

Client Alert

February 2020

For more information, please
contact:

Frederick Burke
Managing Partner
+84 28 3520 2628
Frederick.Burke@bakermckenzie.com

Dang Chi Lieu
Partner
+84 24 3936 9341
ChiLieu.Dang@bakermckenzie.com

Nguyen Thanh Hai
Senior Associate
+84 24 3936 9606
ThanhHai.Nguyen@bakermckenzie.com

Vietnam's proposed new draft regulations on greenhouse gas emissions reductions and other climate change adaptation measures

Recent developments

The Ministry of Natural Resources and Environment of Vietnam ("**MONRE**") has recently released a new Draft Law on Environmental Protection ("**Draft Law**") to replace the current 2014 Law on Environmental Protection ("**Current Law**").¹ The Draft Law proposes, among other things, significant changes to current policies on climate change adaptation measures.

In addition, as part of the roadmap for implementing the Paris Agreement and following the Katowice Climate Change Conference (UNFCCC COP 24), MONRE has drafted and proposed another draft Decree containing a specific plan on the mitigation of greenhouse gas ("**GHG**") emissions in Vietnam ("**Draft GHG Decree**").

According to MONRE, the finalization and implementation of the Draft GHG Decree will provide an important legal basis to assist relevant Ministries in duly conducting state management of GHG mitigation. Furthermore, the approval of the proposed Draft GHG Decree would reaffirm the Government's determination to fulfill its international commitments as well as elevate the position of Vietnamese specialized agencies in international discussions and cooperation on climate change.

A - Proposed Plans to reduce GHG emissions under the Draft GHG Decree

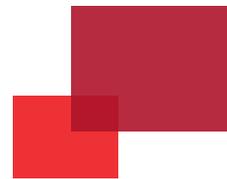
The socio-economic conditions of Vietnam have been assessed to be highly susceptible to the effects of climate change. Vietnam's Nationally Determined Contribution ("**NDC**") represents the country's concerted efforts to contribute to global climate change mitigation. The NDC specifically aims to fulfill the ultimate objectives of the United Nations Framework Convention on Climate Change ("**UNFCCC**") and reach the target of maintaining the global average atmospheric temperature rise to below 2°C by the end of the 21st century.

Under Vietnam's NDC, GHG emissions reduction compared to the Business-As-Usual scenario ("**BAU**") is as follows:

- As an unconditional contribution, Vietnam aims to utilize domestic resources to reduce its GHG emissions by at least 8% compared to BAU by 2030; and
- As a conditional contribution, the above-mentioned 8% contribution may be increased to 25% if sufficient international support is received.

In order to achieve these contributions, MONRE has proposed, among other things, the following specific actions under the Draft GHG Decree:

¹ Law No. 55/2014/QH13 on Environmental Protection adopted by the National Assembly on 23 June 2014 ("**Current Law**").



- a) MONRE will lead and cooperate with local ministries and authorities to draft and propose a national plan on reducing GHG emissions for the Prime Minister's approval by 31 December 2021;
- b) The Ministry of Industry and Trade, the Ministry of Transport, the Ministry of Construction, the Ministry of Agriculture and Rural Development will draft plans on the mitigation of GHG emissions within their management scope and submit their plans to MONRE by 31 December 2020;
- c) MONRE will draft a national strategy for the development of long-term low emission outputs with a vision towards 2050 by 31 December 2020;
- d) MONRE will draft a scheme on the formation and development of a domestic carbon credit market and prepare to enter the international carbon credit market in 2021;
- e) MONRE will draft and promulgate a list of GHG Emission Factors (EF) regarding activities that emit and absorb GHG to apply to GHG inventories in accordance with all relevant regulations, starting from 2020 and updated once every two years; and
- f) MONRE will draft and promulgate guidelines on GHG inventories in 2020 and establish and operate a database of the GHG emissions of large emissions facilities before 31 December 2024.

B - Key supplemental policies on climate change as proposed under the new Draft Law

In order to more effectively address climate change, the Draft Law proposes the following key supplementations to the Current Law:

- Re-orientating climate change adaptation measures towards sustainable development and a low-carbon economy;
- New provisions utilizing climate change scenarios and socio-economic development forecasts to assess the impact, vulnerabilities and risks of climate change;
- New mechanisms to reduce the risks of climate change and GHG emissions to social security; and
- New tools and content regarding national databases and reporting requirements as well as national obligations and international cooperation on climate change and ozone layer protection.

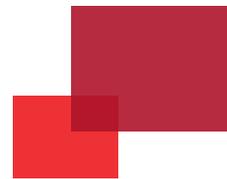
These supplements have been proposed as part of the Vietnamese Government's efforts to effectively respond to climate change and ozone layer depletion as well as to strive towards a low GHG emission economy.

Specific policies on climate change adaptation measures

The Draft Law provides several specific measures to address and respond to climate change, including:

a) **Climate Change Assessment**

An assessment of the impacts and risks of climate change, as well as its potential to cause loss and damage to certain industries, regions and residences. This assessment is to be drafted on the basis of climate change scenarios and socio-economic development forecasts. Further guidelines are to be issued by MONRE.



b) National Climate Change Adaptation Plan and Assessment

Climate change adaptation measures will be specified in a National Plan to be drafted by MONRE with the Prime Minister's approval and to be revised and updated every 5 years.

In addition, MONRE will also be responsible for setting up and operating a supervision and assessment system for climate change adaptation activities. Accordingly, MONRE will be in charge at the national-level, while other Ministries, and the Provincial-level People's Committees will be responsible within their scope and industry of management.

c) Other measures

These include: initiating climate change adaptation activities to mitigate against the risks of natural catastrophes, ensuring social security, maintaining eco-systems and biodiversity; providing solutions to rising sea levels and urban flooding; and creating and duplicating climate change adaptation models.

Specific policies on reducing GHG emissions

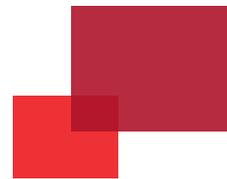
The Draft Law inherits certain provisions from the Current Law, including regulations on the sustainable management of forest resources and the preservation of forest carbon reserves as well as the establishment and development of a domestic carbon credit market and participation in the international carbon credit market.

In addition, the Draft Law proposes additional active measures for reducing GHG emissions, including:

- a) Establishing and implementing cooperative mechanisms on reducing GHG emissions under international treaties to which Vietnam is a party;
- b) Maintaining a GHG inventory at a national, industrial and sectorial level (to be updated every 2 years); and
- c) Ensuring compliance with GHG inventories and the implementation of cooperative mechanisms.

MONRE shall also be specifically required to formulate detailed guidelines for the implementation of such GHG emissions reduction measures, including:

- A list of specific Ministries, sectors, regions and GHG emissions facilities that must conduct GHG inventories (subject to the Prime Minister's approval);
- A national-level GHG Inventory System and a National Measure, Report and Verification (MRV) System on GHG emissions reduction; as well as indexes of emissions data for the purpose of maintaining the GHG inventory;
- A National Report on GHG emissions; and
- A roadmap for the development of a domestic carbon credit market and participation in the international carbon credit market.



Specific policies on protecting the ozone layer

The Draft Law proposes a focused management, control and phasing out of ozone-depleting substances ("**ODS**") and GHG emissions under the Montreal Protocol.²

Specifically, the Draft Law aims to:

- Manage, control and mitigate the import, export and use of ODS and GHGs in line with the Montreal Protocol, with an aim of eventually phasing out such substances;
- Ensure that all manufacturers, trading facilities and service providers that utilize devices, production lines or products that contain or use ODS and GHGs, within the scope of the Montreal Protocol, prepare a roadmap for the replacement or phasing out of such substances;
- Encourage the gathering, re-use, recycling or destruction of ODS and GHGs in industrial and civil refrigerant equipment that is no longer in use; and
- Strictly prohibit the production, import, temporal import and re-export, and consumption of ODS and GHGs in accordance with the Montreal Protocol and relevant international treaties that Vietnam is a party to.

In relation to this topic, we note that on 4 September 2019, the Government of Vietnam issued Resolution No. 64/NQ-CP to ratify the Amendment to Address hydrofluorocarbons (HFCs) under the Montreal Protocol on Substances that Deplete the Ozone Layer. Under this Resolution, MONRE and MOIT were tasked with reviewing and formulating new regulations on import and export controls of HFCs substances.

Specific regulations on climate change reports

Every two years, certain authorities will be required to submit a Climate Change Adaptation Report. Specifically, MONRE will be responsible for providing reports on climate change adaptation to the Government and the National Assembly, while other Ministries and the Provincial-level People's Committees will report to MONRE on climate change adaptation within their scope and industry of management.

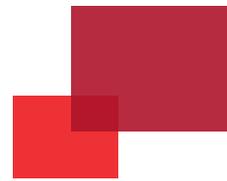
Under the Draft Law, these reports must include the following content:

- General view on climate change progress and impact;
- National GHG inventory results;
- Efforts made in regards to climate change adaptation and reducing GHG emissions;
- Status on the implementation of international commitments on climate change and ozone layer protection;
- Forecasts of the impact of climate change to socio-economic development and environmental preservation;
- Proposals for solutions to climate change.

Specific regulations on the National Climate Change Database

This proposed database is to contain all data and information on climate change as well as measures and activities taken in response to climate

² The Montreal Protocol on Substances that Deplete the Ozone Layer 1987 under the Vienna Convention on Protection of the Ozone Layer ("**Montreal Protocol**").



change and the depletion of the ozone layer. The database shall be established and updated by MONRE, based on information submitted by relevant Ministries, and the provincial-level People's Committees.

Specific regulations on incorporating climate change content to the master planning system

Under the Draft Law, master plans will be required to include specific content on responding to climate change, specifically:

- The impact of climate change to long-term development;
- Solutions and responses to climate change;
- Analytical assessments of the above solutions for the purposes of determining a socio-economic index.

The Draft Law also includes a list of the following master plans that must incorporate the above content.

- Master plans at the national level such as: the comprehensive master plan; the land-use master plan; and the marine spatial master plan;
- Master plans at an industry-level, including urban and rural development plans with the potential to significantly impact the environment such as: master plans on roads, railroads, ports, airports, power/energy, water resources, and minerals/radioactive ores exploration, exploitation and production, etc.);
- Master plans with technical and specialized aspects that may have major effects on the environment, such as: master plans on transportation infrastructure, irrigation, dykes, etc.; and
- Other master plans at a regional/provincial level, and master plans for any special administrative and economic regions.

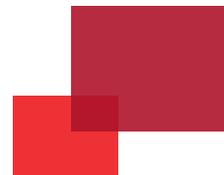
C - Current plan for a carbon credit market

In regards to a market-based carbon credit market, MONRE has stated that the Katowice Rulebook has not provided any specific regulations. Therefore, the Draft GHG Decree contains a specific roadmap for the research and establishment of a carbon credit market in accordance with Vietnam's socio-economic development and international obligations.

However, the mitigation of GHG emissions through international aid and the development of a carbon market between states are yet to be addressed in the Draft GHG Decree. Rather, these measures are to be voluntarily implemented in accordance with the principle of reciprocity between states and applicability to Vietnam.

Under the Draft GHG Decree, the proposed contributions to GHG emissions mitigation cover the entire economy with a focus on key sectors such as energy, transport, construction, agriculture, land use, land use change and forestry (LULUCF) and waste.

As of June 2015, Vietnam has had 254 Clean Development Mechanism (CDM) projects accredited and registered by the CDM Executive Board (EB). Among these 254 projects, energy projects account for 87.6%, waste treatment for 10.2%, reforestation and afforestation for 0.4% and other projects for 1.8%.



www.bakermckenzie.com

Baker & McKenzie (Vietnam) Ltd.
12th Floor, Saigon Tower
29 Le Duan, Blvd District 1
Ho Chi Minh City, Vietnam
Tel: +84 28 3820 5585
Fax: +84 28 3829 5618

Baker & McKenzie (Vietnam) Ltd.
– Hanoi Branch
Unit 1001, 10th floor
Indochina Plaza Hanoi
241 Xuan Thuy Street
Cau Giay District
Hanoi 10000, Vietnam
Tel: +84 24 3825 1428
Fax: +84 24 3825 1428

In relation to the renewable energy sector, the allocation of future carbon credits, renewable energy certificates (“RECs”) and other environmental attributes are among the issues to be addressed in PPAs.

- Under a direct corporate PPA arrangement (whether an off-site synthetic/virtual DPPA or an on-site DPPA), the power generator and the power consumer may agree to the provision of certain environmental attributes or RECs generated by renewable projects.
- In this respect, under previous model utility PPAs for renewables, it is specified that the power seller (developer) is entitled to environmental attributes/benefits in accordance with the law and international treaties. This forms the basis for recognition of the power developers' ownership over environmental attributes in connection with their projects. However, under the recent model PPAs of MOIT and EVN, this provision has been removed from renewables PPAs.

* * *

Although the need for urgent action on climate change through economic transition and sustainable development has been recognized, Vietnam needs specific policies, incentives and legal guidelines to further encourage climate change mitigation investments and the development of a domestic carbon market.

Accordingly, it is expected that in the coming time MONRE and the Government will provide further legal documents in regards to climate investment incentives, a carbon credit market and detailed guidelines on the implementation of such policies. Stakeholders are suggested to keep an eye on such new developments to evaluate their impacts to the business environment as well as potential opportunities that they might bring.