

Client Alert

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Update of key changes to Draft Decision on the potential second Feed-in-Tariff Program from 1 July 2019 and the impact on private investors of solar power projects in Vietnam

Recent developments

On 13 November 2019, at the Office of the Government of Vietnam ("OOG"), the Prime Minister chaired a meeting of the Government on review of a proposed draft of the new Decision ("Draft Decision") on the encouragement mechanisms for solar power projects in Vietnam for the 2nd feed-in-tariff (FiT) period from 1 July 2019 as submitted earlier by the Ministry of Industry and Trade ("MOIT").

Following presentations at the meeting by the MOIT and Vietnam Electricity ("EVN"), and comments made by the Deputy Prime Ministers and the relevant ministries, the OOG has prepared an official notice on the opinions of the Prime Minister on behalf of the Government ("OOG Notice").

In the OOG Notice, the Government sets out certain new instructions and opinions on the Draft Decision. Accordingly, the MOIT has been instructed by the Government to revise further the Draft Decision to reflect the Government's new instructions and prepare an updated report and new Draft Decision for submission to the Government before 15 December 2019. This means that the issuance of the proposed Decision may likely be delayed until the end of the year.

We set out below the specific opinions and instructions of the Government for revisions to the next Draft Decision under the OOG Notice.

Specific implications for solar farms

Under the OOG Notice, the Government suggested that:

- a) the proposed 2nd FiT tariffs will be considered to be limited to solar projects (i) for which Power Purchase Agreements ("PPAs") have been signed and (ii) which achieve commercial operation in 2020;
- b) for other solar farms/projects, they will not be eligible for a 2nd FiT regime, but a definite transition to a competitive, open and transparent bidding mechanism will be considered to reduce power purchase tariffs from solar projects.

Under the previous version of the Draft Decision proposed by the MOIT, it was proposed that the deadline for achieving commercial operation date ("COD") to be eligible for the 2nd FiT program would be 31 December 2021, namely for:

- Floating solar power projects: VND 1,758 per kWh (equivalent to US cent 7.69 / kWh); and
- Ground-mounted solar power projects: VND 1,620 per kWh (equivalent to US cent 7.09 per kWh).

However, the instruction of the Government under the OOG Notice may have a significant impact on a number of developing or recently proposed solar projects not yet approved in the master plans, particularly those large-scale projects that were proposed, or are aiming, to achieve COD in 2021 instead of 2020. This may also have a significant impact on private investors' considerations on making new investments in solar farms.

In addition, under the OOG Notice, the MOIT was instructed to submit a report to the Government on a list of solar projects eligible for the 2nd FiT, ensuring fairness, openness and transparency. As such, private investors may need to review whether their projects can be included in that upcoming list, to be eligible for the 2nd FiT program, noting the criteria on PPAs signing and CODs in 2020 as provided in the OOG Notice and discussed above.

Specific implications for rooftop solar systems

Under the OOG Notice, regarding rooftop solar, it is agreed by the Government that a single national FiT will continue to apply to rooftop solar power systems "for a certain period of time".

However, the OOG Notice is not clear as to whether:

- the FiT for rooftop solar is confirmed at VND 2,156 per kWh (equivalent to US cent 9.35 per kWh); or
- by "*for a certain period of time*", does it mean the deadline for achieving COD to be eligible for the FiT for rooftop solar systems will be by end of 2021 as proposed by the MOIT in September 2019 under the previous version of the Draft Decision.

Instead, the Government instructed the MOIT to work with the Ministry of Finance and EVN to review and agree among themselves on the FiT rate for rooftop solar systems.

In addition, the OOG Notice adds a note for further consideration on the maximum threshold of installed capacity for rooftop solar. In this respect, under the current regulations and the previous version of the Draft Decision, the threshold is 1MWp (DC capacity) to differentiate rooftop solar systems and solar farms. Under the OOG Notice, the MOIT will further review this threshold. From a private sector perspective, rooftop solar developers and consumers may suggest increasing the threshold to promote the deployment of rooftop solar systems, rather than reducing / tightening it.

Clarifications on the special policy for Ninh Thuan Province

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

In addition, the OOG Notice clarifies that the application of this policy will be determined only until Ninh Thuan province reaches its capacity of 2,000 MW or the end of 2020, whichever is sooner. Accordingly, the MOIT and the Ninh Thuan authorities are instructed to strictly follow this policy.

However, it remains unclear as to whether the threshold of "2,000 MW" is DC capacity or AC capacity and how to deal with cases where the combined capacity of eligible projects does not match this threshold exactly.

Other opinions of the Government

Under the OOG Notice, the issuance of the proposed Decision for the 2nd FiT program must comply with the following additional principles:

- a) The focus should be on areas with clear potential, and advantages, for development to ensure the overall economic efficiency. On this point, however, it is unclear as to whether the Government would continue applying the national FiT rates, or re-open for their further discussion a zoning classification option based on solar irradiance potential.
- b) The priority should be given to the development of rooftop solar power thanks to its non-occupancy of land and absence of investment requirements for power grid connection;
- c) Solar power development must have a long-term vision in order to meet the strategic objectives, ensuring the rational development in each period linked with environmental protection.
- d) Solar power development must comply with the master plans and strike a balance in the power system while avoiding significant investments that would negatively affect the overall production cost in the entire system, ensuring a balance of rights and interests of the State - Investors - People, tackling corruption and taking on powerful interest groups, removing the application-approval (input-based on-demand support) mechanism;
- e) Solar projects should not use outdated and low-efficiency technologies with potential threats to the environment.

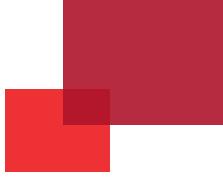
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Please note that the OOG Notice is merely a general instruction of the Government following their meeting. As a next step, the MOIT has been instructed by the Government to further revise the Draft Decision to reflect the Government's new instructions and prepare an updated report and new Draft Decision for submission to the Government before 15 December 2019.

Further, by the date of this update, the proposed Draft Decision is still in draft form, subject to the Government's further discussion and conclusion following the MOIT's new submission.

In the meantime, please do not hesitate to contact us if you would like to understand more about:

- the rationales behind the proposed instructions of the Government under the OOG Notice;
- the likelihood of approval of this Draft Decision;
- other provisions of the New Draft as well as potential upcoming additional guidelines by the MOIT for implementation of this proposed Decision;
- potential impacts of the proposed Draft Decision to specific projects based on their status and necessary steps going forward to mitigate risks; and / or



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- opportunities for development and investment in solar or other power and energy projects in Vietnam following these new developments.