

**MATRIX OF REVIEW OF
DECISION No. 11/2017/QĐ-TTĐ OF THE PRIME MINISTER DATED 11 APRIL 2017 ("Decision No. 11")
ON THE MECHANISM FOR ENCOURAGEMENT OF THE DEVELOPMENT OF SOLAR POWER PROJECTS IN VIETNAM**

Dated 11 April 2017

	Topic / Article	Provision of Decision No. 11	Comment and Suggestion
1.	General Structure		
1.1	Scope of the decision	<p>In Decision No. 11, the Prime Minister and the Government instructs the Ministry of Industry and Trade ("MOIT") and other ministries to issue a number of implementing regulations (circulars), including:</p> <p>(a) the MOIT to issue detailed regulations on the contents, order, procedure for formation, assessment and approval of solar power development master plans (<i>Article 5.5</i>);</p> <p>(b) the MOIT to regulate in detail the method for calculation of losses on grid connection lines in the case where the metering point and the connection point are not the same (<i>Article 8.2 and 13.1(c)</i>);</p> <p>(c) the MOIT to issue a standardized power purchase agreement template for on-grid and rooftop solar power projects and guidelines for implementation (<i>Article 13.1(b)</i>);</p> <p>(d) the MOIT to issue technical standards on solar power, metering for solar power projects and provide guidelines on the procedures for connection, metering instalment and net-metering mechanism for rooftop solar projects (<i>Article 13.1(d)</i>);</p>	<p>For the moment, the drafts of the implementing regulations (as listed) are not available for review.</p> <p>We understand that Decision No. 11 is intended to serve as a framework for the detailed implementing regulations to follow. Therefore, it should be enabling in nature, and not overly prescriptive, to give the law drafters more flexibility to meet with practical issues they encounter during that process. Eventually, when the law is more settled, a full-fledged law may be appropriate, taking into account the experience gained in the implementation of Decision No. 11.</p> <p>For example, and among other things, some interpretations/definitions set out in Clause 3 will likely also be addressed in the MOIT's standardized power purchase agreement template. As such, it is important that the terms and definitions are consistent, because it will become very difficult to amend relevant defined terms in the power purchase agreement template and the implementing circulars. In this particular case, we suggest two options for dealing with this issue: (1) Make the definitions in Decision No. 11 subject to the needs of particular projects by adding "unless the parties to the PPA otherwise agree", to allow for more party autonomy; or (2) reconsider the relevant parts of Decision No. 11 to make it more general, providing principles rather than precise prescriptions.</p>

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		<p>(e) the Ministry of Planning and Investment to coordinate with other ministries to formulate mechanism to encourage investment in development and production of solar power equipment in Vietnam for the Prime Minister's issuance (<i>Article 13.2</i>).</p> <p>(f) the Ministry of Finance to study and supplement regulations on exemption of taxes and fees for rooftop projects with installed capacity not higher than 50 kW (<i>Article 13.3</i>).</p>	
1.2	Types/segments of solar power	As defined in Decision No. 11, solar power projects are classified by: "on-grid project" and "rooftop project".	<p>Decision No. 11 does not provide clear guidelines to help distinguish between projects with different scales (i.e., small-scale, medium-scale and large-scale) or between utility-scale solar power plants and small-scale residential solar power systems for self-consumption.</p> <p>As such, the upcoming implementing circulars and guidelines should provide a clear classification and policies for different types and segments of solar power players.</p>
2.	Chapter I - General Provisions		
2.1	Article 2 (Entities subject to application)	<i>"The entities subject to this Decision include organizations and individuals involved in the development of solar power projects in Vietnam and other relevant organizations and individuals."</i>	<p>Feasible financing options and the role of lenders are important preconditions for successful power projects. Thus, this decision should address them as well to provide support for the sustainable development of solar power.</p> <p>Therefore, if Decision No. 11 can be amended, we suggest adding "investment in, and financing to" for this provision to read:</p> <p><i>"The entities subject to this Decision include organizations and individuals involved in the development of, investment in, and financing to, solar power projects in Vietnam and other relevant organizations and individuals."</i></p> <p>Otherwise, the upcoming implementing circulars and guidelines should take into account these issues.</p>
2.2	Article 3.1 (Interpretation of	<i>"Power Purchaser is Vietnam Electricity or its</i>	No mechanism for direct corporate PPAs:

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	"Power Purchaser")	<i>authorized member entity."</i>	<p>Decision No. 11 specifies Vietnam Electricity ("EVN") or its affiliated entities only as the power purchaser under the standard PPA. It excludes application of "direct PPA" model, which would have allowed non-utility corporate customers such as industrial parks or manufacturing facilities to purchase solar power directly from solar power generators. Whether such arrangements, which have become increasingly popular in international markets, will be allowed remains uncertain.</p> <p>The Government of Vietnam should re-consider this respect. This can be done by way of issuing a separate policy for direct corporate PPAs.</p> <p>In addition, in case of reorganization of EVN, its successor should become the power purchaser, but only subject to the consent of the investors and creditors, who will expect a partner no less creditworthy than the one with which they originally signed their agreements.</p> <p>We suggest amending the clause as follows:</p> <p><u>3.1. "Power Purchaser" is Vietnam Electricity or its authorized member entity or their successors or other power purchasing organizations and individuals.</u></p>
2.3	Article 3.2 (Interpretation of "Power Seller")	<i>"Power Seller is an organization or individual having a power operation license to operate in the field of electricity generation from on-grid solar power plants; and organizations/ individuals having rooftop solar power project selling surplus electricity to power purchaser."</i>	<p>It is appropriate to require the power seller to be legally established in Vietnam, and - generally speaking - to have the requisite legal capacity and authority to engage in the business of power generation and supply. However, this can be understood to require that only organizations or individuals who have obtained a power generation license are permitted to sell solar power, which may be too narrow.</p> <p>In this respect, under current Vietnamese law (<i>Circular No. 10/2015/TT-BCT, Article 3</i>), cases of exemption from electricity generation license includes:</p> <ul style="list-style-type: none"> (i) generating electricity for self use without sale to other organizations and individuals; (ii) generating electricity with installed capacity of less than 50 kW for selling electricity to other organizations and individuals, and

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			<p>(iii) carrying on electricity trading in rural, mountainous areas or islands, buying electricity with capacity of less than 50 kVA from the power distribution grid for selling electricity directly to customers in rural, mountainous areas or islands.</p>
2.4	Article 3.3 (Interpretation of "Solar power project")	<p><i>"Solar power project is a project generating power from solar panels in accordance with the principle of converting photo-energy to electrical energy."</i></p>	<p>There should be different definitions for "power project" and "power plant". Also, there are two different types of solar generation:</p> <p>(i) conventional photovoltaic (i.e., sunlight (photons) strike solar cells causing a chemical reaction that releases electrons and generates electricity) and</p> <p>(ii) concentrated solar power (i.e., mirrors or lenses focus solar thermal energy into a small area to heat liquid which drives a conventional generating turbine).</p> <p>In this respect, Decision No. 11 applies to conventional solar photovoltaic (PV). It does not address concentrated solar power, as another type of solar technology. It remains unclear whether Decision No. 11 will enable such projects to proceed.</p> <p>As Decision No. 11 has been issued, the Government of Vietnam, particularly the MOIT should consider to use appropriate terms for "power project" and "power plant", especially when drafting a standard solar PPA template. Some examples are set out below for consideration:</p> <p><u>"Solar power project" means the development, construction and operation of a Solar Power Plant or the establishment of a solar power system or application for generation of electricity.</u></p> <p><u>"Solar Power Plant" means the solar photovoltaic power plant or the concentrated solar power plant at which energy is generated by the power seller and sold to the power purchaser.</u></p> <p><u>"Solar photovoltaic" means the solar photovoltaic power equipment [that</u></p>

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			<p><u>uses sunlight for direct conversion into electricity</u> / a project generating power from solar panels in accordance with the principle of converting photo-energy to electrical energy <u>and that is being set up by the power seller to provide energy to the power purchaser.</u></p> <p><u>"Concentrated solar power" means the concentrated solar photovoltaic power equipment with storage that use mirrors to reflect and concentrate sunlight into receiver for direct conversion into electricity and that is being set up by the power seller to provide energy to the power purchaser.</u></p> <p>Finally, this technical issue should be reviewed further from technical and commercial perspective (given the rising trend for solar PV compared to concentrated solar power).</p>
2.5	Article 3.4 (Interpretation of "Rooftop solar power project")	<i>"Rooftop solar power project, hereinafter referred to as rooftop project, is a solar power project installed on the roof or attached to constructed facilities and connects directly to the power grid of Power Purchaser."</i>	<p>Both terms "Rooftop solar power project" "rooftop project" are used in other clauses in the body of Decision No. 11. It may be better to use a single defined term for clarity and ease of reference.</p> <p>Rooftop PV systems are typically connected to both the host building as well as the grid. Any solar electricity that is surplus to the building's needs can be sold into the local/national grid. "Rooftop project" can also cover "off-grid project" and can be for the building's needs for residential/household and commercial/industrial purposes. As such, the part "<i>and connects directly to the power grid of Power Purchaser</i>" is not necessary (especially in the case where the Power Purchaser is only EVN) and, so it can be deleted.</p> <p>Also, for rooftop PV, there may be different business models, and customers may need to consider the commercial objective in light of the benefits and disadvantages of the business models, including:</p>

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			<p>(i) "Outright Ownership" model</p> <ul style="list-style-type: none"> - Customer purchases the system outright; - High upfront cost; - Customer bears full performance and operation and maintenance (O&M) risk; - Contractually less complex although O&M/installation issues may increase administrative burden. <p>(ii) "Equipment Leasing" model</p> <ul style="list-style-type: none"> - Solar developer installs and retains title to the PV System; - Price certainty for customer - fee is fixed and does not fluctuate based on amount of energy produced; - O&M services often included in lease fee (i.e. power developer takes O&M risk); - Often operate on a 'lease-to-own' arrangement (a "financial lease" under current Vietnamese rules). <p>(iii) "Power Purchase Agreement (PPA)" model</p> <ul style="list-style-type: none"> - Solar developer installs, owns, operates and maintains the PV System in exchange for a fixed long-term payment obligation based on solar output; - Power project developer takes all performance risk and is responsible for O&M - Higher transaction costs and more contractually complex. <p>In this regard, the provisions of Decision No. 11 are not clear enough in terms of particular policies or incentives related to each of these different business models. For the upcoming implementing circulars, we would suggest elaborating in a way that allows for maximum flexibility to support the development of this important element of the energy market to supplement a variety of modes of energy supply.</p>

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2.6	Article 3.5 (Interpretation of "On-grid solar power project")	<i>"On-grid solar power project, hereinafter referred to as on-grid project, is a solar power project connected to the national power network or power grid of Power Purchaser, except for the projects stipulated in Clause 4 of this Article."</i>	<p>To improve clarity, the upcoming implementing circulars should further clarify the difference in the requirements and incentives between ones connected to the national power network and ones connected to the power grid of Power Purchaser (EVN or other power purchasers).</p> <p>Instead of using both <i>"on-grid solar power project"</i> and <i>"on-grid project"</i>, it may be better to use a single defined term for clarity and ease of reference.</p>
2.7	Article 3.6 (Interpretation of "Connection point")	<i>"Connection point means the location where the transmission lines of the Power Seller is connected to the power system of the Power Purchaser;"</i>	<p>Here, "power system of the Power Purchaser" is used, while "power grid of the Power Purchaser" is used at other clauses, e.g., Articles 3.4, 3.5 and 8.1. If these terms mean the same, they should be used consistently in the entire decision for clarity and ease of reference. If not, clarification may be needed in the upcoming implementing circulars.</p> <p>Please refer to further comment on Article 8 below.</p>
2.8	Article 3.7 (Interpretation of "Power delivery point")	<i>"Power delivery point is the point where power metering equipment is placed as agreed in the power purchase agreement to determine the selling electrical output of Power Seller."</i>	<p>In the upcoming implementing circulars, especially the standard solar PPA template, the MOIT should consider to amend the defined term to:</p> <p><i>"Power delivery point" is the point where power metering equipment is placed or another point as agreed in the power purchase agreement to determine the selling electrical output of Power Seller."</i></p> <p>Alternatively, there is another sample of this defined term for consideration:</p> <p><i>"Power Delivery Point" means the battery limit between the Power Seller and the Power Purchaser where the energy output is measured and transferred from the Power Seller to the Power Purchaser."</i></p>
2.9	Article 3.8 (Interpretation of "Power Purchase Agreement Template for the on-grid")	<i>"Power Purchase Agreement Template for the on-grid projects and rooftop projects is a power purchase agreement issued by the Ministry of Industry and Trade as the basis for the application in power purchase and sale transactions between Power Seller and Power"</i>	<p>The original wording of Decision No. 11 (in Vietnamese) is not entirely clear whether the MOIT will be drafting a single template or separate templates for standardized Solar PPA for on-grid projects (ground-mounted) and for rooftop projects. There may need to be different templates for different types of solar generation and or for projects with</p>

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	projects and rooftop projects")	<i>Purchaser.</i> "	<p>different scales, or the standardized solar PPA template should be drafted to have well-drafted provisions, together with appropriate drafting notes to enable the parties to consider and select on a project-by-project basis depending the scale and specific type of the project, rather than a non-negotiable or non-amendable template required for all projects.</p> <p>For "<i>as the basis for the application</i>", although the wording is not entirely clear whether it is compulsory to apply standardized PPA template of the MOIT, under Articles 9.2, 13.1(b), 14.1(a) and 14.2(a) of Decision No. 11, it implies that the standardized PPA of the MOIT is a non-negotiable agreement, and it is compulsory to use that template for all projects. This is similar to the practice for existing wind and biomass standardized PPA templates of the MOIT. The standardized PPA templates should be well drafted and bankable, especially from the perspective of international and foreign financiers. They should be flexible enough to allow for project-specific supplementation to account for the different circumstances of each project and the relevant stakeholders.</p>
2.10	Article 3.9 (Interpretation of "Power price of solar power projects (FIT-Feed in Tariff)")	<i>"Power price of solar power projects (FIT - Feed in Tariff) is a fixed tariff payable by Power Purchaser to Power Seller."</i>	<p>The Government of Vietnam provides for a feed-in-tariff (FiT) allowing power sellers/generators to receive a fixed and known price for their electricity sales as a form of government economic support for solar power. However, this defined term makes the FiT as the <u>sole</u> support for the tariff.</p> <p>In order to make this open for any further support that the Government may have in the future, in the upcoming implementing circulars, this defined term can be amended to:</p> <p><i>"Power price of solar power projects (FIT – Feed in Tariff) is a fixed preferential tariff (Feed-in-Tariff or FiT) payable by Power Purchaser to Power Seller and other support to tariff that may be provided from time to time."</i></p>

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			In addition, Decision No. 11 does not provide for indexation of the power tariff (by way of escalation in accordance with the Consumer Price Index (CPI), or the exchange rate to be agreed), but tariff generally set at fixed rate with no indexation. See further details at Article 12 below.
3.	Chapter II - The Planning and Investment for Construction of Solar Power Projects		
3.1	Article 5.5	<i>"The Ministry of Industry and Trade specifies content, procedures and formalities for the making, assessment and approval of solar power development plan."</i>	To date, the draft circular governing this matter has not been prepared, made public or provided for review and comments by stakeholders. However, it seems that the MOIT will be drafting a circular similar to existing circulars for wind and biomass power (namely: Circular No. 06/2013/TT-BCT for wind power and Circular No. 29/2015/TT-BCT for biomass power). To better attract the investment, the planning and approval process should be simplified to reduce timeline and associated costs, especially during the preliminary development phase.
3.2	Article 7.1	<i>"The investment in the construction of on-grid projects must conform to the power development plan approved by competent authorities."</i>	<p>In practice, if the relevant province does not have a solar power development plan and a proposed project is not included in the relevant power development plan, the investor/developer is required to conduct the procedure to request for inclusion of the proposed project into the relevant power development plans. For this purpose, the developer/ investor may need to prepare a pre-feasibility study.</p> <p>In practice, this process is very time-consuming and detailed procedure has not been formulated for solar power (pending issuance of a guiding circular as mentioned under Article 5.5).</p> <p>Thus, the upcoming implementing circulars should simplify this administrative process. Among other things, it should not be relevant whether a particular area's plan provides specifically for solar power or carbon-based power; if the plan allows for one, it should be deemed to allow for others. Concerns about the availability of a certain form of power compared to others (e.g., solar power at night) should be addressed in the</p>

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			course of negotiations for PPAs based on each local area's needs.
3.3	Article 7.2	<i>"The investment in the construction of the solar power projects are carried out in accordance with the provisions of current laws concerning investments, construction, fire prevention and fighting, environmental protection and other relevant provisions."</i>	By using the term <i>"solar power projects"</i> , this may mean to apply to all on-grid, off-grid and rooftop projects. However, each type of projects may be subject to different technical requirements of the relevant laws. For ground mounted on-grid (utility-scale) solar power plant projects, the Law on Enterprises and the Law on Land will also apply. Although using the term <i>"other relevant provisions"</i> can generally be acceptable, it would be more meaningful for application if the upcoming implementing circulars make them clearer in terms of the requirements for different types of projects.
3.4	Article 7.5	<i>"Organizations and individuals investing in the construction of solar power projects who are responsible for the installation of solar power equipment have to ensure structural safety, constructional safety in accordance with the current regulations."</i>	This regulation may govern both investors and contractors. The upcoming implementing circulars should consider to provide separate guidelines for investors/developers and for contractors for ease of application and more clarity.
3.5	Article 7.6	<i>"6. The investment in construction of rooftop project must meet the following requirements:</i> <i>a) The roof of house or structural complex affixed with solar panels must be able to handle the weight and structure of the solar panels and accompanying accessories.</i> <i>b) Power safety regulations in accordance with the provisions of laws must be satisfied.</i> <i>c) Surrounding landscape and environment must be preserved."</i>	Clause 6 of Article 7 applies to rooftop projects only. However, it is not entirely clear whether rooftop projects are still subject to the other requirements set out at Clauses 1 to 5 of this Article 7. The upcoming implementing circulars should make them clearer for consistent interpretation and application.

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3.6	Article 8	<p><i>"1. Power Seller is responsible for investment, operation and maintenance of transmission lines and step-up substation (if any) from the power plant of the Power Seller to the connection point to the power grid of Power Purchaser.</i></p> <p><i>2. The connection point is agreed by Power Seller and Power Purchaser in accordance with the principle that it is the closest connection point to the existing power network of Power Purchaser, ensuring the transmission of capacity/electric power of the power plant of Power Seller, in accordance with the approved power development plan. In the event the connection point is not the point where metering equipment is installed, the loss of power on the connection line and the loss [of power on] step-up substation of the plant shall be borne by Power Seller. The Ministry of Industry and Trade specifies calculation method for the loss on the connection line."</i></p>	<p>Grid connection costs can be key to project feasibility. For small projects, the grid connection cost may be a significant portion of total project cost. Smaller sized projects may need to be located next to existing transmission lines. Larger projects need to balance cheaper land rental and use costs in relatively unpopulated areas against increased cost to run transmission lines over longer distances. However, Decision No. 11 imposes liabilities only on the project developer/power seller, without any appropriate mechanism for allocation of costs and risks.</p> <p>In the upcoming implementing circulars, they should address the allocation of grid connection costs and risks, such as project capacity and distance from existing transmission lines. They should also address how to balance cheaper land rental and use costs in relatively unpopulated areas against the greater costs of running transmission lines over longer distances. In addition, under Clause 13.1(c), the MOIT is required to issue this regulation on calculation method for the loss on the connection lines, but no such regulation has yet been prepared or made public for comments.</p>
4.	Chapter III - Mechanisms to Encourage Development of Solar Power Projects		
4.1	Article 9.1	<p><i>"Power Purchaser has the responsibility to purchase all the power produced from solar power projects; [and] to prioritize the exploitation of the full generation capacity of solar power projects operating commercially."</i></p>	<p>Though generally reassuring, this clause may not achieve its intent because it is not clear enough what it means by "to prioritize".</p> <p>A renewables project normally follows a "take if delivered" model requiring the purchaser to take all electricity generated by the project. This would be a form of priority, but it should be clearly stipulated here to demonstrate the State's commitment to using renewable energy as compared to carbon based fuels.</p>
4.2	Article 9.2	<p><i>"The power purchase is carried out through a power purchase agreement made in accordance with the Power Purchase Agreement Template applied for solar power projects issued by the Ministry of Industry and Trade."</i></p>	<p>Please refer to the comment on Clause 3.9 above. The PPA template must be detailed, and it should reflect international best practice to be "bankable" (i.e., provide certainty for the multi-year payment commitments in order to convince creditors to provide the debt financing portion of the project on</p>

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			reasonable terms) and it must provide for some flexibility to allow for various circumstances.
4.3	Article 9.3	<i>"Within a period of thirty (30) days from the day Power Seller has all the dossiers and documents asking for power sale, Power Purchaser and Power Seller enter into a power purchase agreement in accordance with the regulations."</i>	<p>Procedure and required dossiers/documents should be specified or referred to the relevant regulations for clarity. In addition, this should be clarified whether this procedure is for preliminary PPA acceptance (to save time for official signing in a later stage with the power purchaser), or for the final approval and signing of the official PPA as a legally binding agreement with the power purchaser. Without clarity, in practice, this can cause unnecessary administrative burdens for the Power Seller.</p> <p>These issues should be addressed into the upcoming implementing circulars.</p>
4.4	Article 9.4	<i>"The term of the power purchase agreement with respect to solar power project is twenty (20) years from the commercial operation date. After twenty (20) years, both parties may extend the agreement term or enter into a new agreement in accordance with the then current provisions of law."</i>	<p>The end date should be sufficiently far into the future to allow investors and creditors to recover their investments and loans at a reasonable rate. As technology is a factor, which may impact the contract term, subject to further review from technology/technical and commercial perspective, the upcoming implementing circulars may need to be considered whether to provide for a longer term, e.g., 25 years.</p> <p>In addition, the extension mentioned in Decision No. 11 does not help reduce investment capital costs up-front. An option to extend is therefore desirable but not essential.</p> <p>On the other hand, the concept of "make-up term" should be considered to address the situation in which the project is suspended or delayed for reasons beyond the control of the Seller (e.g., the term shall be extended on a day-for-day basis for all periods during which an affected party is unable to perform its obligation pursuant to a force majeure event, and is relieved of its obligations to so perform).</p>
4.5	Article 10.2	<i>"Import duties: Solar power projects are exempt from import duties for goods imported to create fixed assets for the project; the current provisions of the laws concerning export duties [and] import duties are applied to goods which are raw materials, supplies, semi-</i>	In the upcoming implementing circulars, further details and special additional incentives should be considered to be provided.

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		<i>finished products not yet produced domestically and are imported to serve the project's production purpose ."</i>	
4.6	Article 10.3	<i>"Enterprise income tax: The exemption [and] reduction of enterprise income tax for solar power projects are carried out as with projects in the sectors enjoying investment incentive treatment under the current provisions of the tax laws."</i>	<p>The term "under the current provisions of the tax laws" refers this clause to the tax laws, which may be changed from time to time, but no special additional incentives for enterprise income tax are provided under Decision No. 11.</p> <p>In the upcoming implementing circulars, further details and special additional incentives should be considered to be provided.</p>
4.7	New Article/Clause on investment incentive	No provision.	<p>Under Decree 118/2015/ND-CP implementing the Investment Law (Appendix 1, Item A.I.6), "production of renewable energy, clean energy" (including solar power generation) is classified as a business line eligible for SPECIAL investment incentives (rather than a business line eligible for investment incentive). Accordingly, the investor should be entitled to a 50% reduction of the deposit as a security for implementation of the project under Article 27.6(b) of Decree 118/2015/ND-CP.</p> <p>In the upcoming implementing circulars, such investment incentive and any other additional incentives should be considered to be added.</p>
4.8	Article 11.1	<i>"Solar power projects, transmission line constructions and substations for connection to <u>the power grid</u> may enjoy exemption [and] reduction of land use fee, land rent, water surface rent in accordance with the provisions of laws currently applicable to projects in the sectors enjoying investment incentive treatment."</i>	<p>As mentioned above, "production of renewable energy, clean energy" (including solar power generation) is classified as a business line eligible for SPECIAL investment incentive (rather than a business line eligible for investment incentive). Specific incentives are provided in accordance with the Land Law and its implementing regulations (currently, Decree 45/2014/ND-CP as amended by Decree 135/2016/ND-CP).</p> <p>In addition, for "the power grid" as underlined, this needs to be clarified in the upcoming implementing circulars whether it is "the national power grid" or "the power grid of the Power Purchaser" or both as both these terms were used in the interpretation of the term of "on-grid solar power project" at Article 3.5 above. Following the comment on the direct corporate PPA mode, this clause also needs to be clear whether this</p>

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			incentive will also apply in the case where the Power Purchaser is an organization or individual other than EVN under the direct power sale and purchase model.
4.9	Article 11.2	<i>"Based on the plan approved by competent authorities, Provincial-level People's Committees facilitate the arrangements of land reserve for the investors to carry out the solar power projects. The compensation [and] assistance for land clearance are carried out in accordance with the provisions of the current laws on land."</i>	The phrase <i>"facilitate the arrangements"</i> is not clear; does it mean an assurance from provincial-level People's Committee, or any additional support for solar power above and beyond that provided in the existing law? As land related procedures are time-consuming and lead to unexpected high costs, a clear assurance and support from the relevant State authorities will better encourage the investment and development of solar power projects. A strong provision enabling relevant authorities to provide support for land clearance and compensation procedures, including expedited procedures in appropriate cases, would be helpful in furthering the aims of Decision No. 11. This can be addressed in the upcoming implementing circulars.
4.10	New provisions on other incentives, guarantees and assurances from the Government	No provision.	Decision No. 11 provides helpful guidance on the project formulation and approval process for solar power projects, but it does not provide for certain support policies that investors wish to have, for example: <ul style="list-style-type: none"> • There is no provision for any form of government guarantee, assurance or support to enhance the creditworthiness of EVN as the sole off-taker/purchaser; • There is no provision for any guarantee for minimum revenue, or payments by EVN upon termination of the PPA; • There is no specific policy to address the risk for change in law or tax and costs; • There is no provision for payment protection in circumstances of political force majeure; and • There is no concept of deemed commissioning to allow for certain payments by EVN if the facility or a section is ready but EVN fails

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			<p>to construct grid connection or is otherwise unable to take power produced.</p> <p>Specifically, Decision No. 11 does not provide for a number of other incentives and assurances that would normally be found in a national regime for the development of solar power. Some incentives, guarantees and assurances are provided under Decree 15/2015/ND-CP for public-private partnership (PPP) projects, but they do not apply to all possible solar power projects, but only those implemented in the PPP form.</p> <p>It is common that solar power projects in particular and renewable energy projects are implemented in the private /independent power producer (IPP) form, rather than the PPP form. Thus, solar power developers and financiers will not be able to get the additional incentives, guarantees and assurances that are provided for PPP projects (e.g., BOT thermal power projects), although even PPP projects are still facing certain specific issues.</p> <p>To encourage the development and investment in solar power projects and improve bankability (especially for large-scale (utility-scale) solar power projects), the suggested forms of support outlined below should be considered for addition to Decision No. 11's upcoming implementing circulars:</p> <p>(a) Guarantees for obligations of EVN as a power purchaser</p> <p>In this regard, the Power Purchaser should be an established credit-worthy entity with a history of meeting its performance and payment obligations. As EVN is a State-owned enterprise and the sole power purchaser/off-taker of on-grid projects in Vietnam, most international solar energy investors and developers will expect that its payment obligations should be supported by a Government guarantee and/or other appropriate form of Government support. Recently, however, it has become harder to get such a Government guarantee. In terms of recent policy of the Government, there is a directive from the Government that:</p> <ul style="list-style-type: none"> - In 2016, to thoroughly review any proposal for Government guarantees right

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			<p>from the stage of approval for the plan/proposal to limit Government guarantees; and</p> <ul style="list-style-type: none"> - From 2017, to temporarily cease issuing policy approvals for [Government] guarantees for new projects to secure public debt safety. - For special urgent cases, to report to the Prime Minister for consideration for an approval for Government guarantee on a case-by-case basis. <p>This policy is provided under Official Letter 7089/VPCP-KTTH of the Office of Government dated 25 August 2016. Without Government guarantees for the payments of EVN as monopoly State-owned Power Purchaser, it will be very difficult to find sufficient international financial support for energy projects, including solar energy projects.</p> <p>(b) Mortgage over rights of business over the project facilities</p> <p>This mortgage is included, for public-private partnership (PPP) projects, in Decree 15/2015/ND-CP (Article 58), which provides that investors and project enterprises can establish mortgage over rights of business over the project facilities as well as assets (project facilities) and land-use rights for the benefit of financial institutions that provide funds to such projects in accordance with the civil law and the land law. Lenders are expected to enhance lender's control over the projects and function of the lender's step-in right.</p> <p>(c) Assurance for the performance of land use rights</p> <p>This assurance is included, for PPP projects, in Decree 15/2015/ND-CP (Article 59), which provides that the purpose of use of the project land is assured unchanged over the entire term of the project, and this assurance covers circumstances whereby the lenders exercise their step-in rights.</p> <p>(d) Assurance for the balance of foreign currency</p> <p>There are certain assurances provided for PPP projects under Decree 15/2015/ND-CP, Article 60, specifically:</p> <ul style="list-style-type: none"> (i) The investors and the project enterprise can:

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			<p>- buy foreign currency from credit institutions authorized to conduct foreign exchange activities, in order to serve its demand for current transactions, capital transactions and other transactions; or</p> <p>- remit abroad capital, profits and proceeds from investment liquidation.</p> <p>(ii) Assurance for the balance of foreign currency can be given to:</p> <p>- projects, which are under the National Assembly's investment decision authority;</p> <p>- infrastructure construction projects under the Government's investment program, and</p> <p>- other important projects under the decisions of the Prime Minister.</p> <p>(iii) Assurances for the balance of foreign currency will be based on the social-economic development orientation, the foreign exchange control policies, the capacity for balance of foreign currency in each period, as well as the objective and nature of each project.</p> <p>In addition, Decision No. 11's implementing circulars will need to include a clear provision on what extent the Government can guarantee the convertibility of VND income to foreign currency as this directly impacts bankability of projects.</p> <p>(e) Assurance for the supply of public services</p> <p>Decree 15/2015/ND-CP (Article 61) provide for PPP projects that:</p> <p>(i) The investor and the project enterprise can use land, roads and other ancillary facilities, to implement the project.</p> <p>(ii) The investors and the project enterprise can be:</p> <p>- prioritized and supplied with public services, or</p> <p>- given the priority to be granted the right to use public facilities,</p> <p>in the event that there is a scarcity of public services, or a restriction on the entities, which are eligible to use the public facilities.</p> <p>(f) Assurance for rights of ownership over assets</p>

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			<p>Decree 15/2015/ND-CP, Article 62 for PPP projects provide that:</p> <p>(i) Lawful assets of the investors will not be nationalized or expropriated by administrative measures;</p> <p>(ii) The authorized State agency can make payments or compensate for any expropriation or purchase of assets of the investors. This can be required in the event that it is necessary due to reasons of national defence and security, the national interest, a state of emergency and the prevention of natural disasters.</p> <p>In addition, Decision No. 11 does not address some other key issues in the relevant legal documents, including:</p> <ul style="list-style-type: none"> - Applicability of foreign law; - Applicability of dispute resolution by international or foreign arbitration centres/organizations; and - Effective mechanism for project step-in right of lenders and applicability of a direct agreement of the power purchaser, the power seller (the project company) and lenders of the project company. <p>Addressing these three issues would be a major step towards creating an enabling environment for the development of renewable energy. It will help the MOIT to draft a bankable PPA template for solar power projects if these issues are appropriately addressed and included into Decision No. 15's implementing circulars.</p>
4.11	Guarantee for investment capital costs and minimum revenue	No provision.	<p>Guarantee for minimum revenue:</p> <p>Vietnamese law currently does not provide for any guarantee of minimum revenue. Decision No. 11 also does not provide for any protections for the investors' investment capital, outstanding debts in the event of termination of the power purchase agreement. The termination payment should be equal to, at a minimum, the outstanding debt owed by the project developer. In the event of termination of the PPA, there should be a mechanism to allow for</p>

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			<p>determining the total amount of any termination payment.</p> <p>To improve the bankability for solar power projects, Decision No. 11's implementing circulars should address these issues, especially in the standard solar PPA template.</p>
4.12	Article 12.1: Power price of on-grid solar power projects	<p><i>"1. With respect to on-grid projects</i></p> <p><i>a) Power Purchaser is responsible for purchasing the entire power output from the on-grid projects with power purchase price at the power delivery point of VND 2,086/kWh (excluding value added tax, equivalent to 9.35 US cents/kWh, in accordance with the central exchange rate of VND 21,896/USD announced by the State Bank of Vietnam on 10 April 2017, which is 22,316 VND equal 1 USD). Power selling price shall be adjusted in accordance to the VND-USD exchange rate fluctuation. This power price is only applied to on-grid projects with efficiency of solar cells greater than 16% or efficiency of modules greater than 15%.</i></p> <p><i>b) The adjustment of power purchase price in accordance to the VND-USD exchange rate fluctuation for on-grid projects shall be implemented pursuant to the Power Purchase Agreement Template issued by the Ministry of Industry and Trade."</i></p>	<p>For clarity, Decision No. 11's implementing circulars may need to supplement a clarification of consequences or what tariff will apply to on-grid projects if they do not meet the requirement <i>"on-grid projects with efficiency of solar cells greater than 16% or efficiency of modules greater than 15%"</i>, as required by Decision No. 11.</p> <p>The level of tariff needs to be enough to cover debts, operating costs and an equity return and this issue needs to be reviewed further from a commercial and technical perspective.</p>
4.13	Article 12.2: Power price of rooftop projects	<p><i>"Rooftop projects are eligible for net-metering mechanism using bi-directional meter systems. In a billing cycle, when generated power from rooftop projects is greater than the consumed power, the difference amount will be transferred to the next billing period. At the end of the year or the termination of the power purchase agreement, the surplus generated power will be sold to the power purchaser at the power price</i></p>	<p>Further details on the net-metering scheme still need to be formulated and the MOIT is required to issue technical standards for solar power and metering for solar power projects, and to provide guidelines on the procedures for connection, meter installation and net-metering mechanism for rooftop solar projects. Until then, it remains unclear what limitations may apply to net-metering schemes (e.g., system size, transferability of credit in case of excess generation, etc.), except that it may be inferred from other provisions in the Decision that this scheme applies to rooftop projects</p>

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		<p><i>specified in Article 12.1.</i></p> <p><i>b) Every year, based on the VND-USD central exchange rate announced by the State Bank of Vietnam on the date of last exchange rate announcement of the previous year, the Ministry of Industry and Trade issues solar power purchase price for rooftop projects for the following year."</i></p>	<p>50KW and less.</p> <p>The upcoming implementing circulars may also need to clarify whether there is any condition or requirement for the outstanding generated power at the end of the year or at the end of the PPA to apply the tariff under Article 12.1 as for on-grid projects (e.g., efficiency of solar cells greater than 16% or efficiency of modules greater than 15% as provided in Article 12.1).</p>
4.14	Article 12.4	<p><i>"The Ministry of Industry and Trade monitors and proposes the adjustment of power purchase price provided in Point a, Clause 1 of this Article in order to report to the Prime Minister for reviewing, and deciding, if necessary."</i></p>	<p>If adjustment to the tariff is advantageous to the power seller/project developer, the power seller/project developer should be able to enjoy such higher tariff. Please see the comment on Article 15 (Transitional provision) below.</p> <p>In addition, Article 12 does not provide for any tariff for off-grid projects, so Decision No. 11's implementing circulars may need to supplement a specific policy for off-grid projects.</p>
5.	Chapter IV - Provisions for Implementation		
5.1	Article 13	Decision No. 11 provides for certain responsibilities of the MOIT and the MPI.	In addition to the MOIT, the MPI and the MOF, there are some other ministries involved in the management over the development of solar power projects, including the State Bank of Vietnam, the Ministry of Construction, the Ministry of Natural Resources and Environment, etc. Thus, Decision No. 11's implementing circulars may need to add further guidance related to those ministries, to implement the incentives, assurances, guarantees as suggested at Chapter 3 above.
5.2	Article 13.1(b)	The MOIT is required to <i>"issue Power Purchase Agreement Template applicable to the on-grid projects and rooftop projects, and guides its implementation."</i>	Please refer to the comment on Article 3.9 above.
5.3	Article 13.1(c)	The MOIT is required to <i>"issue calculation method for the loss on the transmission line in the event the point of</i>	Please refer to the comment on Article 8 above.

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		<i>metering is not the same as the connection point".</i>	
5.4	Article 13.1(d)	The MOIT is required to " <i>issue solar power technical standards, regulations on power metering for solar power projects and guidance on the procedures for connection, installation of meters and calculation of net-metering mechanism for rooftop solar power projects.</i> "	Please refer to the comment on Article 12.2, in relation to the net-metering scheme.
5.5	Article 13.1(dd) (Responsibility of Ministries and localities with respect to solar power projects)	The MOIT is required to " <i>study tendering process for solar power projects and organizes its implementation with appropriate roadmap to improve investment efficiency, reducing the cost price of solar power projects.</i> "	By "study", it is unclear whether the MOIT will work with the Ministry of Planning and Investment to issue any implementing document, or this is only an internal task of the MOIT. It would be more meaningful if this provision is further clarified under the implementing circulars whether this is tendering for selection of investors/developers or for selection of contractors or both. In addition, how and when the tendering will be proposed in connection with the entitlement of the existing FiT rate under Decision No. 11 should be clarified for the interest of investors.
5.6	Article 13.1(e) Article 16 (Entry into force)	The MOIT is required to " <i>Study to propose mechanisms to encourage the development of solar power projects to be applied to the period after 30 June 2019.</i> " Article 16. Entry into force <i>"1. This Decision takes effect as from 01 June 2017 until 30 June 2019."</i>	Uncertainty after 30 June 2019: Decision No. 11 will be in effect only until 30 June 2019, and the Prime Minister has given an instruction to the MOIT to study a new policy for solar power for the period after 30 June 2019. However, Decision No. 11 does not give early investors a specific assurance that they will receive treatment no less favourable as compared with post-30 June 2019 investors in respect to the basic terms and conditions of their investment agreements and especially their PPAs, even if this means retroactive adjustments to the FiT.
5.7	Article 13.1(i)	<i>"With respect to solar power projects not in the approved list of solar power development plan and power development plan, the MOIT is required to review, further approve the plan for solar power projects with output lower than or equal to 50 MW; and submit for</i>	When approvals of solar master plans (national and provincial) are pending, it is time-consuming and this will cause administrative process burden for new projects to conduct the procedure for approval for inclusions into the master plans. This process should be improved and streamlined under the

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		<i>Prime Minister's further approval of the plan for solar power projects with output higher than 50 MW."</i>	upcoming implementing circulars.
5.8	Article 13.2	The Ministry of Planning and Investment is required to <i>"preside over the coordination with the Ministries and industries to devise mechanisms encouraging investment in development and production of solar power equipment in Vietnam for submission to the Prime Minister for review and approval"</i> .	<p>It appears from Decision No. 11 that the Prime Minister will issue another document regarding mechanisms supporting the development of enterprises producing solar power equipment. The draft of such document will also need to be reviewed.</p> <p>In addition, the MPI and local Department of Planning and Investment take an important role in the approval for the investment of project and establishment of the project company. Thus, further instructions for the MPI may be needed to be considered to improve the licensing process for solar power projects specifically (in addition to the general rules under the Enterprise Law and Investment Law and their existing implementing regulations).</p>
5.9	Article 13.3	The Ministry of Finance is required to <i>"preside over the study to supplement the regulations on exemption of taxes and fees for rooftop projects (with installed capacity not higher than 50 kW), and submit to competent authority level for review and approval."</i>	This draft regulation by the MOF will need to be reviewed if types of taxes and fees subject to exemption are sufficient.
5.10	Article 15 (Transitional provision)	<i>"With respect to on-grid projects and rooftop projects with power purchase agreements entered into before the effective date hereof, both parties shall be responsible for agreeing on and entering into an amended Agreement as stipulated hereof."</i>	<p>No negative retroactive effects should apply to existing projects and PPAs, especially for provisions providing for higher requirements or less incentives (pursuant to the Law on Issuance of Legal Normative Documents, Article 152).</p> <p>In addition, the Investment Law (Article 13) provides for some principles for assurance of business investment upon changes in law, as follows:</p> <p>(i) In cases where a new law is promulgated that provides more favourable investment incentives than those currently enjoyed by the investor, the investors shall enjoy the new incentives for the remaining period of the</p>

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			<p>incentivized period of the project.</p> <p>(ii) In cases where a new law is promulgated that provides less favourable investment incentives than those currently enjoyed by the investor, the investors shall keep enjoying the current incentives for the remaining period of the incentivized period of the project.</p> <p>However, this assurance does not apply if legal regulations are changed for reasons of national defense and security, social order and security, social ethics, public health, or environmental protection.</p> <p>If an investor is no longer eligible for such investment incentives, one or some of the following solutions shall be adopted:</p> <p>(i) Deduct the damage actually suffered by the investor from the investor's taxable income;</p> <p>(ii) Adjust the objectives of the investment project; and/or</p> <p>(iii) Assist the investor in recovery from damage.</p> <p>In such cases, however, the investor must make a written request within three (3) years from the effective date of the new law.</p> <p>In this respect, under Decision No. 11, there is no specific policy to address the risk for change in law or tax and costs.</p> <p>As such, these issues should be clarified under the upcoming implementing circulars, so that only new requirements that are more favorable to the investor should apply.</p>