



VIETNAM – CHALLENGES IN SOLAR PROJECTS INVESTMENT

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DUANE MORRIS ENERGY PRACTICE

- Duane Morris attorneys advise clients on the legal, practical and business issues surrounding electricity generation, transmission, distribution, policy, regulation, sale and consumption.
- Our experience includes representation of domestic and international producers, regulatory agencies, independent electric transmission system operators and publicly owned utility companies, conventional and alternative energy developers, demand response providers, end users and others.
- In serving our clients, Duane Morris attorneys draw upon industry experience gained by serving as members of governmental regulatory agencies and from working within the energy industry

Energy Sector Background

- The Institute of Energy has calculated that commercial electricity will reach 491 billion kWh by 2030, and 877 billion kWh by 2045
- By 2030, the total installed capacity of Vietnam's electricity sources is predicted to be at 137.2 GW, of which **renewable energy: 29%**
- Total investment capital for electricity development in the period 2021-2030 is roughly USD 128.3 billion USD, of which: USD 95.4 billion for the power sources, USD 32.9 billion for the grids. The average structure of capital investment shall be 74% / 26%.
- By the end of 2020, the total solar power capacity (including floating) put into operation was about 17 GW, concentrated in the southern provinces and the Central Highlands.



Challenges in solar project development (1)

- **Non-negotiable PPA** and compulsory application for grid connected solar projects
- EVN has the obligation to buy all electricity generated from solar power projects. However, in the Solar PPA, EVN may stop buying electricity in certain circumstances beyond the reasonable control of the seller, without any compensation or payments to the seller/project developer.
- The purchaser must pay the seller only for the electricity that is received by the purchaser. The Solar PPA does not include any provision where the purchaser is unable to take the electricity produced.
- Dispute resolution: by litigation before Vietnamese courts or mediation/resolution at authorized energy state authorities of Vietnam. **No international arbitration is mentioned!**

Challenges in solar project development (2)

- **Grid connection issues**
- Congestion happens in some provinces with the most solar potential (Ninh Thuan, Binh Thuan for example) (generation exceeds transmission capacity)
- High possibility that the projects are ready to come into operation but cannot be fed into the grid
- It takes at least 3-5 years to improve the grid capacity.

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

- EU – Vietnam FTA (“EVFTA”) and the Investment Protection Agreement (“IPA”):
 - EVFTA came into effect on 1 August 2020, making Vietnam has 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.

DIRECT POWER PURCHASE AGREEMENT IS UNDER WAY

- Under MOIT's proposal, consumers can directly negotiate, purchase electricity with GENCO under a Fixed-term Contract.
- The pilot is to be implemented nationwide with a total capacity of selected projects of 1,000 MW at max. The nominal capacity of each project must be 30 MW (conversion rate for solar plants: 01 MW_p equals 0.8 MW).
- The project must be already included in the National Power Development Plan and the developer must already have a binding principle agreement with a consumer to sell electricity.

BENEFITS OF DPPA MECHANISM

- ✓ Impose take-or-pay obligation on off-takers thus guarantee developer's revenue stream
- ✓ Fixed electricity purchase price regardless of status of national legislation
- ✓ Flexible calculation of monthly exchange rate
- ✓ Increase consumer's environmental commitments (since only consumers with renewable energy usage commitments can participate in the pilot program)

WHEREVER YOU ARE - BE ALL THERE

Jim Elliot

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Thank you very much!

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