

Client Alert

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New Circular 02 on Development Guidelines for Wind Power Projects in Vietnam

Recent developments

Effective from 28 February 2019, Circular No. 02 of the Ministry of Industry and Trade of Vietnam ("**MOIT**") provides for updated guidelines on the development of wind power projects in Vietnam.¹

Following the Prime Minister's recently issued Decision No. 39, approving the new Feed-in-Tariff ("**FIT**") for onshore and offshore wind power projects in Vietnam,² the new guidelines of Circular No. 02 will replace previous regulations under Circular No. 32 in 2012 and Circular No. 06 in 2013 of the MOIT.³ The new guidelines will further supplement new guidelines based on practical application, approval and development of wind and other renewable power projects in Vietnam during the recent years.

Compared to previous draft versions released in October and November 2018 as well as the previous Circular No. 32 in 2012, Circular No. 02 as the final and official version has made substantial revisions, including both improvements on some aspects and stricter requirements on others.

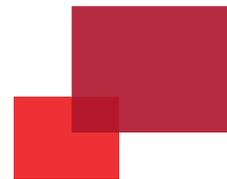
Specifically, Circular No. 02 provides for updated guidelines for the development of wind power projects in Vietnam, which includes, among other things:

- Power development plans and the procedure for inclusion of a new wind project in the power development plans;
- Requirements for wind measurement and meteorological mast ("met mast");
- Feasibility Study (FS) Report;
- Conditions for commencement of construction of wind power projects;
- The process for testing, acceptance and commissioning of wind farms;
- Requirements for wind farm turbines and equipment;
- Safety corridor requirements;
- Land use limitations for wind farms; and
- Tariffs for projects involving both onshore and offshore wind turbines.

¹ Circular No. 02/2019/TT-BCT of the Ministry of Industry and Trade regulating the implementation and development of wind power projects and a model power purchase agreement for wind power projects ("**Circular No. 02**").

² Decision No. 39/2018/QĐ-TTg of the Prime Minister dated 10 September 2018 amending and supplementing a number of articles of Decision No. 37/2011/QĐ-TTg of the Prime Minister dated 29 June 2011 on the support mechanisms for development of wind power projects in Vietnam ("**Decision No. 39**").

³ Circular No. 32/2012/TT-BCT of the MOIT dated 12 November 2012 on the procedure for development of wind power projects and model PPA for wind power projects; and Circular No. 06/2013/TT-BCT of the MOIT dated 8 March 2013 on the contents, order, procedure for preparation, appraisal and approval of wind power development plans.



Power Development Plan ("PDP") requirements

Under the previous Circular No. 32 and the new Circular No. 02, for any newly proposed wind power project not yet in applicable PDPs, the project's site, power source and its interconnection plan will need to be approved for inclusion in the applicable PDPs before the developer can apply for investment approval (i.e. investment policy decision and/or investment registration certificate) and other project development related licenses.

Under Circular No. 02, the MOIT clarifies further that:

- a) The schedule of operation and the scale of capacity of a wind project's phases must comply with the approved PDPs. In case where the investor wishes to adjust the schedule of project implementation resulting in a difference of longer than 6 months or divide the project into separate phases different from the approved contents in the PDP, the investor will need to report to the relevant PDP approval authority for review and approval. It appears that the MOIT adds this clarification to stay informed of any important changes or mismatches to the project's capacity, development progress and associated interconnection plans following the Prime Minister and the MOIT's approval of the PDP inclusion for the central government's supervision.
- b) For projects which were previously approved by the MOIT or the Prime Minister (as applicable depending upon the scale of the project) for inclusion in general PDPs or wind-specific PDPs, as a general rule, the developers can continue to develop those projects in accordance with approved PDPs. The MOIT clarifies this point given the changes under the new Law on Master Planning taking effective from 1 January 2019. This is in line with the new Law on Master Planning's transitional provisions (Articles 59.1(c) and 59.3).
- c) However, when an investor develops a wind power project which has been included in the list of wind projects in the relevant provincial-level Wind PDPs for the period of 2011 to 2020, an important point to note is that the provincial People's Committee must update the plan of interconnection for that project to ensure that the project's generating capacity and electrical power can be transmitted and the local electrical grid system is capable to absorb the project's capacity. If there is any change to the interconnection plan of the project, the provincial People's Committee must report and propose to the MOIT on an adjusted / updated interconnection plan for appraisal and re-approval for the same. This requirement is most relevant to wind power projects developed in provinces where a provincial-level Wind PDP has been approved by the MOIT (e.g., Quang Tri, Ninh Thuan, Binh Thuan, Ben Tre, Tra Vinh, Soc Trang, Bac Lieu, Ca Mau, Thai Binh, Dak Lak and Ba Ria - Vung Tau Provinces).

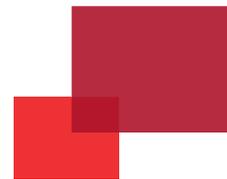
Inclusion of newly proposed wind projects in the PDP

Circular No. 02 provides for updated guidelines for inclusion of newly proposed projects into the PDPs on a project-by-project basis. Compared to the previous Circular No. 32, Circular No. 02 provides for more requirements for developers to apply for approval of their proposed project into the PDPs. Having said that, these updated requirements only reflect actual requirements in practice for wind and other renewable projects during the recent years, rather than introducing entirely new ones.



Specifically, under Circular No. 02, the contents and documents required for the application for approval of a newly proposed wind farm in the PDP must include the following specific contents:

- a) **Proposal for inclusion in PDP**, including the following key contents:
- 1) The necessity for investment in the proposed project and the conditions for implementation of investment and construction of the proposed project;
 - 2) Proposed objective, scale, sites of the project (including specific location and coordinates) and proposed form of project implementation;
 - 3) Specific needs to use land and natural resources:
 - clearly specifying the area for survey, proposed land area for temporary use, proposed land area for permanent use and land area affected by the safety corridor of wind farms;
 - providing for a list of types of land, coastal or sea areas and analysis of the state of efficiency of the use of land, natural resources and coastal or sea areas; and
 - setting out an evaluation of the appropriateness of the land use master plans, marine area master plan, any overlaps with other types of master plans as applicable.
 - 4) Report on assessment of wind potentials at the project's proposed sites;
 - 5) Brief on the technological solutions:
 - analyzing the technological selection based on the wind characteristics of the project's sites; and
 - plans on designing the wind turbines' location.
 - 6) Plan of preliminary design of the proposed project, including:
 - Construction location, types and levels of the main construction facilities;
 - Layouts of preliminary design of the project's sites and grounds; and
 - Layouts and preliminary explanations on the solutions for foundation and sites chosen for the main construction facilities.
 - 7) Report on the selection of plans for interconnection of the wind power plant to the electrical grid system, which clearly states:
 - the current state of local power sources and grid systems, plan to develop power sources and electrical grids;
 - comparison of different options of interconnection plans, calculation / estimation of impacts on local power sources and electrical grids when the proposed project is included; and
 - evaluation of the capability of local electrical grids to absorb the project's proposed capacity of power when the project comes into commercial operation.



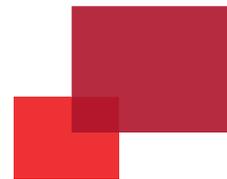
- 8) Preliminary solution for transporting of super-length and super-weight wind turbines and equipment; schedule of implementation, technical construction solutions;
 - 9) Brief on total investment capital; and
 - 10) Preliminary evaluation of the socio-financial and socio-economic effectiveness and impacts of the proposed project.
- b) **Written consents and opinions from the provincial People's Committee** on the project location planning and area of land use and their alignment with the relevant land use master plans, any overlaps with other types of master plans; written opinions of the competent authority on the use of natural resources and sea or coastal areas of the proposed project (for offshore wind power projects); and
- c) **Written opinions from the regional Power Corporation of EVN** (if connected to distribution power systems) **or National Power Transmission Corporation of EVN** (if connected to transmission power systems) **and written opinions of EVN** on the capability of the local electrical grids to absorb the project's proposed capacity of power and the application dossier for inclusion of the proposed project in the PDP.

In terms of procedures, under Circular No. 02,

- Within a period of 45 working days from the date on which the MOIT's receipt of the provincial People's Committee's proposal together with a complete set of the investor's supporting application dossier containing the above documents, the MOIT is required to consult with other relevant Ministries and central authorities for review and appraisal of the same. In practice, the ministries from which the MOIT normally obtains written opinions normally include: Ministry of Construction, Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment, Ministry of Finance.
- Based on the review and appraisal results, the MOIT may issue a request to the provincial People's Committee for the investor's supplementation of the application documents.
- Within 15 working days from the date of the MOIT's Electricity and Renewable Energy Authority ("**EREA**") has received the supplemented and satisfied application dossier, the EREA will be required to prepare a consolidated appraisal report to the Minister of the MOIT. The final review and approval process of the MOIT and the Prime Minister for inclusion of the project in PDP will be implemented in accordance with the Law on Master Planning and relevant implementing regulations.

Requirements for wind measurement

Under Circular No. 02, wind power projects must have a report on wind measurement data results at the project's sites before a feasibility study (FS) report is formulated and approved. Wind measurement must be implemented for a period of at least twelve (12) consecutive months at representative positions. The number of wind masts must be consistent with the topographic change of the project's sites.



Previously, Circular No. 32 imposes certain minimum technical requirements for wind met masts. For example, wind measurement data must be collected from a wind met mast with a height of at least sixty (60) meters, with frequency and length of collection at ten (10) minutes per collection. For projects with a proposed capacity greater than 50MW (with land area used for wind potential assessment greater than 1,000 hectares), investors must install and operate at least two wind masts to measure wind across the project's sites. However, new Circular No. 02 no longer provides for those specific requirements. Instead, to add greater flexibility and align closer with international standards, Circular No. 02 generally provides that the method, equipment and results of wind measurement tests must conform to international standards of the International Electrotechnical Commission ("IEC") or an equivalent international standard.

Feasibility Study (FS) report requirements

Under Circular No. 02, the FS report of a wind power project must include the following key contents, among other things as required under the Construction Law:

- Report detailing wind measurement results;
- Location, coordinates, land area for permanent use, land area for temporary use; sea area for use (if any) of the wind power project;
- Interconnection plan of the project and assessment of the impact of the project's interconnection plan on local power grid system;
- Technical plan and projections, costs for disassemble and settlement of wind project facilities and equipment after the project has ended; and
- Grid Connection Agreement; approval or agreement with the competent authority on the project's location; alignment of the project's transmission lines; land areas for use (for onshore wind projects) and/or sea area and natural resources for use (for offshore wind projects); the project's zoning plan; written confirmation/approval of the competent authorities on the location of offshore wind turbines (for projects having offshore turbines); written approval of the wind turbines' height from the competent authority.

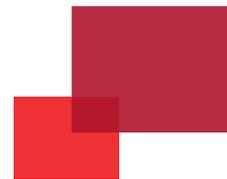
Conditions for commencement of construction of wind power projects

Under Circular No. 02, wind power projects may only be constructed if the following conditions have been satisfied, among other conditions under the Construction Law and the Environmental Protection Law:

- Construction designs of the project have been appraised and approved;
- Power purchase agreement has been executed with EVN as power purchaser; and
- Financing agreement and commitments for debt capital financing to ensure meeting the schedule of construction of the project in accordance with approved schedule have been available.

Process of testing and commissioning of wind farms

Circular No. 02 provides for the following general guidelines:



- Wind power plant facilities may be brought into operation after they are accepted for taking over in accordance with applicable regulations; and
- The process of testing for acceptance and taking over of wind power plant facilities may be subject to examination by the MOIT's Electricity and Renewable Energy Authority or the provincial Department of Industry and Trade.

In practice, before the commercial operation date ("**COD**") of a wind farm, the developer is required, among other things, to:

- conduct the procedure for testing and acceptance of metering system, certification of energy output from tested wind turbines;
- reach an agreement on the coordination procedure of the operation of the wind farm with EVN's local power corporation; and
- reach an agreement and receive recognition from EVN's Electricity Power Trading Company on the actual COD of wind turbines.

Requirements for wind farms' turbines and equipment

Circular No. 02 inherits the earlier Circular No. 32 to set out the following requirements for equipment of wind farms:

- Wind farm facility equipment must meet the Vietnamese technical standards and regulations or international standards of IEC or equivalent standards; and
- Equipment of the wind farms must be new equipment and must have a manufacture date of no more than five (5) years, have an appropriate certificate of origin (C/O) and manufacturer's certificate. If a wind power project uses second-hand equipment or equipment having a manufacture date of more than five (5) years, the developer must report such use to the MOIT for review and collaboration with other relevant agencies for decision.

Circular No. 02 removes Circular No. 32's earlier requirement that the efficiency of a wind farm (wind turbines' arrangement) must not be less than ninety percent (90%).

Safety Corridor Requirements

Circular No. 02 inherits the earlier Circular No. 32's requirement to provide for the following safety requirements for wind farms:

- Safety corridor of wind power plants, safety corridor of transmission lines and substations must comply with the technical standards and regulations on power equipment, regulations on safety of high-voltage power grid systems and regulations on safety of electrical power facilities;
- Wind power plant facilities must be located away from residential areas for at least 300 m; and
- Wind turbines and towers must be in a bright color and non-reflective.

Land use limitation for wind farms

Land use areas during the development of wind power projects includes: (i) land area for survey and site studies for investment in wind power projects; (ii) land area for termed / permanent use; and (iii) land area for temporary



use. The land use area for a wind farm must be consistent with the scale of capacity of the project.

In comparison with previous Circular No. 32, new Circular No. 02 reduces the maximum land use area/rate for a wind farm, in particular:

- The rate of land area for permanent use in a specific period/term for a wind farm may not exceed 0.35 ha per MW (instead of 0.5 ha per MW under previous Circular No. 32); and
- The rate of land area for temporary use for a wind farm may not exceed 0.3 ha per MW (instead of 0.7 ha per MW under previous Circular No. 32).

Previously, under Circular No. 32, in case where roads to the project's sites have complex topography that must be widened to facilitate the transportation of wind turbines and towers in the construction and operation of a wind farm, the provincial People's Committee may consider allowing for a higher rate of land area for permanent use during the operation term of the project of up to 1 ha per MW. However, new Circular No. 02 has removed this special provision, meaning that the land area for permanent use during the operation term of a wind farm shall be limited to 0.35 ha per MW as mentioned above.

For land area of temporary use for wind power projects, the developer may use the land temporarily for construction of wind power projects, including: temporary roads for construction, gathering yards of materials and equipment, construction sites, camps for workers' living and other ancillary locations. After the power plant has been completed, the land area of temporary use will be recovered by the relevant provincial People's Committee. After the wind power project has been put into operation, the developer must restore the status of land area for temporary use and hand it over to the provincial authority for management.

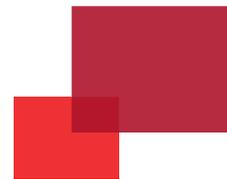
Tariffs for projects involving both onshore and offshore wind turbines

Decision No. 39 approves the new FiT of UScents 8.5 per kWh (for onshore wind power projects) and UScents 9.8 per kWh (for offshore wind power projects).

Given the difference in tariffs between new FiT for onshore and offshore projects, Circular No. 02 clarifies that for grid-connected wind power projects having both onshore turbines and offshore turbines, the project developer (i.e., power seller) will need to agree with EVN (as power purchaser) on the project's specific plan for installing meters and metering method to separate energy outputs from the project's onshore turbines and offshore turbines to form the basis for application of appropriate power tariffs.

Potential additional guidelines

- In relation to wind turbine and equipment manufacturers and suppliers, under Circular No. 02, the MOIT has instructed its Industrial Department to study and propose specific mechanisms for the encouragement of development and manufacturing of domestic wind power equipment and increase of local contents in wind power projects in Vietnam, to submit to the Prime Minister for a decision.
- Separately, the MOIT instructed its Electricity and Renewable Energy Authority to study and propose auction/bidding mechanisms for wind



power projects for application for the period from 1 November 2021 to submit to the MOIT and the Prime Minister for decision. Currently, an auction/bidding mechanism has been in a study and consultation process, but a final decision on a specific mechanism has yet to be approved for implementation.

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Transitional provisions for operating wind farms

Circular No. 02 clarifies that for wind farms which came into commercial operation before 1 November 2018, the developer may re-sign the PPA with EVN (as power purchaser) to apply the new FiT under Decision No. 39 from 1 November 2018 until expiration of the remaining term of the existing PPA.

However, Circular No. 02 is not entirely clear as to how other new regulations of Circular No. 02 (e.g., reduced land areas) will affect existing projects under development.

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If you would like to discuss these new regulations in further detail, the impacts of Circular No. 02 to your specific project, necessary steps going forward, as well as opportunities for investment in wind or other renewable power projects in Vietnam, please do not hesitate to contact us.