

Vietnam: Draft decision on solar auction pilot program released to create a transition phase for future competitive auction mechanisms

In brief

On 25 September 2020, the Ministry of Industry and Trade of Vietnam (**MOIT**) circulated to the relevant line ministries and Vietnam Electricity (**EVN**) the draft proposal letter to the Prime Minister ("**Draft Proposal**"), together with the full text of the draft Prime Minister's Decision on the pilot program for competitive selection of solar power projects ("**Draft Decision**").

The pilot program targets a limited number of solar power projects that have been included (or will be included soon) in the power development master plan, but are not eligible for Feed-in-Tariff (**FiT**) 1 and FiT 2 ("**Pilot Program**"). Under the Draft Proposal, this program will tentatively take place from **November 2020 to May 2021** (to be finalized) as a transition phase for future competitive auction mechanisms (such as "substation-based" and "solar park" models).

To participate in the Pilot Program, among other criteria, the project must:

- a) have been included in the power development plan
- b) be included in the list of solar projects eligible for the Pilot Program prepared by the MOIT (and such list is subject to further review by local Provincial People's Committees)
- c) have a proposed Commercial Operation Date (**COD**) before **1 July 2022**

Specific selection criteria will focus on the proposed electricity sale/purchase price (i.e., among projects that have met the eligibility criteria above, projects with lowest proposed electricity sale/purchase price will be selected) as a key principle. Under the Draft Decision, the ceiling price is proposed to be same as FiT 2 under Decision No. 13.¹ Currently, the MOIT proposes that the PPA template for FiT 2 projects under Circular No. 18 also apply to the pilot program.²

The Draft Decision also imposes certain other legal restrictions on projects selected through the Pilot Program, among other things:

- a maximum capacity for the whole Pilot Program (at 60% of all projects participating in the program) and maximum capacity for project(s) of one investor (at 20% of all projects selected through the Pilot Program)
- a restriction on "project transfers" before COD
- an expansion of circumstances where the projects may not be able to get a refund of security deposits
- a reduction of electricity sale price by 5% per quarter of delay in COD beyond the required long stop date of 30 June 2022

¹ Decision No. 13/2020/QĐ-TTg dated 6 April 2020 of the Prime Minister on encouragement mechanisms for solar power development in Vietnam ("**Decision No. 13**").

² Circular No. 18/2020/TT-BCT dated 17 July 2020 of the MOIT regulating on project development and model PPAs for solar power projects ("**Circular No. 18**").



Recommended actions

The contents of the Draft Proposal and the Draft Decision circulated by the MOIT on 25 September is in draft form only. Final contents are subject to the Prime Minister's Decision, to be issued for the pilot program.

Please do not hesitate to contact us if you would like to know more about any of the following:

- The upcoming regulations related to the solar auction/competitive bidding program
- Necessary legal considerations for existing and newly proposed solar farms to best prepare for participation in the Pilot Program, and/or other alternative mechanisms
- Specific selection procedures as proposed under the Draft Decision, including the contents of the MOIT's template RfP/electricity sale price proposal form
- Specific opportunities and challenges, as well as legal and practical solutions for development and investment in solar power projects in Vietnam

In depth

Main objectives of the Pilot Program

The Pilot Program is designed for a transitional phase, starting from the end of the fixed FiT regime and until the launch of the official solar competitive bidding program (expected within 2021) ("**Future Auction Program**"). In particular, the Pilot Program is proposed to be applied to grid-connected solar projects that have been included in the relevant power development master plan (**PDP**), but do not meet the COD timeline to be eligible for the FiT regime under Decision No. 11³ and Decision No. 13 ("**Transitional Phase**").

According to the Draft Proposal, the key objectives of the Pilot Program include:

- Continuing Vietnam's policy to encourage solar power development, to meet Vietnam's power demand for the period until 2025
- Aiming to transition to competitive selection mechanisms in order to reduce electricity sale/purchase price
- Being the pilot step for the studies and formulation of the Future Auction Program
- Selection criterion to be focused on the proposed electricity sale/purchase price

Participating projects can be at different development phases and various development locations within Vietnam.

Scope and capacity demand

Timeline and types of eligible solar projects

- The Pilot Program is proposed to be applicable only to grid-connected: (i) ground- mounted solar power projects; and (ii) floating solar power projects. Solar projects invested under the form of Private-Public Partnership (**PPP**) or Direct Power Purchase Agreement (**DPPA**) model are not governed by this Draft Decision and will be subject to separate legal regimes.
- The Pilot Program is expected to take place from **November 2020** to **May 2021** (this date will be finalized). This means that solar projects, not having been included in the PDP before May 2021, may not be eligible for participation in the Pilot Program. However, this proposed timeline is subject to updates and finalization by the MOIT and the Prime Minister, subject to the approval timeline of the government's launch of the Future Auction Program.

³ Decision No. 11/2017/QĐ-TTg dated 11 April 2017 of the Prime Minister on encouragement mechanisms for solar power development in Vietnam



Transitional phase projects

The Pilot Program only applies to projects within the Transition Phase. The Draft Decision requires that to be eligible for the Pilot Program, participating projects must have already been included in PDP.

The MOIT's Draft Proposal mentioned the following categories of projects that have been included in the PDP or nearly complete PDP inclusion process:

- 1) Eight solar projects which have been included in the PDP with the total capacity of around 610 MW, which are not eligible for FIT 2 under Decision No. 13
- 2) 21 solar projects with the total capacity of about 1,000 MW, which have been, in principle, approved by the Prime Minister for PDP inclusion (in accordance with Notice No. 221/TB-VPCP dated 1 July 2020)
- 3) 103 solar projects with the total capacity of 10,000 MW, which have completed appraisal of Pre-FS/PDP inclusion application dossiers

However, it is only clear, under the Draft Decision, that groups 1) and 2), with a total of about 1,610 MW, are likely to be mobilized for the Pilot Program/transition phase if all of those projects will be approved in the PDP before the launch of the Pilot Program. This was also mentioned in the previous MOIT Proposal No. 1968/TTr-BCT dated 19 March 2020.

For group 3 of 103 solar projects, the Draft Decision and the Draft Proposal are not entirely clear as to whether those projects may participate in Pilot Program/Transition Phase or if not, it these will have to wait for Phases 2 and 3 of future competitive auction mechanisms (such as "substation-based" and "solar park" models). This can be a debatable policy consideration, given that the Pilot Program, based on its characteristics, may not be considered a "true" competitive auction mechanism, but more appropriately, be considered a transition phase from FiT mechanism to Phases 2 and 3 of competitive auction mechanisms. For distinguishing these different phases, technical considerations and PPA risk allocation improvements can be major differences.

Restrictions on capacity demand

Under the Draft Decision, the total capacity of selected projects must not exceed 60% of the total capacity of all participating projects in the Pilot Program. However, this appears to be inconsistent with the template RfP circulated by MOIT for the Pilot Program (attached to the Draft Decision), which requires that maximum selected capacity be 50% and the total amount of selected capacity must not exceed **1,000 MW**.

The Draft Decision proposes that the total capacity of project(s) of an investor participating in a selection round must not be higher than 20% of the total capacity of that selection round. This restriction may be a challenge to solar developers, who may own several projects that are technically eligible for selection, so proper legal investment structure can be a key issue.

Key selection criteria

Under the Draft Decision, participating projects of the Pilot Program must meet the following key criteria:

- **Criteria 1:** The project must have been included in the relevant PDP.
For this criterion, the MOIT will review and prepare a list of solar projects that were included in the PDP for participation in the Pilot Program. This means that PDP inclusion approval is not yet a definitive document that confirms the project's eligibility for the Pilot Program. The project needs also be included in the list of solar power projects that were included in PDP by the MOIT.
- **Criteria 2:** The participating project must be, in principle, approved by its local Provincial People's Committee ("**Provincial PC**") for participation in the Pilot Program. Once the MOIT has prepared the list of solar projects (mentioned in Criteria 1 above), the MOIT will send the list to Provincial PCs for their review and further inputs. The MOIT will finalize the list based on Provincial PC's inputs.
- **Criteria 3:** The proposed electricity sale/purchase price of the participating projects must not be higher than the FIT 2 under Decision No. 13.
- **Criteria 4:** The grid must be capable of absorbing the project's proposed capacity (subject to appraisal by Vietnam Electricity (**EVN**) prior to the MOIT's finalization of the list of projects eligible for the Pilot Program).
- **Criteria 5:** The participating project must have the proposed COD of before **30 June 2022**. Under the Draft Decision, upon having been selected through the Pilot Program, if the project fails to reach COD by



30 June 2022, the project's FiT, as determined through the Pilot Program, will be reduced by 5% for each quarter of delay.

Pilot Program application timelines and selection procedures

The selection procedure for the Pilot Program is proposed to include the following key steps:

- The MOIT reviews and prepares a list of solar projects that were included in PDP for participation in the Pilot Program. After that, the MOIT sends the list to the Provincial PC where the project is located for comments on investors (if any), investor proposals, and the status of project registration and preparation in the locality.
- EVN evaluates the power evacuation capacity of the projects under the MOIT's list.
- The MOIT organizes the formulation and approval of the Pilot Program covering: (i) its implementation plan; (ii) list of participating projects; and (iii) the electricity sale/purchase price proposal dossier (the template of which is provided under Appendix 2 of the Draft Decision) ("**Proposal Dossier Template**"). The Pilot Program's implementation plan will be sent to the Provincial PC where the project is located, the proposed investors and disclosed on the website of the MOIT and the national bidding network system.
- Within 45 days from the date the MOIT publishes the Pilot Program's implementation plan on its website, the interested investors in solar power project development must prepare and submit applications/proposals in accordance with the Proposal Dossiers Template to the MOIT.
- The MOIT organizes the evaluation of tariff proposals to select solar projects and determines applicable electricity tariffs, and approves the selection results.

Electricity price and power purchase agreement

The proposed electricity sale/purchase price of projects participating in the Pilot Program must not be higher than the FiT 2 under Decision No. 13 (i.e., 7.09 UScent/kWh for ground-mounted solar projects and 7.69 UScent/kWh for floating solar projects).

The specific applicable rate will be the electricity sale/purchase price proposed by the investors, of projects that are selected through the Pilot Program, and must not be higher than the ceiling price above. This applies on the condition that the project reaches COD by 30 June 2022, and the applicable rate will be reduced by 5% for each quarter of delay in COD after 30 June 2022.

Under the Draft Decision, the MOIT proposes that the applicable PPA template for the Pilot Program is the solar PPA template under Circular No. 18. This proposed PPA template is subject to further review/confirmation of the relevant state authorities.

Other legal requirements

Restrictions on project transfers

Under the Draft Decision, the project owner may only transfer a part or the whole of its rights and obligations under the executed PPA to another investor after that project has achieved COD.

This restriction will likely not apply to an M&A transaction of buying shares/charter capital in a project company. However, this will also depend on the local authorities' interpretation of the above legal provision, given the unclear wording of this restriction.

Participation guarantee requirement

The Draft Decision does not impose any requirements for participation guarantees (e.g., bid bond), but this will be subject to the final version of the Draft Decision.

Security deposit payment (applicable only to selected projects)

For selected projects, within 60 days from the date of the selection result, the Draft Decision requires that investor must submit the security deposit payment to the local authority (Provincial Department of Planning and Investment).



Security deposit is not a new concept; in fact, it is currently required under the Investment Law of Vietnam for any investment project using land. Under the Investment Law, security deposit ranges from 1% to 3% of the project's total investment capital (and solar projects may be eligible for 50% reduction of that rate).

In comparison with the Investment Law, the Draft Decision proposes to add more circumstances under which a project is not eligible for refund of security deposit, and these circumstances include the following:

- The project's violation of the contents and conditions under the MOIT's decision on selection results; or the Investment Policy Decision/Investment Registration Certificate; or the commitment of project implementation submitted to the MOIT
- The investor refuses to implement the PPA after its effective date.
- Other circumstances under the laws

Future nationwide Official Auction Program

The MOIT is currently studying the framework for the Future Auction Program, which is also known as Phases 2 and 3 of future competitive auction mechanisms (such as "substation-based" and "solar park" models) and expected to be launched within 2021 (to be finalized by another draft Decision of the Prime Minister).

In comparison with the Pilot Program (as currently proposed by the MOIT), the Future Auction Program would be expected to provide differentiated features with respect to selection criteria (with more consideration given to the technical and financial proposals of the project) and the applicable template PPA should be expected to be improved, to address certain key legal and contractual risk allocation issues of the current PPA template under Circular No. 18 (such as curtailment issues, termination payment, force majeure events, etc.). For the time being, these issues have yet to be concluded, given the current status of the legal framework for the Future Auction Program, subject to the progress of the Pilot Program.

From a private sector's perspective, improvements to the contractual frameworks are typically a key incentive for promoting new investments through this kind of reverse auction mechanism.
