

WATSON FARLEY & WILLIAMS

BRIEFING

NEW FEED-IN-TARIFF MECHANISM FOR VIETNAMESE SOLAR ENERGY PROJECTS MARCH 2019

- THE VIETNAMESE GOVERNMENT HAS CONSIDERED NEW SOLAR FEED-IN-TARIFFS WHICH WILL BE IN PLACE FOR APPROXIMATELY TWO YEARS.
- THE FEED-IN-TARIFFS WILL VARY DEPENDING ON THE TYPE OF SOLAR POWER TECHNOLOGY AND REGION OF DEPLOYMENT.
- GIVEN THE DEADLINE FOR TAKING ADVANTAGE OF THE FEED-IN-TARIFFS IT IS IMPORTANT FOR INVESTORS AND DEVELOPERS TO ACT FAST.



In 2017, the introduction of the feed-in-tariff (“FiT”) of 9.35 US cents per kilowatt hour¹ by the Vietnamese Ministry of Industry and Trade (“MOIT”) generated significant interest in solar projects in Vietnam, especially in the southern regions of Vietnam which have the highest levels of irradiation. However, the FiT under Decision No. 11 is only available to projects that achieve commercial operations by 30 June 2019. As a result there has been some uncertainty surrounding projects that do not commission by this date, and whether those projects would receive any FiT.

This uncertainty has now been clarified. On 20 February 2019, MOIT released the draft Decision of the Prime Minister for the development of solar projects in Vietnam beyond 30 June 2019 (“Draft Decision”) to replace Decision No. 11. The Draft Decision stipulates new FiTs will be introduced, and in place for approximately two additional years, from 1 July 2019 to 2021, with the exact deadline in 2021 to be determined. Solar projects which meet the deadline will benefit from the revised FiT for a 20-year operational term.

Revised FiTs

Under the Draft Decision, the revised FiTs will vary, ranging from 6.67 US cents per kilowatt hour to 10.87 US cents per kilowatt hour dependent on the type of solar power technology and region of deployment. This differs from the current FiT under Decision No. 11 in which a fixed tariff applies across all solar power projects (irrespective of solar power technology type and region). The Draft Decision,

¹ Decision No. 11/2017/QĐ-TTg of the Prime Minister dated 11 April 2017 on the mechanism for encouragement of the development of solar power projects in Vietnam (“Decision No. 11”).

however, proposes differentiated tariff levels, which vary dependent on the four different irradiation regions of Vietnam and four different solar power technologies.

FiTs from 1 July 2019 to a date to be determined in 2021:

	REGION 1 FIT		REGION 2 FIT		REGION 3 FIT		REGION 4 FIT	
	VND per KWh	US cents per KWh	VND per KWh	US cents per KWh	VND per KWh	US cents per KWh	VND per KWh	US cents per KWh
Floating solar power	2,159	9,44	1,857	8,13	1,664	7,28	1,566	6,85
Ground-mounted solar power	2,102	9,20	1,809	7,91	1,620	7,09	1,525	6,67
Solar power projects with integrated storage system	Not Applicable ²	Not Applicable	Not Applicable	Not Applicable	1,994	8,72	1,877	8,21
Rooftop solar power	2,486	10,87	2,139	9,36	1,916	8,38	1,803	7,89

The four regions of irradiation are classified as follows:

- I. Region 1:
 - 28 provinces included: Ha Giang, Bac Kan, Cao Bang, Tuyen Quang, Thai Nguyen, Lao Cai, Yen Bai, Lang Son, Quang Ninh, Phu Tho, Vinh Phuc, Bac Giang, Hai Duong, Hoa Binh, Hanoi, Ha Nam, Bac Ninh, Hung Yen, Hai Phong, Ninh Binh, Thai Binh, Ha Tinh, Nam Dinh, Quang Binh, Thanh Hoa, Lai Chau, Nghe An, and Son La.
- II. Region 2:
 - 6 Provinces included: Quang Tri, Dien Bien, Thua Thien Hue, Quang Nam, Da Nang, and Quang Ngai.
- III. Region 3:
 - 23 Provinces included: Kon Tum, Ca Mau, Hau Giang, Binh Dinh, Bac Lieu, Kien Giang, Soc Trang, Can Tho, Vinh Long, Tra Vinh, Lam Dong, Ben Tre, Tien Giang, An Giang, Dak Nong, Ho Chi Minh City, Dong Nai, Dong Thap, Ba Ria - Vung Tau, Long An, Binh Duong, Binh Phuoc and Tay Ninh.
- IV. Region 4:
 - 6 Provinces included: Phu Yen, Gia Lai, Dak Lak, Khanh Hoa, Ninh Thuan and Binh Thuan.

The four solar power technologies are classified as follows:

- I. Floating solar power projects:
 - Defined as solar power projects having solar PV panels installed on structures floating on the water surface, directly connected to the grid of the power purchaser (i.e., EVN or its successors).
- II. Ground-mounted solar power projects:
 - Defined as solar power projects having solar PV panels installed on the ground, directly connected to the grid of the power purchaser and

² We note the inclusion of "Not Applicable" is not entirely clear in the Draft Decision. Our understanding of this is that there is no guaranteed tariff applicable for regions 1 and 2, and instead the tariff level will be determined by negotiations between the developer and the offtaker. This can be contrasted with regions 3 and 4 which will receive guaranteed tariffs.

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- rooftop solar power projects having an installed capacity of more than 1 MWp directly connected to the power purchaser's grid.
- III. Solar power projects with integrated storage system:
- Defined as solar power projects using an electrochemical storage system for the purposes of storing electrical power directly connected to the power purchaser's grid, with a required minimum storage capacity being 25% of alternating current (AC) capacity in hours.
- IV. Rooftop solar power projects:
- Defined as solar power projects having solar PV panels installed on the roof, or attached to a building, and having an installed capacity of 1 MWp or less.
 - There are 4 rooftop solar power models, which are: (i) household consumption; (ii) household business; (iii) direct power purchase; and (iv) intermediary power purchase.

Foreign exchange

Under the Draft Decision the exchange rate for the FiTs for rooftop solar power projects will be calculated annually, with a fixed rate between VND and USD published at the end of each year, which will take effect for the following calendar year. The fixing of an annual rate differs from the approach seen for wind projects which have monthly exchange rate calculations.

However, the Draft Decision is silent on the exchange rate mechanism for FiTs in relation to the three other types of solar power technologies. This may therefore leave room for negotiation between EVN and the developers, and may enable monthly fixed rates to be implemented.

Government approval

The Draft Decision maintains that all solar power projects must be included in the Power Development Master Plan (which comprises the National Power Development Master Plan and the Provincial Power Development Master Plan). According to the Draft Decision, the consideration and approval of the inclusion of solar power projects into the Power Development Master Plan is determined in compliance with the current law provisions on planning. We note that Article 27 of Law on Planning No. 21/2017/QH14 dated 14 November 2017 would likely be interpreted in the way that any project which is not in the Power Development Master Plan will be subject to the Prime Minister's approval. While the requirement for receiving the Prime Minister's approval was previously required for projects which exceed 50 MW (and were not in the National Power Development Master Plan), this differs to Decision No. 11 in relation to projects which are equal to 50 MW, or below. For these projects, under Decision No. 11, if they were not in the Provincial Power Development Master Plan, they only required MOIT's approval, not that of the Prime Minister. This change may therefore create a significant burden for the investors with projects which are equal to 50 MW, or below, who are now also required to obtain the Prime Minister's approval.

Grid curtailment

The Draft Decision has provided clarity in relation to EVN's offtake requirements where grid congestion on the transmission lines exists. The Draft Decision confirms that EVN is required to purchase all power generated by the power plants, but only to the extent that the power reaches EVN. Consequently, if the transmission lines are congested, there is no obligation on EVN to purchase the electricity. Prior to the Draft Decision, such scenarios often resulted in disputes being made based on force majeure clauses. While this clarification places congestion risk on developers,

“THIS DRAFT DECISION CAN BE SEEN AS AN ATTEMPT TO REBALANCE THE SOLAR ACTIVITY IN VIETNAM”

the Draft Decision does state that priority must be given to solar projects over conventional power.

The Draft Decision also places an obligation on MOIT to issue zoning for capacity scale solar energy developments based on (i) solar radiation intensity, (ii) capacity release capability, and (iii) regional load demand. MOIT must, in addition, announce information on load capacity limits in relation to transformer stations nationwide. Such obligations will help developers plan and choose project locations with greater transparency and understanding on curtailment risk.

Closing thoughts

The move to create a varied FiT regime comes after years of heavy deployment in Regions 3 and 4, with the focus historically being on ground-mounted projects. According to MOIT, as of September 2018 there are 121 solar projects with a total capacity of 6,100 MW which have been added in the Power Development Master Plan, which far exceeds the targeted capacity of 850 MW by 2020. In addition to the unbalanced deployment of solar projects, this has also caused regional strains on the transmission lines. This Draft Decision can therefore be seen as an attempt to rebalance the solar activity in Vietnam, by both region and type of solar technology.

The provinces with lower solar irradiation (i.e. northern provinces) will benefit from higher FiTs than the provinces with higher solar irradiation (i.e. central highlands and southern provinces). This will have an impact on the development of solar projects in Vietnam as central highlands and southern provinces are currently more popular locations for solar power plant developments due to the fixed rate FiT under Decision No. 11 and the higher solar irradiation levels in the region.

Despite investors' expectations that the Decision No. 11, 30 June 2019 commercial operations cut-off date would be extended, this has proven not to be the case. Rather the Draft Decision has been proposed with a new FiT regime to be put in place. We, therefore, expect that the new commercial operations cut-off date in 2021 will also not be extended, and investors are recommended to accelerate their projects to ensure they can meet the two-year commercial operations date ("COD") period.

Investors should also take note that the Draft Decision states that MOIT is responsible for researching an auction mechanism, and while no further details have been included, it is possible that this will be the approach taken to replace the feed-in-tariff mechanism after 2021, and therefore provides a further reason to ensure their projects meet the FiT two-year COD deadline.

Watson Farley & Williams LLP ("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 Asian energy sector, with Linh and her team having advised on numerous conventional and renewable power projects in the region. WFW is recognised globally for its renewable expertise and frequently advises a range of clients in the sector.

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 LLP.



LINH DOAN
Of Counsel
Hong Kong

T +852 2168 6700
ldoan@wfw.com



MICHAEL FOLSOM
Registered Foreign Lawyer
Hong Kong

T +852 2168 6718
mfolsom@wfw.com



EDMUND POON
Associate
Hong Kong

T +852 2168 6771
epoon@wfw.com