


V I L A F
VIETNAM INTERNATIONAL LAW FIRM

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Circular 16 on Solar Power

Ministry of Industry and Trade of Vietnam (“MOIT”) issued Circular No. 16/2017/TT-BCT (“Circular 16”) dated 12 September 2017 on project development and standard form of power purchase agreement (“Model PPA”) for solar power projects, with effect from 26 October 2017. Circular 16 provides for detailed guidance for implementation of Decision 11/2017/QĐ-TTg dated 11 April 2017 of the Prime Minister on mechanisms for encouraging development of solar power projects in Vietnam (“Decision 11”).

Below are key points introduced under Circular 16.

1. Grid-connected projects

1.1 An investor is only permitted to prepare the feasibility study for a solar power project which is included in an approved **power master plan** (either for power generally or solar power specifically). If not, the investor will need to apply for inclusion of the project in the relevant master plan before the investor could prepare the feasibility study for the project.

1.2. The equity capital in a grid-connected project must not be less than 20% of the total investment capital of the project.

1.3. The land area on a long term basis for a grid-connected project must not exceed 1.2 hectares/1MWp.

1.4. The feasibility study of a grid-connected project needs to include, among others, the following:

- Assessment on the impact of the project’s grid connection plan on the local area power system; and
- Equipment connected to the SCADA system or the load dispatch information system so as to provide forecast information on the hourly electrical output to the relevant load dispatch center.

1.5. PPAs of grid-connected projects need to follow the Model PPA. Please refer to Section 4 below for details.

2. Rooftop projects

2.1. A rooftop project with capacity of 1 MW or more needs to be included in an approved power master plan. If not, the investor will need to apply for inclusion of the project in the relevant master

plan before the investor could develop the project.

2.2. A rooftop project with capacity of less than 1 MW is not subject to the above requirement. However, the investor needs to register with the relevant provincial power company for connection of the project to the relevant power grid.

2.3. PPAs of rooftop projects need to follow the model PPAs applicable thereto, which are also issued under Circular 16 and much simpler than the Model PPA applicable to grid-connected projects.

3. Electricity Generation permit

A solar power project (either grid-connected or rooftop) having the capacity of 1 MW or more needs to obtain the electricity generation permit.

4. Model PPA for grid-connected projects

4.1. Mandatory application of Model PPA

The Model PPA shall be of mandatory application. The parties may supplement the Model PPA to clarify rights and obligations of the parties without change of the basic terms and conditions of the Model PPA.

4.2. Feed-in-Tariff ("FIT")

Under the Model PPA, FIT is applicable in accordance with Article 12.1 of Decision 11 which is VND 2,086/kWh (exclusive of VAT) equivalent to **US cents 9.35/kWh** at the VND/USD exchange rate published by the State Bank of Vietnam ("**SBV**") on 10 April 2017 being VND22,316 to USD1.00. This FIT shall only apply to a solar power plant which achieve the Commercial Operation Date ("**COD**") **before 30 June 2019**, and shall apply for **20 years** from COD.

The Vietnamese law currently does not specify the treatment to the projects which do not achieve COD before 30 June 2019. The Vietnamese law only states generally that Decision 11 shall expire on 30 June 2019 and the MOIT shall propose the mechanism for encouragement of development of solar power projects for the period after 30 June 2019.

Under Decision 11, the adjustment of FIT due to VND/USD exchange rate fluctuation will be carried out in accordance with the Model PPA. However, the Model PPA does not have such provisions.

4.3. Off-take by EVN

Under the Model PPA, the Electricity of Vietnam ("**EVN**") or its authorized subsidiary acting as the power purchaser has the responsibility to off-take the entire electricity output generated by the relevant solar power project to the grid.

4.4. Long-term PPA

The Model PPA provides for a term of 20 years from COD which can be extended or a new contract can be signed between the parties to the first contract in accordance with the then effective law.

4.5. COD and deemed commissioning

The Model PPA provides that the power company as seller will be considered as having committed a breach of the PPA if the COD does not occur within 3 months after the scheduled date for COD, unless it is caused by a force majeure ("**FM**") event. The Model PPA has not addressed the scenarios where the power plant is available for testing and commissioning for COD but the power company could not do so due to a breach by EVN or a FM event affecting or attributable to EVN as the purchaser.

4.6. Grid risk allocation

Under the Model PPA, the company is responsible for grid connection costs and risks, including investing in, operating and maintaining interconnection equipment and facilities in order to connect the plant with the power transmission and power distribution grids.

The Model PPA has not addressed the scenarios where the power plant is prevented from generating electricity due to unavailability or other risks of the grid.

4.7. Interruption in power receipt and purchase

Under the Model PPA, EVN is entitled to stop purchasing power in the following cases:

- (a) The power plant operates or is maintained not in conformity with the regulations on operation of the national grid and the power industry technical regulations and standards;
- (b) During the period of time when EVN installs equipment or repairs, replaces, inspects or examines the grid directly related to its connection to the power plant of the company;
- (c) When the transmission grid or the distribu-

tion grid connected to the grid of EVN breaks down or grid equipment or facilities directly connected to the transmission grid or distribution grid of EVN breaks down; or

(d) When the grid of EVN needs support to recover after a breakdown, in accordance with the provisions on operation of the national grid and the power industry technical regulations and standards;

The Model PPA has not addressed the scenarios where the incidents in (b), (c) or (d) are caused due to a breach by EVN or a FM event affecting or attributable to EVN.

4.8. Tariff payment

The payment shall be made no later than a date being fifteen (15) days after the date on which the purchaser receives an invoice for power payment from the seller at the FIT as specified above. Any late payment shall bear a late payment interest calculated at the average interbank interest rate for one-month loan.

4.9. FM events

In case of failure to perform a part or the whole of its obligations under the Model PPA due to a FM event, the breaching party will be exempted from liability related to its failure. FM events comprise of the following circumstances:

(a) Natural disaster, fire, explosion, flood, tsunami, epidemic or earthquake; and

(b) Riot, demonstration, insurrection, insurgence, destruction, embargo, surrounding, blockage, or any act of war or acts of public enemies whether or not war is declared;

The Model PPA does not distinguish political FM events and natural FM events.

The Model PPA also provides the actions to be taken to mitigate in FM event and unilateral termination rights of the affected party if the FM event prevents a party to the contract from performing its obligations for 1 year by giving a written notice to the other party.

4.10. Change in law

The Model PPA does not specifically address change in law risk.

4.11. Breach of contract, compensation for loss and damage and suspension of contractual performance

Under the Model PPA, the party which breaches the Contract is obligated to pay compensation for any loss and damage caused to the party affected. The amount of compensation shall comprise the actual and direct losses occurred and the direct benefits which the party affected would have received.

Under the Model PPA, if the power company as affected by a breach selects suspension of the contract, the amount of compensation for loss and damage shall be calculated as per the actual output of electricity generated by the power company within the previous one (1) year period prior to the suspension of the contract. It is unclear as to why the value of 1 year's actual output is applied.

The Model PPA does not provide for termination payments in the events of early termination of the Model PPA.

4.12. Governing law

The Model PPA provides for mandatory choice of Vietnamese law as the governing law.

4.13. Dispute resolution

In case of a dispute, the Model PPA requires the parties to settle by amicable negotiation first within 60 days as from the date of receipt of notice from the disputing party and 15 days if the dispute relates to payment of tariff. The Model PPA states further that if the negotiation fails, the parties may elect the Electricity and Renewable Energy Authority under the MOIT for conciliation, or go to a dispute resolution body in accordance with the laws of Vietnam.

Accordingly, the jurisdiction of a specific PPA could be arbitration or Vietnamese courts if selected by the parties in accordance with the laws of Vietnam.

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