

DuaneMorris

LEGAL FRAMEWORK AND INVESTMENT POLICIES OF WIND POWER DEVELOPMENT IN VIETNAM

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AGENDA

- VIETNAM'S LATEST ECONOMIC DEVELOPMENTS
- ENERGY SECTOR OVERVIEW
- POTENTIAL OF RENEWABLE ENERGY IN VIETNAM
- CURRENT GOVERNMENT'S POLICIES ON WIND ENERGY
- INVESTMENT GUIDELINES FOR FOREIGN INVESTORS
- RECOMMENDATIONS

Vietnam's latest economic developments

Vietnam 2018 Economy at a glance



- GDP: **US\$220.3 billion**
- GDP per capita: **US\$2,385**
- GDP Growth: 7.08% (record breaking since 2008)
- Inflation: **3.54%**
- Population: **About 91.70 million**
- Labor force aged 15 and above: **54.61 million**
- Total export and import turnover: : **>US\$482 billion (14% increase compared with 2017)**
- Regional Minimum wage (Region I): **VND 4.180 million (US\$ 180) per month (Jan 2019)**
- Vietnam's average age: **29 years old**

Welcome to the most dynamic country on this planet : Vietnam!

90 million people

Which are the world's most dynamic cities?
According to the JLL City Momentum Index 2017*

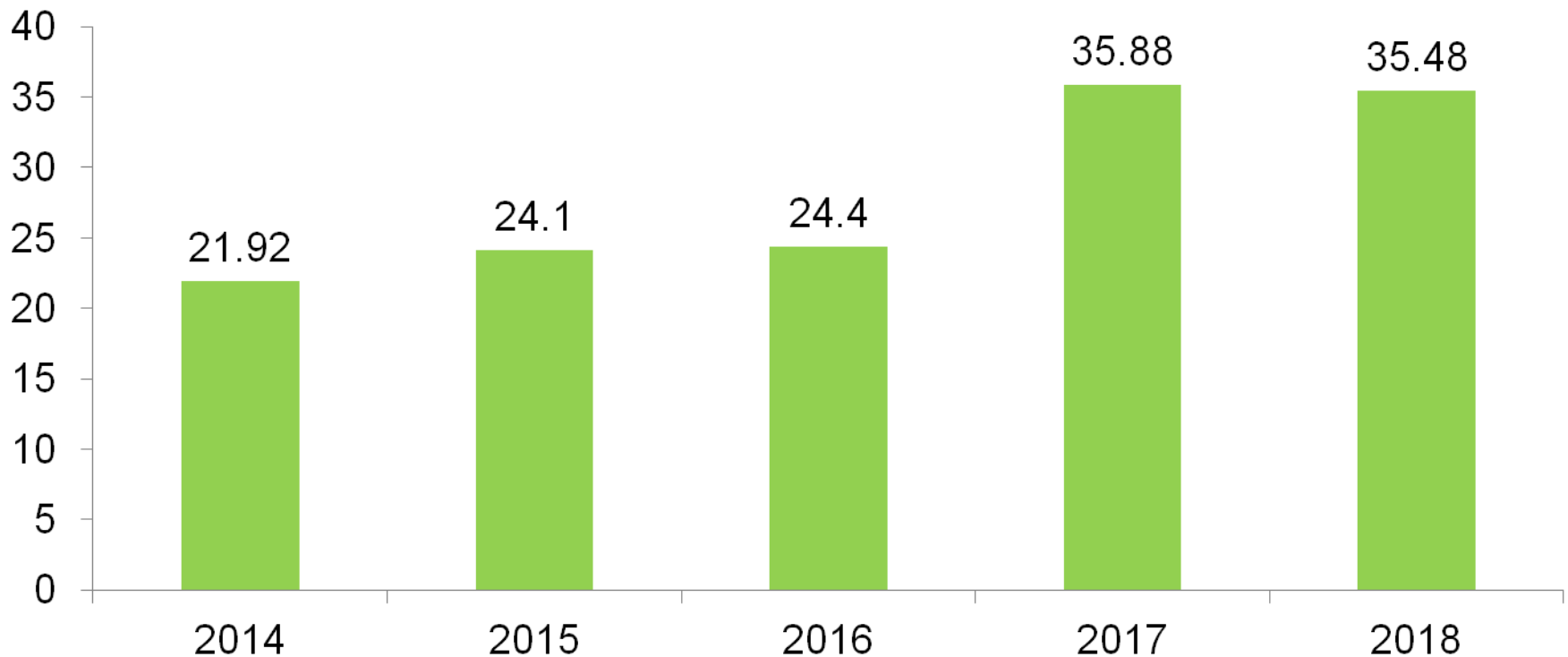
1. Bangalore (India)
2. Ho Chi Minh City (Vietnam)
3. Silicon Valley (USA)
4. Shanghai (China)
5. Hyderabad (India)
6. London (UK)
7. Austin (USA)
8. Hanoi (Vietnam)
9. Boston (USA)
10. Nairobi (Kenya)

Growing middle-class
(doubled by 2020 to
33 million people
according to Boston
Consulting Group)

Fastest-growing ASEAN economy
in 2018 and 2019, as in 2017 –
Standard Chartered Bank predicts

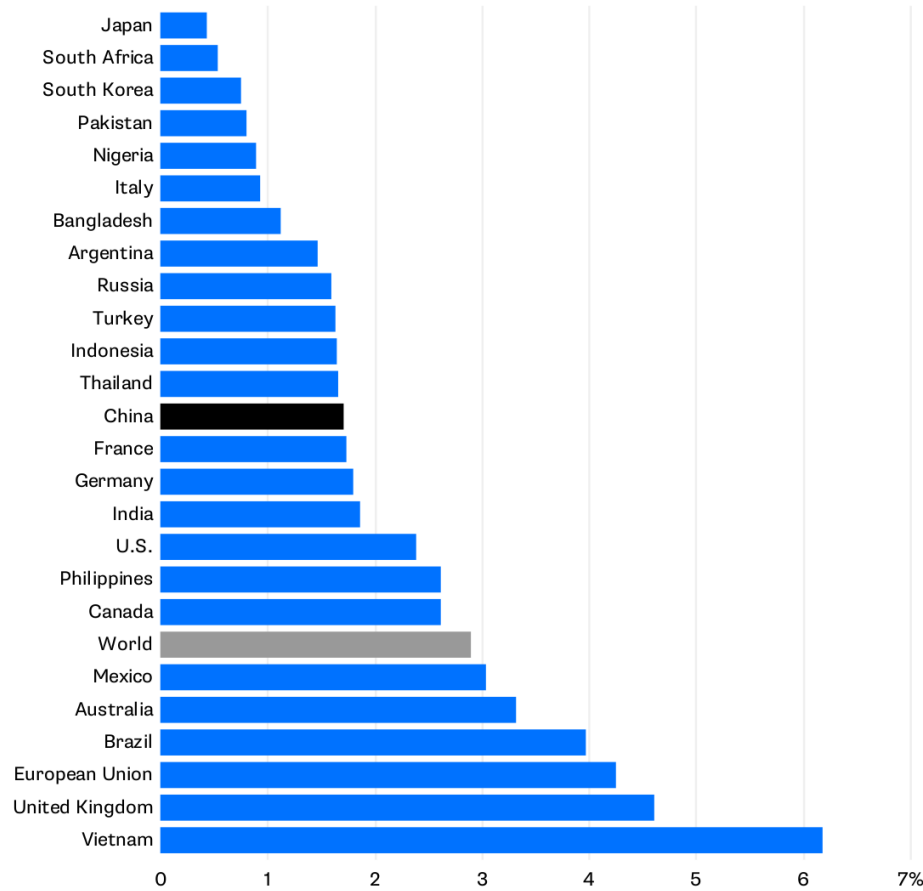
Increasing Foreign Direct Investment

Foreign Direct Investment Value (2014-2018) (billion USD)



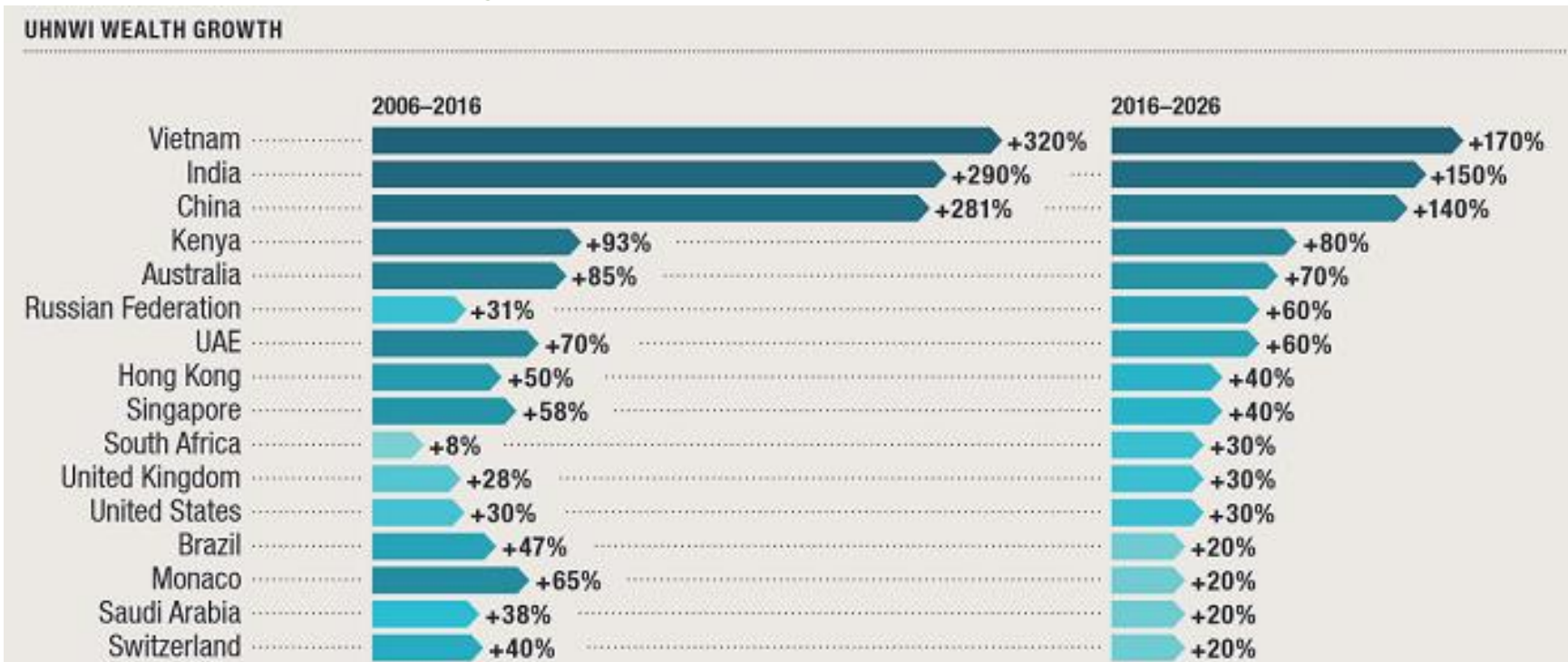
Trading Places

China is on a par with France, Germany and India in terms of foreign direct investment inflows as a share of gross domestic product



Note: We've taken three-year averages of the 2015-2017 period, as year-by-year figures can be volatile as a result of major transactions.
 Source: World Bank, Bloomberg Opinion calculations

Vietnam's super rich population is growing faster than anywhere else....



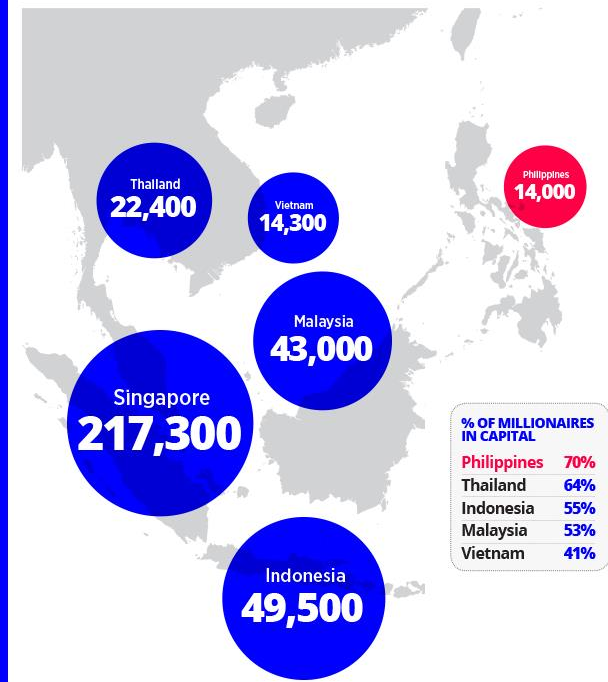
... and is on track to continue leading the growth in the next decade

Communist Vietnam Has More Millionaires Than Capitalist Philippines



ASEAN Millionaires

Number of residents in large Southeast Asian countries with a net worth of at least a million US dollars in 2016



Source: Knight Frank, The Wealth Report 2017

Entrepreneur
PHILIPPINES

Energy Sector Background

- Electricity demand is expected to increase by up to 11.4 pct. for the 2016-2020 period and 7 times to 800 billion Kwh in 2030
- Electricity consumption is projected to increase from 85,932 gigawatt hours (GWh) in 2010 to 251,763 GWh in 2020
- Electricity of Vietnam (EVN) holds a monopoly on electricity transmission and distribution
- PetroVietnam under the control of the Ministry of Industry and Trade, has administrative authority over oil and gas activity in Viet Nam.
- PetroVietnam operates an upstream subsidiary while PetroVietnam Exploration and Production develops its own projects and joint ventures with foreign companies



POTENTIAL OF RENEWABLE ENERGY IN VIETNAM

POTENTIAL OF RENEWABLE ENERGY IN VIETNAM

Small hydro
power



Potential: > 7.000 MW
Current use: 1900 MW

Biomass



Potential: >3000 MW
Current use: 150 MW

Wind



Potential: 7000MW
Current use: 90 MW

Solar



Potential: 4-6 kWh/m²
Current use: 5 MW

Municipal
wastes

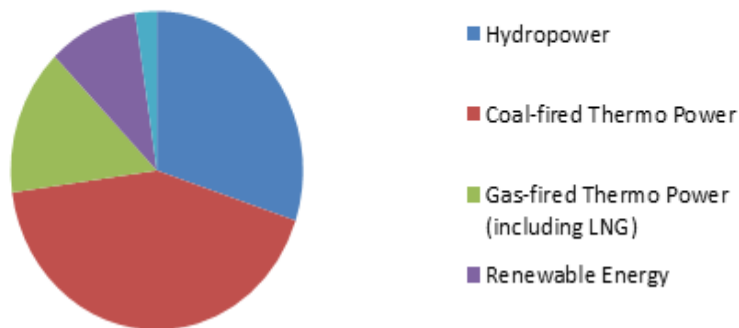


Potential: 220 MW
Current use: 2.4 MW

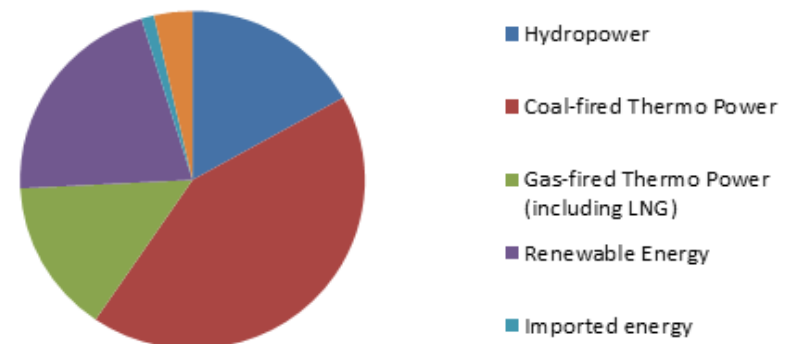
Vietnam's electrical energy mix

- Vietnam policy emphasises the need to diversify the country's energy mix whilst maximising the use of local energy reserves
- Currently Vietnam is developing an energy mix sector **with the mainstay of coal fired power**

By 2020 - Total Capacity to be 60,000 MW



By 2030 - Total Capacity to be 129,500 MW

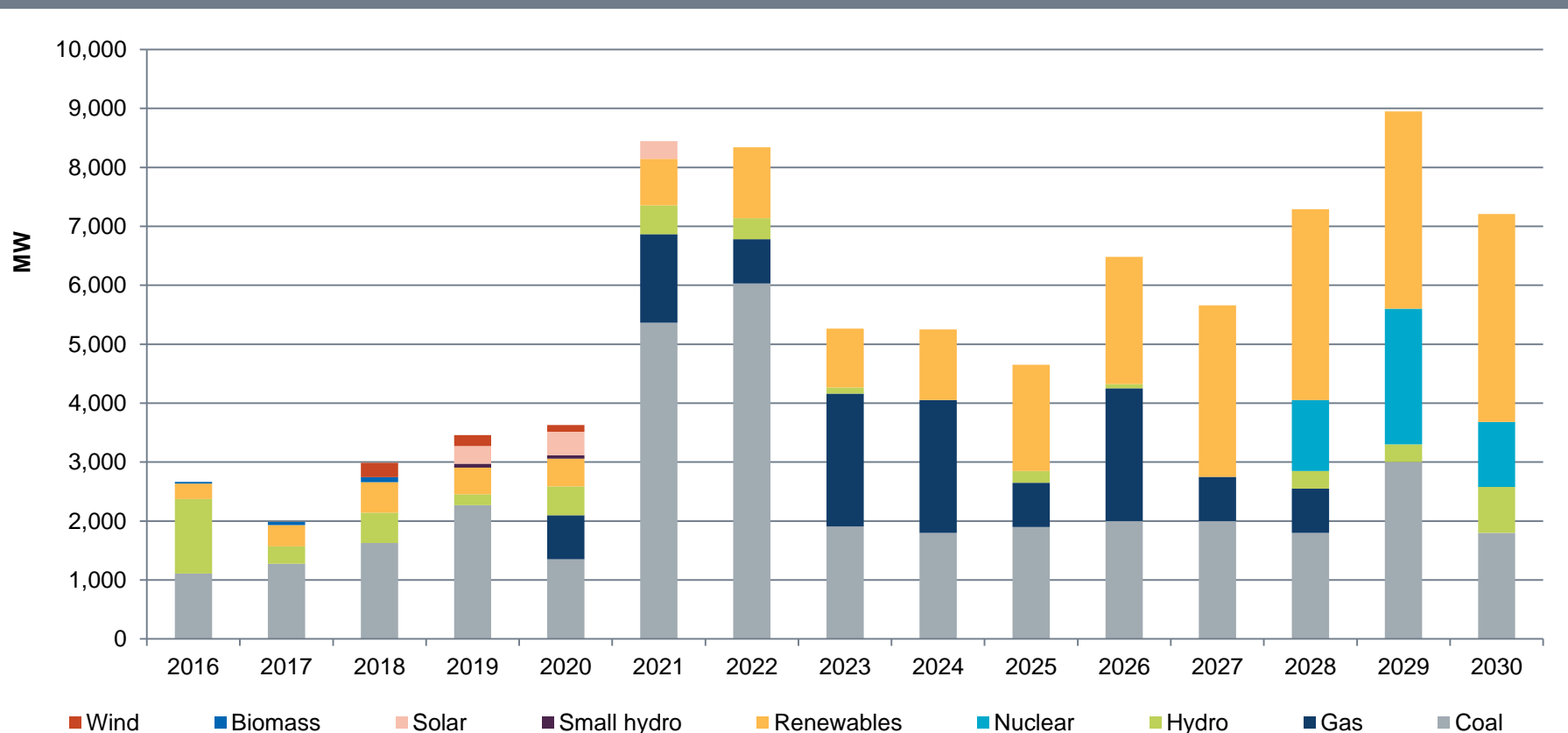


Coal production – World Bank no longer supports???



Capacity additions each year to 2030

PDP Revision 2016: Capacity additions each year

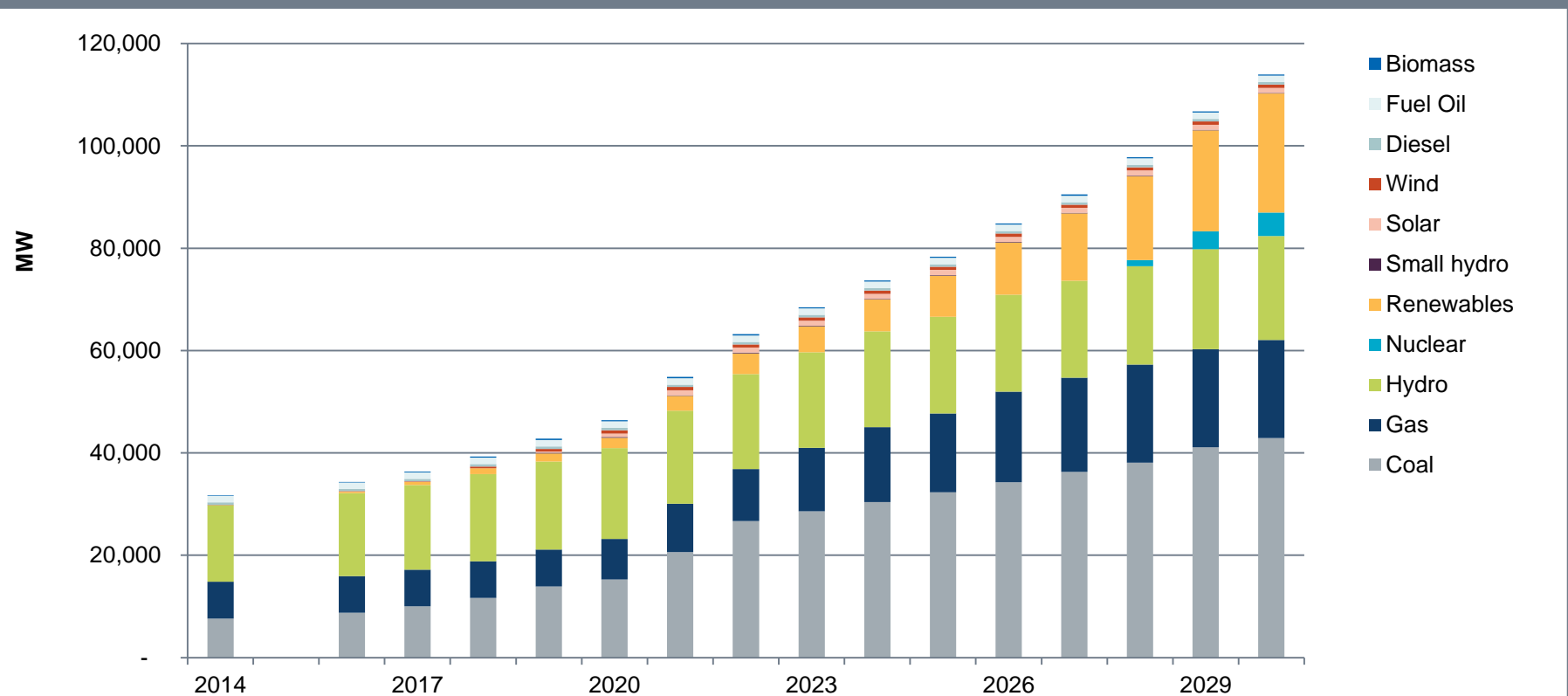


Source: IHS, Vietnam PDP Revision 2016

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Cumulative capacity to 2030

PDP Revision 2016: Capacity additions cumulative



Source: IHS, Vietnam PDP Revision 2016

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CURRENT GOVERNMENT'S POLICIES ON WIND ENERGY



Current Government's policies on renewable energy – General documents

- Electricity Law 2004 and 2012
- The Revised Power Development Plan 2011-2020 (revised PDP VII) approved by Prime Minister in Decision 428/QĐ-TTg dated 18 March 2016
- Still under development and not suitable with current industry practice: Law on Petroleum No. 18-L/CTN passed in 1993, as amended on 2000, 2008
- No master plan yet for the whole oil and gas industry: Only Decision No. 459/QĐ-TTg approving master plan for development of Vietnam gas industry until 2015, vision to 2025
- Lack of transparency: Decision No. 386/QĐ-TTg and Decision No. 233/QĐ-TTg Approving strategy for development of oil and gas sector until 2015, vision to 2025
- Decision 2068/QĐ-TTg dated 25 November 2015 on development strategy and vision of RE to 2050.

Current Government's policies on renewable energy – Wind power



- Decision No. 37/2011/QD-TTg dated 29 June 2011 on support mechanism for wind power projects (as amended by Decision No. 39/2018/QD-TTg)
- Circular No. 02/2019/TT-BCT dated 15 January 2019 on development of wind power projects and power purchase agreement for wind power projects
- FIT: 8.5 UScents/kWh (on-shore projects) and 9.8 UScents/kWh (off-shore projects)
- For grid-connected wind power projects having both onshore turbines and offshore turbines, the investor must agree with EVN on a plan for installing meters and on how to measure and calculate the separate power output of the onshore turbines and that of the offshore turbines as the basis for applying the appropriate power trading prices
- PPA: Based on sample PPA.

Wind PPA template – some improvements

- In terms of the new FiT, the revised model PPA has adjusted the foreign exchange rate to be the central exchange rates of the Vietnamese dong against the US dollar announced by the State Bank of Vietnam on the payment date.
- The PPA does exclude the due payment obligations of EVN / power companies from force majeure exemption and it could ensure EVN and power companies to make payments regardless force majeure events occurring.
- EVN's compensation liability now comprises (i) the value of actual and direct losses incurred by the aggrieved party as caused by the defaulting party and (ii) the value of direct benefits which the aggrieved party would have been entitled to if there was no such default.

Wind PPA template – but still not bankable

- The PPA relieves EVN from payment obligations in cases it is unable to take power due to a breakdown of the transmission or distribution grid. This is still a risk to power producer although EVN is required to give at least 10-day advance notice to the seller.
- The PPA is governed by Vietnamese law and does not itself expressly include the right to agree on international arbitration to resolve disputes
- The PPA enables the developers to transfer the PPA or provide step-in rights to lenders but subject to always written approval from EVN, provided that also it notifies EVN immediately in writing. This is a disappointment as the old template allows lender's step-in right without approval from EVN

The wind PPA

- PPA is required to follow a specific template
- The PPA template is unclear whether it is a “take or pay” agreement.
- No amendment of the PPA template is possible, except the supplementation to clarify the rights and obligations of the parties, **PROVIDED** that it does not change the basic contents of the PPA template.

But don't worry! We have the EU – Vietnam FTA and CPTPP

- EU – Vietnam FTA (“EVFTA”) and the Investment Protection Agreement (“IPA”):
 - When EVFTA is ratified, Vietnam will have more legal certainty than even Germany.
 - IPA implements **investor-to-state dispute settlement** (ISDS) mechanisms – investors can claim in case that an investor protection obligation has been breached
 - Domestic courts cannot question the legal validity of the decisions
- Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP):
 - TPP continues without the US, effective from 30 December 2018.
 - New TPP accounts for 12.9% of global GDP and 14.9% of global trade.

Non-recourse financing

- **What is it?** The Project can be financed with a loan secured by a charge on specific assets or on the revenues generated from a specific project or assets.
- **How to obtain?**
- ✓ **Option 1:** To develop the project by way of entering into a BOT (Build-Operate-Transfer) contract with the Government. As it is the Government who will own the project at the end upon the expiration of the BOT contract, the BOT contract will be more bankable → the non-recourse/limited recourse financing arrangement can be achievable.
- ✓ **Option 2:** To seek guarantee from the Multilateral Investment Guarantee Agency (“MIGA”).
- ✓ **Option 3:** To cooperate with a State-owned commercial bank for its guarantee of the project and then, negotiate with lenders to eliminate all recourses that lenders may ask from the sponsors and/or the borrowers.

EVN – Bankable now?

- EVN is assigned an Issuer Default Rating (IDR) of ‘BB’ with a ‘Stable Outlook’ for long-term foreign currency from Fitch Ratings – EVN’s First and Positive Credit Rating
 - This is based on EVN’s strong linkages to the state, its market position, strong demand for electricity and solid collection rates.
- More assurance to the private sector and commercial lenders about the financial and technical capacity of EVN

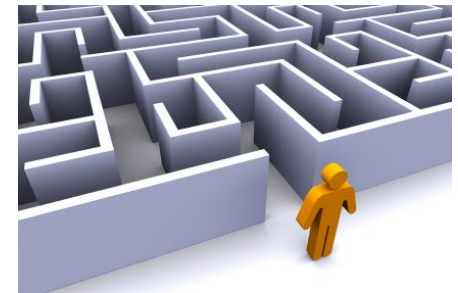


Investment guideline for foreign investors



Market access and Forms of investment

- No foreign ownership restriction
- Investment forms:
 - ✓ A wholly-owned foreign enterprise
 - ✓ A joint venture company between a foreign investor and domestic investor
 - ✓ Investment pursuant to the BOT legal framework
 - ✓ Through the purchase of shares in either an EVN subsidiary being or having been equitized or a private IPP holding power assets.



WTO ANALYSIS OF LIBERALIZATION OF MARKET ACCESS

Country	Limitation of market access*	Country	Limitation of market access*
Malaysia	medium	Myanmar	high
Indonesia	medium	Cambodia	medium
Philippines	medium	Laos	medium
Singapore	low	India	high
Thailand	medium	China	medium
Brunei	high	Vietnam	low

* Typical restrictions: number of opened sectors, JV requirement, limits on foreign-owned shares, permission requirement

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Financing options for power projects

- Government investment funding and preferential policies
- Official Development Assistance (ODA)
- Loan from commercial banks or financial institutions
- Clean Development Mechanism (CDM)
- Public Private Partnership (PPP)

BOT – BEST INVESTMENT FORM

- Government's Decree No. 63/2018/ND-CP on Public-Private Partnership: making projects more bankable
- Easier to negotiate more favorable electricity rates.
- Easier to obtain more government guarantees, especially in terms of EVN's obligations to purchase all electricity from the project.
- More fiscal and financial incentives.
- Precedent large-scaled BOT power projects in Vietnam: Phu My, Vung Ang, Mong Duong 2

INVESTMENT INCENTIVES



- **Subject to the decision of the local People's Committee where the project is located**
- **Land: land use fee exemption**
- **CIT 10%**
 - 15 years for new enterprises investing in power plant projects
 - tax exemptions within 4 years and tax reduction by 50% in the next 9 years.
- **Import duty exemption**
 - on goods imported to create fixed assets of the projects; components, materials and semi-finished products which cannot be produced inland for the project's operation.

Project planning



- Investors has to obtain prior agreement of EVN on power purchase prior to licensing procedure.
- Commitment of banks or credit institutions on financing the project must be obtained prior to issuance of Investment Registration Certificate .
- In-principle approval of the local People’s Committee is required prior to issuance of Investment Registration Certificate depending on the project size
- Obtain a power generation permit from the competent State authorities in order to conduct power generation operations in Vietnam
- Term of the permit: maximum 20 years for large power plants with particularly important meaning on economy, society, national defense and security as per the list approved by the Prime Minister; and 10 years for other power plants projects.
- The permit cannot be renewed but the investor may apply for a new one within 60 days prior to the expiry date of the current permit.

Project licensing

- **Step 1:** The investor obtains approval from the competent authority [e.g., Prime Minister, MOIT] approving the power plant as part of the power development plan (if required).
- **Step 2:** The investor obtains in-principle approval from the competent People's Committee
- **Step 3:** Application for issuance of the Investment Registration Certificate and the Enterprise Registration Certificate
- **Step 4:** Preparation of construction / operations of the power plant (for example, acquiring land area, site clearance, preparation, land investigation, conducting environmental assessment)
- **Step 5:** The project company to obtain necessary permits (*e.g.* electricity generating permit) and relevant agreements (*e.g.* PPA) for its and the power plant's operation.
- **Step 6:** Construction of the power plant and operation



RECOMMENDATIONS FOR INVESTORS

- Public private partnerships (e.g. - BOT) should be the first option.
- Due care on negotiations of the PPA and grid connection agreement with EVN
- Electricity selling in off-grid areas can be a good choice
- Sound financing structure, good business model and great legal assistance are keys to success.
- Accurate prediction of where the market is heading to, in the context of Vietnam's critical power shortage, should be considered.
- More pressure on the government to adequately address key issues on tariff increase, demonopolization of the power market and government guarantee.
- Vietnam's market is extremely in need of financing and EPC capability. There are rooms for cost-effective and high quality EPC contractors and resourceful lenders.
- In many cases, you can “test the water” with a small power plant project.

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WHEREVER YOU ARE - BE ALL THERE

Jim Elliot

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Thank you very much!

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