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BRIEFING

DEVELOPING WIND AND SOLAR POWER IN
VIETNAM: KEY ISSUES
JANUARY 2018

- THE GOVERNMENT OF VIETNAM HAS SET A TARGET OF GENERATING 850 MW AND 800 MW OF SOLAR AND WIND POWER RESPECTIVELY BY 2020
- THE SOLAR PPA ISSUED BY THE VIETNAMESE GOVERNMENT IS LACKING IN SEVERAL KEY AREAS THAT ARE CRUCIAL FOR OVERSEAS INVESTORS
- LOCAL LAW ISSUES SURROUNDING THE USE AND RESETTLEMENT OF LAND WILL ALSO CAUSE SIGNIFICANT ISSUES FOR OVERSEAS INVESTORS



In 1990s Vietnam, it was not common for people to own a television, radio or telephone. Today, a vastly different picture comes to mind. Vietnam has developed rapidly over the last 20 years and power demand is higher than ever. The Vietnamese government expects a 10 to 12% annual growth in power consumption from now to 2020.

In 2016, the Prime Minister of Vietnam approved a revised version of the power development plan for 2016-2020 with a vision to 2030. The Power Master Plan VII aims to increase the capacity of all solar power plants to 850 MW and wind power plants to 800 MW by 2020.

The government showed strong support for developing renewable energy with the Standard Power Purchase Agreement for Solar Projects ("Standard Solar PPA") issued by the Vietnamese Ministry of Industry and Trade ("MOIT") in September 2017 as well as the feed-in-tariff ("FIT") of 9.35 cents per kilowatt hour. Both measures have generated significant interest in the market and we understand that MOIT has received a large number of applications to develop solar projects in Vietnam.

This initial FIT however is only available to projects that achieve commercial operations by 30 June 2019. It is unclear whether the FIT will still be available after 30 June 2019 and it is possible that MOIT may lower the FIT thereafter. This means that, allowing for construction time, solar projects will need to resolve legal issues around financing and structuring on an urgent basis in order to benefit from the

“SOLAR PROJECTS WILL NEED TO RESOLVE LEGAL ISSUES AROUND FINANCING AND STRUCTURING ON AN URGENT BASIS IN ORDER TO BENEFIT FROM THE INITIAL FIT”

initial FIT. Choosing the right project that minimalizes the potential issues will also be important.

This briefing discusses a number of potential issues that need to be taken into account by investors considering developing or investing in solar or wind power in Vietnam.

Issues surrounding the Standard Solar PPA

The Standard Solar PPA is comparatively short compared to the PPA used in the majority of conventional power projects, and it fails to adequately address a number of issues that are important for overseas investors. The Standard Solar PPA is heavily based on a previous power purchase agreement for wind projects published by MOIT, therefore these issues apply equally to wind projects. Key areas of concern include:

- **Termination Payments** – In the event of default by Vietnam Electricity, the offtaker under all Vietnamese PPAs (“EVN”), damages will be payable to the developer. However, there are no provisions regarding the calculation of damages and the developer can only rely on general provisions of Vietnamese law regarding damages for breach of contract. In particular, there is no guarantee that damages will compensate all debt incurred from financiers of the project.
- **Currency fluctuations** – The FIT is set in US dollars at 9.35 cents per kilowatt hour but is payable in Vietnamese dong. The Standard Solar PPA for roof top projects contains provisions to adjust the FIT in order to accommodate for currency fluctuations, however these provisions are missing in the Standard Solar PPA for grid connected projects.
- **Outages and force majeure** – Whilst EVN is obligated to purchase all electricity generated by the project, this obligation is suspended in a number of circumstances, including force majeure and also overhauls and maintenance of the electricity grid by EVN. There are few limitations on the length of these interruptions and there are no “take or pay” obligations.
- **No Government Guarantee** – The Standard Solar PPA and accompanying legislation do not provide for a state guarantee of EVN's obligations, and projects will need to take EVN payment risk.
- **Dispute Resolution** - There are provisions providing for the escalation of disputes through a number of Vietnamese bodies, including state bodies under MOIT, to Vietnamese courts or Vietnamese arbitration bodies. These processes are complex and time consuming and there are no provisions for international arbitration.

Based on the above issues, it is likely that the Standard Solar PPA is not bankable on an international project finance basis. Although these concerns are widely known in the market and have been communicated to EVN and MOIT, it appears any significant amendments to the Standard Solar PPA will not happen anytime soon.

Government Consents

There are three key consents that need to be obtained by solar or wind projects in Vietnam. These are: -

- Inclusion in the National Power Development Plan for period 2011-2020 with visions to 2030.
- MOIT approval.
- Approval by the Prime Minister of Vietnam – in respect of projects over 50 MW only.

The approval processes can take some time. With the FIT deadline of 30 June 2019, it is important for potential investors in a project to carefully consider the consents that have been already obtained by a project and the additional consents that are required.

Land issues

The land used for renewable projects will need to be leased from Vietnamese local authorities and there are a number of Vietnamese land law issues that can cause serious concerns for projects. These include:-

- Resettlement and compensation –
 - Under Vietnamese law, the developer will be responsible for compensating local land users and paying for the construction of resettlement areas.
 - The level of compensation is determined by agreement with the local authorities and this can be a time consuming process.
 - Agreeing the level of compensation is most likely to be a key condition precedent for financial close - this could potentially delay construction and prevent the project from meeting the 30 June 2019 deadline.
 - Potential investors will therefore need to carefully consider the current use of the proposed site, and potential resettlement issues. For example, a project with a cleared site, or on unsettled land or land with fewer households, may be significantly easier to develop.
- **Security** – Vietnamese law does not permit foreign banks taking security over land or assets attached to land (solar panels, on the other hand, should be able to be mortgaged to foreign banks on the basis that they can be easily removed). In any case, this can create significant problems for international lenders when it comes to obtaining to security.

Financing Solutions

It seems the possibility of Standard Solar PPA being bankable for international banks is rather low given the issues highlighted above. On the other hand, local Vietnamese banks have the appetite for renewable energy projects and are comfortable with EVN risk and the issues surrounding the Standard Solar PPA. One thing to note is that local banks do not have significant project finance experience and would usually finance deals on a recourse basis taking a parent guarantee and other security from group assets.

It remains unclear whether there is sufficient capacity in the local Vietnamese banking market to finance the volume of proposed renewables deals. In addition, there are a number of concerns that arise for renewable projects borrowing from Vietnamese banks such as:

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“AS THE RENEWABLE MARKET CONTINUES TO GROW IN VIETNAM, THERE WILL BE A NEED FOR OVERSEAS TECHNOLOGY AND CAPITAL WHICH MEANS FOREIGN INVESTORS AND DEVELOPERS WILL BE IN DEMAND ”

- Restrictions from the State Bank of Vietnam on issuing US Dollar loans,
- Comparatively high interest rates offered by Vietnamese banks, and
- Unfamiliarity with long tenure loans required for renewables projects.

Hence, there is a role to play for international banks in the Vietnamese renewable energy markets. Potential sponsors and lenders will need to consider creative solutions to address the issues. These can include backing from multilateral institutions and/or export agencies, and partnerships with local banks.

Closing thoughts

The Standard Solar PPA has a number of issues for international investors and this is because the document has been issued with local developers in mind. They are less concerned about some of the issues identified in this briefing and will look to obtain financing from local banks compared with overseas developers.

The Vietnamese government shows support for clean energy by the size of the power targets set. As the renewable market continues to grow in Vietnam, there will be a need for overseas technology and capital which means foreign investors and developers will be in demand. They will however need to evaluate the project they are investing in, and be prepared to look for innovative structuring solutions to address the outstanding concerns.

Watson Farley & Williams (“WFW”) works closely with our Vietnamese associated law firm LVN & Associates (“LVN”) in Hanoi to provide local and international legal advice to our clients. Our Counsel Linh Doan is the founding partner of LVN. The WFW and LVN team has extensive experience in the Vietnamese and Asia energy sector, with Linh having advised on numerous conventional and renewable power projects in Vietnam for the past 20 years. We are recognised for our extensive experience in dealing with both EPTC and EVN on power purchase agreements and we frequently represent the Vietnamese Government, state-owned enterprises and foreign investors on energy projects in Vietnam. This note is based on our experience working with MOIT, EVN and other Vietnamese regulatory bodies, and renewable energy projects we are currently advising in Vietnam.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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