

## Vietnam's January 2022 updates to the new draft decision on corporate DPPA pilot program for renewable energy

### In brief

On 11 January 2022, the Office of Government of Vietnam (OOG) issued Document No. 229/VPCP-CN to the Ministry of Industry and Trade of Vietnam (MOIT) for the next steps of updating the draft regulations on the implementation of the pilot program on the direct power purchase agreement (DPPA) mechanism between renewable energy power generation companies and major power consumers. Accordingly, the deputy prime minister in charge of the power sector formally agreed to assign the MOIT to develop a new draft DPPA pilot regulation in the form of a Prime Minister decision, ensuring the transparency, efficiency, lawfulness and sustainable development of the power sector.

Previously, the MOIT submitted its Report No. 94/BC-BCT dated 29 October 2021 proposing a new draft legal document regarding the implementation of the DPPA pilot program in the form of a Prime Minister Decision. Respective initial comments and opinions for that purpose have also been obtained from the relevant ministries (including the Ministry of Finance, the Ministry of Planning and Investment and the Ministry of Justice) during November - December 2021.

Compared to the previous draft (in the form of an MOIT circular), this new draft in the form of a Prime Minister decision made significant changes to the tariff mechanisms and transaction structures. A key new change proposed by the MOIT under its Report No. 94/BC-BCT is that the power consumers will take and buy power from EVN/PC at the retail price (instead of the VWEM spot market price plus DPPA charges as proposed under the previous draft MOIT circular). However, as a next step, the MOIT will need to prepare an updated version of New Draft DPPA Decision and then, probably an implementing Circular of the MOIT to provide more details - which should be subject to public comments and further revisions before finalization.

The New Draft DPPA Decision retains a tight timeline once the proposed program is approved for submission of applications. Generators/developers and major power consumers who wish to participate will be required to prepare and submit their registration applications via the electronic information portal within 45 working days from the date of the MOIT's opening of the pilot DPPA program's electronic information portal.

In terms of the commercial operation date (COD) deadline, the New Draft DPPA Decision keeps the same timeline as the previous draft. Specifically, participating generation companies (GENCOs) must achieve commercial operation for their power plants to participate in Vietnam's wholesale competitive electricity market within 270 working days from the date when the list of GENCOs and major power consumers participating in the pilot DPPA program is announced.

Similar to the previous draft, the participating power consumers and developers must have a "binding in-principle agreement" for the sale and purchase of power from the projects to be selected. This kind of agreement (e.g., a contract-for-differences (CfD) or a virtual PPA in-principle agreement) must be submitted as part of registration application documents.

The New Draft DPPA Decision includes the same list and templates of application documents required to be completed and submitted to the MOIT/Electricity Regulatory Authority of Vietnam (ERAV) in order to participate in the upcoming DPPA pilot program (together with other detailed guidelines) as proposed in the previous draft.

However, the DPPA pilot program's launch date remains to be confirmed and depends on when the Prime Minister will officially sign the proposed formal decision.

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DPPA mechanisms (also known as corporate PPAs) are surging around the world as a new driver and catalyst for renewable energy projects. Under the New Draft DPPA Decision, synthetic DPPA mechanisms (also known as financial, virtual direct or corporate PPAs) for off-site renewable energy projects in Vietnam were proposed with a pilot program at a scale up to 1,000 MW to be implemented from 2022 to 2024. The DPPA official program is proposed to commence from 2025 onward.

The DPPA mechanism refers to a power purchase agreement in which the power purchasers (off-takers) are major private power consumers. This represents a growing global trend whereby instead of buying electricity directly from the state utility off-taker, private businesses purchase electricity directly from independent power developers (generators) under long-term contracts.

The New Draft DPPA Decision proposes specific mechanisms and principles for the pilot DPPA program, as well as its proposed scope, scale and objectives for implementing the pilot program.

Unlike the previous MOIT's circular, the New Draft DPPA Decision does not set out specific criteria for participating private sector stakeholders, including renewables developers and private power consumers, which are expected to be provided in another implementing MOIT circular to be issued for implementing this proposed DPPA Prime Minister decision. Under the previous MOIT's circular on DPPA, the MOIT proposed that participating generators/GENCOs be limited to solar and wind power generation project companies with solar or wind power plants each having an installed capacity of greater than 30 MW (in the case of a solar farm, 1 MWp (DC capacity) shall be equivalent to 0.8 MW (AC capacity)). This has been approved and included in the power development plan. In terms of qualifications for consumers under the previous MOIT circular on DPPA, the MOIT proposed that participating power consumers be limited to power consumers for industrial manufacturing purposes who purchase electricity at a voltage level of 22 kV or more.

In addition, Report No. 94 sets out key transactional arrangements, including:

- a. CfDs between GENCOs and power consumers
- b. "Market buyer power supply agreement" between power consumers and Vietnam Electricity (EVN)/power corporation (PC)
- c. Power purchase agreement between GENCOs (as a power seller) and EVN (as a power buyer)
- d. Associated arrangements with the Vietnam Wholesale Electricity Market (VWEM)

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## Recommended actions

Renewable energy developers and major power consumers should take into account the updated regulations in negotiating the CfD (virtual PPA) term sheets for participating in the DPPA pilot program. They should also take the necessary steps to best position themselves to catch investment opportunities in the electricity business industry, given the tight timeline for bid submission once this proposed decision is signed in its final form.



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## In depth

### Proposed scope and scale of the pilot program

The pilot DPPA program is proposed to be applied nationwide "up to **1,000 MW**." Under the previous draft, the selection of participants (both consumers and developers) will be on a first-come, first-served basis if the total capacity of all applications to be submitted to the MOIT's portal exceeds 1,000 MW. However, the New Draft DPPA Decision remains silent on this point, which may be elaborated in the implementing MOIT circular to be drafted and released.

The MOIT previously provided the following explanations for this proposal:

- The current electricity market infrastructure is insufficient to widely implement the DPPA program.
- Power generators and major private power buyers/consumers are free to enter into agreement under the Electricity Law. However, the pilot DPPA program is necessary to procure best practices, avoiding taking advantage of the DPPA program to transfer costs/profit.
- The proposed scale is to assess and perfect the legal framework in a synchronous and uniform way as a basis for official application.
- The pilot DPPA program can help support the transition to the competitive retail market.

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### Proposed tentative plan and schedule for implementation of the pilot program

Under the New Draft DPPA Decision, the MOIT proposed that the pilot DPPA program be implemented from 2022 to 2024, with the following key timelines:

- a. GENCOs and major power consumers who wish to participate will be required to prepare and submit their registration applications via the electronic information portal within 45 working days from the date of the MOIT's opening of the pilot DPPA program's electronic information portal.
- b. The MOIT will organize and administer the process of assessing, selecting and announcing a list of selected GENCOs and major power consumers to participate in the pilot DPPA program within 45 working days from the date of closing the pilot DPPA program's electronic information portal.
- c. The participating GENCOs must achieve commercial operation of the projects to participate in the competitive electricity market of Vietnam within 270 working days from the date when the list of GENCOs and major power consumers participating in the pilot DPPA program is announced.

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### Proposed criteria for participating private power developers/GENCOs

Specific criteria for developers/GENCOs remain to be promulgated by the MOIT. However, under the previous draft circular, the MOIT proposed that participating GENCOs be limited to solar and wind power generation project companies with solar or wind power plants each having an installed capacity of greater than 30 MW (in the case of a solar farm, 1 MWp (DC capacity) shall be equivalent to 0.8 MW (AC capacity)). This has been approved and included in the power development plans.

Similar to the previous draft version, the participating GENCOs must have a "binding in-principle agreement" with power consumers for sale of power from the projects to be selected. This means that interested participating developers should procure a necessary "binding in-principle agreement" with power consumers as a precondition for participating in the upcoming DPPA pilot program.

As one of the criteria for selection, GENCOs are required to commit to put the power plant into commercial operation and participate in the VWEM no later than 270 working days from the date when the list of GENCOs and major power consumers participating in the pilot DPPA program is announced.

In addition, GENCOs must possess documents from financial institutions or banks as lenders regarding financing support/arrangements for their power project at the time of registering for participation in the DPPA program.



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## Proposed criteria for participating major private power consumers

Under the New Draft DPPA Decision, specific criteria for major private power consumers remain to be promulgated by the MOIT. However, under the previous draft, the MOIT proposed that participating power consumers be limited to power consumers for industrial manufacturing purposes who purchase electricity at a voltage level of 22 kV or more.

The New Draft DPPA Decision retains the requirement that the participating major power consumers must have a "binding in-principle agreement" with GENCOs for the purchase of power from the projects to be selected.

Notably, the New Draft DPPA Decision keeps silent on the requirement that power consumers need to make the commitment on electricity volume purchased from GENCOs in a year as required in the previous MOIT Circular draft, i.e., for the first three years of its participation in the pilot DPPA program, the amount of power to be purchased from GENCOs within a year must be at least 80% the total amount of power consumed that is supplied by EVN/PC within the same year. This point may be determined and confirmed in the subsequent MOIT circular to be drafted and released for implementing this proposed prime minister decision.

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## Proposed registration, assessment and selection of participants

The New Draft DPPA Decision does not include general arrangements for the DPPA pilot program. However, the following proposed arrangements for registration, assessment and selection of participants in the previous draft MOIT circular should be considered for interested stakeholders (subject to the new draft MOIT circular to be released):

- a. GENCOs and power consumers will register their participations in the pilot DPPA program by uploading soft copies of their application dossiers via the electronic information portal of the MOIT/ERAV on the pilot DPPA program, with original hard copies of the application dossiers submitted in person or by post to the MOIT/ERAV Office.
- b. Applications of GENCOs and power consumers will be assessed for selection based on certain detailed criteria to be issued by the MOIT.
- c. The list of GENCOs and power customers participating in the pilot DPPA program will be announced on the MOIT/ERAV's electronic information portal.

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## DPPA tariff mechanisms and contractual framework

Under the New Draft DPPA Decision, the DPPA pricing mechanism and contractual framework will be promulgated by the MOIT. However, the key new change proposed by the MOIT under its Report No. 94/BC-BCT is that the power consumers will take and buy power from EVN/PC at the retail price instead of the VWEM spot market price, plus DPPA charges as proposed under the previous draft MOIT circular. As a next step, the MOIT will need to prepare an updated version of New Draft DPPA Decision and then, probably an implementing Circular of the MOIT to provide more details - which should be subject to public comments and further revisions before finalization.

In relation to developers, similar to the previous draft MOIT Circular, DPPA tariff mechanism and contractual framework are summarized as follows:

- a. GENCOs will sell power to EVN/PC at the 'spot market price' as determined in accordance with the MOIT's regulations on the operation of VWEM (i.e., current Circular No. 45/2018/TT-BCT as amended).  

GENCOs must register for participation in the VWEM and sign a PPA with EVN/PC. The template of the PPA between GENCOs and EVN/PC for the DPPA mechanism will follow the MOIT's PPA templates for grid-connected solar or wind projects (with some adjustments for consistency with DPPA mechanism as specified under Annex 2 of the previous draft circular). The PPA contract term is proposed to be 20 years from the COD of the project.
- b. Power consumers will enter into a CfD with GENCOs, mainly to regulate (i) the GENCOs' power supply commitments and (ii) a strike contract price. More specifically, similar to Annex 3 of the previous draft circular, the key terms of the CfD are expected as follows:
  - The power consumer and the GENCO may negotiate and agree on a contractual strike price.
  - If the agreed strike price is higher than the spot market price, the power consumer will pay the GENCO the amount of the difference between the strike price and the spot market price. If the agreed strike price is lower than the spot



market price, the GENCO will pay the power consumer the amount of the difference between the strike price and the spot market price.

- CfD contract terms may be agreed on for a period between 10 years and 20 years from the commercial operation date.
- Under the CfD template provided under the previous draft circular, the GENCO must provide its power consumers with a guarantee letter issued by a commercial bank/credit institution to guarantee the GENCO's obligation to complete construction of the power plant. Meanwhile, on or before the COD of the power plant, the power consumer must provide a guarantee letter issued by a commercial bank/credit institution to guarantee the power consumer's payment obligations under the CfD. The value of such guarantees are subject to agreements between the power consumer and the GENCO. These points are subject to further review and updates under the new implementing MOIT circular to be drafted and released.
- The GENCO and the power consumer may negotiate and supplement other terms and conditions to the CfD as appropriate (other than the terms provided in the CfD template attached to the previous draft circular).

## Contact Us



**Oanh Nguyen**

Partner

Ho Chi Minh City

[oanh.nguyen@bakermckenzie.com](mailto:oanh.nguyen@bakermckenzie.com)



**Thanh Hai Nguyen**

Special Counsel

Hanoi, Vietnam

[thanhhai.nguyen@bakermckenzie.com](mailto:thanhhai.nguyen@bakermckenzie.com)

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