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# MHM VIETNAM

## Newsletter

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## MAJOR UPDATES REGARDING RENEWABLE ENERGY PROJECTS IN VIETNAM

### 1. Adoption of mechanism for calculating the electricity generation price brackets of transitional wind and solar projects

On 3 October 2022, the Ministry of Industry and Trade ("MOIT") issued Circular No. 15/2022/TT-BCT ("Circular 15") stipulating the mechanism for calculating the electricity generation price brackets<sup>1</sup> for transitional wind and solar projects. Circular 15 takes effect from 25 November 2022.

Transitional wind and solar power projects are projects for which PPAs were executed with Vietnam Electricity ("EVN") before 1 January 2021 in respect of solar power projects and 1 November 2021 in respect of wind power projects, but which did not achieve COD within the deadline to be eligible for the favourable feed-in tariffs under Decision No. 13/2020/QD-TTg regarding solar power and Decision No. 39/2018/QD-TTg regarding wind power (for further background on such projects, please see [Volume 4](#) of our Newsletters).

These projects have faced considerable difficulty in achieving COD or obtaining financing due to the lack of certainty regarding the applicable tariff rate. Circular 15 provides long-awaited certainty for such projects.

Briefly, Circular 15 sets out the method and formula for calculating the electricity generation prices, and the procedure for formulating, assessing and issuing the electricity generation price brackets for transitional wind and solar power projects. It notably provides specific timelines for EVN and the MOIT to adopt and publish the electricity generation price brackets.

<sup>1</sup> Under Article 3.9 of the Law on Electricity 2004 (as amended), the electricity price bracket refers to the permitted range of electricity prices between the specified floor and ceiling prices.

In terms of the specific electricity generation price of transitional wind or solar power projects, while clear that it must fall within the electricity generation price bracket published by the MOIT, further guidance from the MOIT and/or EVN is required regarding the following:

- how the specific electricity generation price of a transitional wind or solar power projects would be implemented. We expect that this would be through an amendment of tariff-related terms in the applicable PPA for the project (but not re-negotiation of the whole PPA);
- there is no specific timeline for EVN and investors to negotiate and determine the electricity generation price applicable to a specific transitional wind or solar power project;
- whether the electricity generation price determined for a transitional wind or solar power project which qualifies as the standard wind or solar power project (which is used to establish the ceiling price of the electricity generation price bracket, as described below) can be the ceiling price of that bracket; and
- whether the mechanism for adjusting the electricity generation price for changes in the foreign exchange rate agreed in the PPAs for transitional wind or solar power projects will continue to be applicable.

It appears that the transitional wind and solar power projects would not be able to enjoy (or require) this adjustment given under Circular 15 the electricity generation price brackets are determined in Vietnamese Dong. The MOIT also proposed to not make foreign exchange adjustments to the electricity generation price for the transitional wind and solar power projects in its proposal letter No. 1513 to the Prime Minister dated 24 March 2022 on proposed mechanism for such projects.

We discuss in further detail below some key points regulated in Circular 15.

*(i) Method and formula for calculating electricity generation price*

The electricity generation price brackets of transitional solar and wind power projects range from a minimum value of VND 0/kWh to the maximum value, being the electricity generation price calculated for a **standard** solar or wind power plant.

A standard solar power plant is defined as a power plant selected to calculate the electricity generation price bracket for ground solar power plants and floating solar power plants with an installed capacity of 50 MWp. A standard wind power plant is defined as a power plant selected to calculate the electricity price bracket for onshore wind power plants and offshore wind power plants with an installed capacity of 50 MW.

Circular 15 stipulates the method and formulas for calculating the electricity generation price of a standard solar power plant and a standard wind power plant which will be the ceiling price

of the electricity generation price brackets. EVN is entitled to hire consulting organisations to assist it with calculating the electricity generation price of the standard solar power plant and standard wind power plant.

The input data applied in the formulas are based on data from (i) the feasibility study reports and technical design of transitional solar and wind power plants; (ii) the approved total investment capital of the transitional solar and wind power plants; and (iii) reference data provided by the consulting organisations of EVN.

*(ii) Procedure for formulating, assessing and issuing the electricity generation price bracket*

The Circular 15 stipulates the procedure for formulating, assessing and issuing the price bracket as follows:

- within 15 days from the effective date of Circular 15 (i.e., 25 November 2022), investors in transitional wind and solar power plants are responsible for providing the feasibility study report or technical design for their plants to EVN;
- within 45 days from the effective date of the Circular, EVN will (a) formulate the electricity generation price bracket based on the method and formula stipulated under Circular 15 and the documents provided by the investors; and (b) submit the same to the Electricity Regulatory Authority of Vietnam ("**ERAV**") under the MOIT for assessment;
- within 45 days from the receipt of valid application dossiers from EVN, the ERAV will assess the electricity generation price bracket. The ERAV can consult with independent specialists appointed by the MOIT or the Advisory Committee established by the MOIT. We note further that the ERAV would only confirm the receipt of valid application dossiers if the ERAV considers the contents of dossiers are sufficient and valid. Otherwise, EVN will need to amend and supplement the dossiers or submit further explanation on the contents of dossiers. Accordingly, the timeline for this step could be extended; and
- within 10 working days after the issuance of the assessment result, the ERAV will submit the electricity generation price bracket determined by it for approval by the Minister of the MOIT and publish the approved price bracket on the website of the ERAV and MOIT.

## **2. Instructions of the Prime Minister in relation to rooftop solar power**

On 6 September 2022, the Government Office issued Notice No. 277/TB-VPCP dated 6 September 2022 on conclusions of the Government Cabinet about the National Power Development Plan for the 2021–2030 period, with a vision to 2045 (PDP VIII) ("**Notice**").

The Notice summarises the instructions of the Prime Minister during the meeting of the Government Cabinet on the PDP VIII. Among other things, regarding the development plan for

solar power, the Prime Minister has instructed relevant ministries to "study and assess the impact of rooftop solar power for the purpose of **self-consumption rather than selling to the national grid**".

This instruction may have a significant impact on the potential for sales of electricity generated by rooftop solar power systems to EVN. The terms of the Notice and the current market practice suggest a trend of the Government tightening the regulations on solar power to control the booming development of solar power projects, especially rooftop solar power systems, in some locations in the past few years which have overloaded the grid. Investors should keep an eye on this trend and carefully consider the impact on their investments in this field.

If you have any questions or would like further details regarding this issue, please contact our lawyers listed in the left-hand column.

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