

Client Alert

January 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

Updates to Vietnam's Draft Decision on solar power: New Draft submitted on 31 December 2019

On 31 December 2019, the Ministry of Industry and Trade of Vietnam ("**MOIT**") issued Proposal No. 10170/TTr-BCT to the Prime Minister ("**Proposal No. 10170**") to submit a new draft Decision on the mechanism for developing solar power projects in Vietnam (the "**New Draft**").

The New Draft was issued to implement the Prime Minister's instructions under Notice No. 402 dated 22 November 2019¹, and was prepared following the MOIT's receipt of a number of comments by Vietnam Electricity ("**EVN**") on the earlier draft of 6 December 2019, but pending comments from the Ministry of Finance ("**MOF**") and the Ministry of Justice ("**MOJ**").

The New Draft and Proposal No. 10170 lists out potentially eligible solar farm projects for new FiT while leaving alternative tariff mechanisms unresolved and pending for the other projects currently under development.

In addition, for rooftop solar power systems, the New Draft tightens the deadline for eligibility for the proposed new FiT of 8.38 US cent per kWh from 31 December 2021 to 31 December 2020 (i.e., one year earlier compared to the earlier Draft attached to MOIT's Official Letter No. 9319 dated 6 December 2019).

Specific implications for solar farms

Similar to the earlier draft of 6 December 2019, the new FiT proposed for solar farms under the New Draft is as follows:

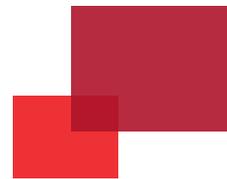
- For floating solar power projects: VND 1,758 per kWh (equivalent to 7.69 US cent per kWh);
- For ground-mounted solar power projects: VND 1,620 per kWh (equivalent to 7.09 US cent per kWh).

However, this new FiT will only be applicable to solar farms:

- 1) for which Power Purchase Agreements ("**PPAs**") have been signed and construction has commenced before 23 November 2019; and
- 2) which will achieve their commercial operation date ("**COD**") between 1 July 2019 until 31 December 2020.

For the criteria of "construction has commenced before 23 November 2019", the MOIT has taken the view in its proposal that eligible solar farms must be limited to those that have technical design appraised by the relevant authority (i.e., the MOIT or the DOIT depending on the installed capacity) in case of

¹ Notice No. 402/TB-VPCP of the Office of Government dated 22 November 2019 on conclusions of the Prime Minister at the Government's meeting on the Draft Decision on mechanism for development of solar power projects in Vietnam ("**Notice No. 402**").



applying a 3-step design option; or detailed (construction drawing) design completed in case of applying a 2-step design option, before such date.²

Accordingly, under Proposal No. 10170, the MOIT sets out a list of solar farms eligible for the proposed new FiT, comprising 7 solar projects with a combined capacity of about 320MW, namely: (i) 44MW of 106 MW Sao Mai (Phases 3 and 4) solar project in An Giang Province; (ii) 50MW Central Region Power solar power project in Khanh Hoa Province in which 8MW was operational before 1 July 2019; (iii) 100.5 MW GAIA solar power project in Long An Province; (iv) 150MW Dau Tieng 3 solar power project in Tay Ninh Province in which 60MW was operational before 1 July 2019; (v) 40MW Phong Dien II solar power project in Thua Thien Hue Province; (vi) 40MW Solar Park 1 solar power project in Long An Province operating after 30 June 2019; (vii) 29.99 MW VSP Binh Thuan II solar power project in Binh Thuan Province in which 26.48 MW was operational before 1 July 2019. This list is exclusive of solar farms in Ninh Thuan Province as discussed separately below.

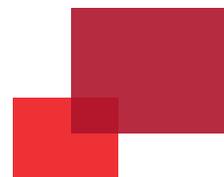
In addition, under Proposal No. 10170, the MOIT provided:

- (i) a list of about 44 solar power projects which have been included in the master plans but did not achieve COD before 1 July 2019 with a total capacity of 3,668.9 MW, in which there is a total capacity of 1,930.7 MW of solar projects for which PPAs have been signed before 23 November 2019; and
- (ii) a list of 22 other solar power projects for which the applications for inclusions in the master plans have been appraised by the MOIT and reported to the Prime Minister but not yet approved by the Prime Minister.

For solar projects on these two lists (other than the 7 projects eligible for the new FiT), under Proposal No. 10170, the MOIT acknowledged that there was a recommendation from certain relevant developers to the Prime Minister for allowing certain projects to be eligible for the new FiT provided that they can achieve their CODs by 31 December 2020. However, the text of the New Draft proposed by the MOIT does not provide any specific protective or incentive mechanisms to secure a new tariff other than reporting on those lists of projects to the Prime Minister. The New Draft provides that for projects that are not eligible for the new FiT, the power purchase price will be determined based on auction mechanism as discussed in further detail below.

According to the MOIT's report under its Official Letter No. 9608/BCT-DL dated 16 December 2019, under the previous FiT program, 135 solar power projects with a total capacity of 8,935 MW has been approved for inclusion in the master plan, in which about 4,500 MW has achieved commercial operations. However, under Official Letter No. 9608/BCT-DL dated 16 December 2019, the MOIT has requested the provincial People's Committee and EVN to temporarily suspend proposing new applications for inclusions in the master plans under the FiT mechanism until a new mechanism has been issued.

² The date of 23 November 2019 is used because it is the date following the date of issuance of Notice No. 402.



Special policy for Ninh Thuan Province's solar farms

Regarding Ninh Thuan province, the New Draft continues recognizing the special policy for this province by allowing limited solar power projects with the total accumulated capacity cap of 2,000 MW achieving actual COD before 1 January 2021 to be eligible for the extended FiT of 9.35 US cents per kWh.

Notice No. 402 recently clarified that the application of this policy will be applied only until Ninh Thuan province reaches its capacity of 2,000 MW or the end of 2020, whichever comes first.

For this purpose, under Proposal No. 10170, the MOIT sets out a list of 30 solar power projects in Ninh Thuan Province with a total capacity of 1,932.92 MW which have been included in the master plans. Of these, there are: (i) 16 solar power projects which have achieved CODs with a total capacity of 1,016.1 MW; and (ii) another 14 solar projects which have not achieved CODs with a total capacity of about 916.8 MW.

Specific implications for rooftop solar

In relation to rooftop solar business, the New Draft no longer sets out four (4) specific rooftop solar models as in earlier drafts. Instead, the New Draft provides a general wording that rooftop solar systems are eligible to sell all or part of power generated to EVN, or to a third-party purchaser in case the EVN's grid is not used.

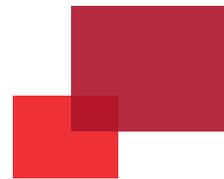
For the new FiT for rooftop solar power systems, even though EVN recommended keeping it unchanged at VND 2,156 per kWh (equivalent to 9.35 US cent per kWh), the MOIT still proposes reducing to VND 1,916 per kWh (equivalent to 8.38 US cent per kWh) under Proposal No. 10170 and the New Draft. This new FiT is proposed for rooftop solar systems that achieve a COD between 1 July 2019 and 31 December 2020.

This new FiT will only be applicable to limited rooftop solar systems directly and indirectly connected to EVN's local grid with a voltage of 35kV or less. In addition, the threshold of installed capacity of no more than 1MWp remains unchanged. This means, although not expressly stated in the New Draft, that if a rooftop solar power system does not meet both of these two conditions, it will be disqualified for the new FiT for rooftop solar for sale of power exported to EVN's grid. While there has been a consistent policy toward encouraging deployment of rooftop solar, the New Draft on its text does not provide any specific alternative incentive tariff mechanism for larger rooftop solar systems with an installed capacity of 1MWp or more given that these systems are also likely disqualified for the new FiT for solar farms as discussed above.

In case power purchasers are not EVN or its affiliated entities, tariff and PPAs' terms shall be agreed by relevant parties in accordance with applicable laws.

In addition, the MOIT proposed that:

- the Ministry of Planning and Investment will issue guidelines on developers' registration of business lines for the production and sale of power from rooftop solar power systems; and



- the Ministry of Finance will issue guidelines on invoicing and payment of income tax and VAT for entities making investments in solar PV installation and sale of power from rooftop solar systems.

According to the MOIT's report, by end of November 2019 there have been 19,378 rooftop solar systems with a total capacity of 318 MW installed nationwide, with a focus on the southern region of Vietnam.

Specific intentions for pilot solar auctions

There is no further update on the solar auction program under Proposal No. 10170 but for a statement, the MOIT is coordinating with relevant agencies and international organizations to develop the solar auction mechanism for the Prime Minister's consideration.

Previously, under the Prime Minister's Notice No. 402, the Prime Minister instructed the MOIT to work out a definite transition to a competitive, open and transparent bidding mechanism (also known as solar auction or reverse auction) to apply for solar projects that will not be eligible for the new FIT mechanism. Accordingly, in the earlier proposal of 6 December 2019, the MOIT proposed that a pilot solar auction at one floating solar power project would be conducted in 2020; and the MOIT would propose a complete solar auction mechanism, roadmap for implementation for reporting to the Prime Minister later for approval and implementation nationwide.

* * *

Please note that the New Draft Decision (together with Proposal No. 10170) of 31 December 2019 is still in draft form, subject to the Government's further discussion and the Prime Minister's conclusion and signing.

www.bakermckenzie.com

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

Baker & McKenzie (Vietnam) Ltd.
Hanoi Branch Office
Unit 1001, 10th Floor
Indochina Plaza Hanoi
241 Xuan Thuy Street
Cau Giay District, Hanoi
Socialist Republic of Vietnam
Tel: +84 24 3825 1428
Fax: +84 24 3825 1432

Please do not hesitate to contact us if you would like to understand more about:

- the lists and identity of specific solar power projects under the MOIT's Proposal No. 10170 and specific issues of those lists;
- the rationales behind the proposed changes to the mechanisms under the New Draft;
- other provisions of the New Draft as well as potential upcoming additional guidelines by the MOIT and relevant ministries for implementation of this proposed Decision;
- potential impacts of the proposed New Draft on specific projects and necessary steps going forward;
- opportunities, challenges and legal solutions for investments in solar or other power, energy and infrastructure projects in Vietnam.