

Client Alert

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Draft Circular proposes new limitations on avoided cost tariff (ACT) mechanism for hydropower projects in Vietnam

Recent developments

The Ministry of Industry and Trade of Vietnam ("**MOIT**") recently released a draft Circular ("**Draft Circular**") amending Circular No. 32 and Circular No. 06 on avoided cost tariff ("**ACT**") mechanisms for small hydropower projects in Vietnam and the respective model power purchase agreement ("**ACT PPA**").¹

In relation to cascade hydropower plants with a combined capacity of up to 60MW on the same river, under the Draft Circular, the MOIT proposes removing ACT eligibility for those plants and only allowing single plants of up to 30MW each to be eligible for the ACT mechanism.

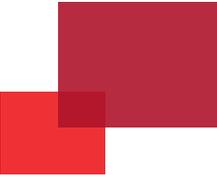
The Draft Circular also proposes removing the option of ACT risk sharing mechanisms for parties to ACT PPAs in relation to the floor price of 90% and the ceiling price of 110% applicable for up to 12 years in order to address market risks from annual ACT adjustments, together with other amendments relating to the methods and input components of determining ACT tariff structures.

Specific implications for cascade hydropower plants

Under the current regulations of Circular No. 06, power developers may apply the ACT mechanism in any one of the following cases:

1. The installed capacity of the power plant is no larger than 30 MW and the entire electrical power is produced from renewable energy ("**Case 1**");
2. For power developers who have multiple cascade hydropower plants on the same river with a total installed capacity of no more than 60 MW ("**Case 2**"):
 - a. In cases where the cluster of cascade hydropower plants consists of a hydropower plant with capacity of no more than 30 MW, which is put into operation first, then all other hydropower plants in the cluster will be eligible for the ACT mechanism;
 - b. In cases where the cluster of cascade hydropower plants consists of a hydropower plant with capacity of more than 30 MW, which is put into operation first, then the power developer will:
 - i. participate in the competitive electricity market of Vietnam and apply another model non-ACT PPA applicable to the competitive electricity market;
 - ii. after the next hydropower plant(s) are put into commercial operation, then the power developer may elect to apply one of the following options:

¹ Circular No. 32/2014/TT-BCT of the MOIT dated 9 October 2014 on the order, formulation and application of avoided cost tariff and issuance of model power purchase agreement for small hydropower projects ("**Circular No. 32**"), which is amended and supplemented by Circular No. 06/2016/TT-BCT of the MOIT dated 14 June 2016 ("**Circular No. 06**").

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- Continue applying model non-ACT PPA applicable to the competitive electricity market; or
 - change to apply ACT PPA to all hydropower plants in the cluster from the date on which the later power plant(s) come into commercial operation.

However, under the Draft Circular, the MOIT proposes removing Case 2 of cascade hydropower plants, leaving only Case 1 for the purposes of eligibility of the ACT mechanism.

For clusters of cascade hydropower plants for which their ACT PPAs are signed before the effective date of this proposed Circular (which is to be determined), the relevant developers will remain eligible for the ACT mechanism based on the signed ACT PPA.

In this respect, the risk of changes in the law and how to best mitigate and handle such risk may vary on a project-by-project basis depending on the status of relevant hydropower plant(s).

Tariff structures and ACT risk sharing mechanism

Under the current regulations, small hydropower projects are eligible for the ACT to be announced by the MOIT's Electricity Regulatory Authority of Vietnam ("**ERAV**").

However, the power developer (seller) can elect to apply a risk-sharing mechanism related to annual ACT adjustments, specifically:

- Under this risk sharing mechanism, the ACT schedule to be announced annually is applied, along with the pre-determined floor price and ceiling price based on the ACT schedule of the year in which the PPA signed.
- If the ACT of a subsequent year falls in the range between the floor price and the ceiling price, then the tariff for energy payments will be the ACT of such year.
- If the ACT of a subsequent year is higher than the ceiling price, then the ceiling price will be applied. If it is lower than the floor price, then the floor price will be applied for energy payments.
- The floor price of each component of the tariff is determined to be 90% of the price of such component in the ACT applicable to the year when the PPA is signed.
- The ceiling price of each component of the tariff is determined to be 110% of the price of such component in the ACT applicable to the year when the PPA is signed.
- The maximum duration for application of the tariff with the risk-sharing mechanism is 12 years from the year when the PPA is signed. The power seller may elect to apply a shorter duration.
- In case the power developer elects to apply this risk-sharing mechanism, the parties to the PPA specify the ACT of the year when the PPA is signed, the agreed duration of applying this risk-sharing mechanism, the floor price and the ceiling price for each component of the tariff structure.

However, under the Draft Circular, the MOIT/ERAV proposes removing this optional mechanism for power developers.



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Other proposed amendments by the MOIT / ERAV

In addition to the changes noted above, the MOIT proposes other amendments relating to the methods and input components of determining ACT tariff structures covering avoided energy cost components and avoided capacity components, as well as other revisions related to technical curtailment and reporting requirements for power developers.

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Please note that the proposed amendments to the Draft Circular are still in draft form, allowing members of the private sector to provide feedback and make necessary recommendations for revision and supplementations to the Draft Circular.

If you would like to discuss further details of the Draft Circular, the potential impact of the Draft Circular to your specific project(s), or necessary steps going forward, please do not hesitate to contact us.