the acquisition or subscription of the existing shares/new shares in the Target Co. with the competent DPI (**M&A Approval**), which is required in the following cases:

- The acquisition or subscription increases the ownership ratio of the foreign investor(s) in the Target Co. which conducts business in areas with certain market access conditions applicable to foreign investors;
- The acquisition or subscription results in foreign investor(s) holding over 50% of the charter capital of the Target Co. in the following cases: The charter capital ownership ratio by the foreign investor(s) is increased from less than or equal to 50% to over 50%; the charter capital ownership by the foreign investor(s) is increased while such foreign investor is holding over 50% of the charter capital of the Target Co.;
- The foreign investor acquires or subscribes shares of the Target Co. which has a land use right certificate for land on an island or in a border commune; in a coastal commune; in another area that affects national defense and security.

## **V. Key Challenges**

### **1. Lack of exhaustive legal framework and implementing regulations**

Given that Vietnam LNG market and its legal framework are still at an early stage of development, the investment and implemen-

tation of LNG projects and especially LNG-related businesses are expected to face uncertainties and ambiguities. For now, Decree 87/2018 of the government is acting as the key piece of legislation governing the trading, importing and transporting of LNG. However, the conditions therein are quite general and ambiguous, which may cause confusion and difficulties to the investors.

### **2. Lengthy regulatory approval process for full project chain**

LNG market is relatively new in the country, Vietnam still lacks LNG-supporting infrastructure. Thus, investors participating in LNG sector may need to invest in all aspects of the LNG project chain and to ensure smooth operation of their LNG projects, which shall involve complex and lengthy regulatory approval processes associated with each component of the LNG-to-power chain.

### **3. Foreign currency availability**

Like other countries, Vietnam's foreign exchange reserves are limited, there exists a risk that the availability of US dollars in the country may be rationed at times, which poses a challenge for any investors who want to convert Vietnamese Dongs into US dollars to conduct their businesses (e.g., payment to offshore EPC contractors etc.).

### **4. Land use rights as security**

The Land Law of Vietnam allows investors to mortgage both their land use rights as well as assets attached to land (understood as immovable assets) as collateral(s) to raise financing from local banks in Vietnam. However, the land use rights can only be mortgaged where the land rent due to the State authorities has been paid in one-off payment. Meaning that, if the project land is exempted from the land rent (as an investment incentive) or the land rent is paid on an annual basis, the project land cannot be used as a security for raising finance to support the LNG project.

For a detailed read, please visit <https://www.vilaf.com.vn/knowledge-center/>

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