

Client Alert

November 2018

For further information, please contact:

Fred Burke
+84 28 3520 2628
frederick.burke@bakermckenzie.com

Dang Chi Lieu
+84 24 3936 9341
chilieu.dang@bakermckenzie.com

Nguyen Thanh Hai
+84 24 3936 9606
thanhhai.nguyen@bakermckenzie.com

Vietnam's Draft New Circular Provides Detailed Guidelines on Development of Wind Power Projects

Recent developments

Following the Prime Minister's issuance of Decision No. 39¹ approving the new Feed-in-Tariff ("**FiT**") of onshore and offshore wind power projects in Vietnam, the Ministry of Industry and Trade of Vietnam ("**MOIT**") has released a draft of a new Circular ("**Draft New Circular**").² The Draft New Circular updates the guidelines on the development of wind power projects in Vietnam following current regulations set out under Circular No. 32 in 2012 and Circular No. 06 in 2013 of the MOIT.³

The Draft New Circular provides updated guidelines for the development of wind power projects in Vietnam, which includes:

- Power development plans and the procedure for inclusion of a new wind project in the power development plans;
- Assessment of wind potential and the installation of meteorological mast ("met mast") for wind measurement;
- Feasibility Study (FS) Report, basic design and technical and detailed designs;
- The process for testing, acceptance and commissioning of wind farms;
- Efficiency and technical standards specifications for wind farms;
- Land use limitations for wind farms;
- The process for negotiation and execution of a wind Power Purchase Agreement ("PPA") with EVN;
- Implications of operating wind farms; and
- An indication of future potential policies for wind farms in Vietnam.

Power Development Plan ("**PDP**") requirements

Under current regulations and practice a wind power project may be developed after the project's power source and its interconnection plan have been approved for inclusion in the applicable PDPs by the MOIT or the Prime Minister (depending on the scale of the project). The developer will then apply for investment approval (i.e., investment policy decision and/or

¹ Decision No. 39/2018/QĐ-TTg of the Prime Minister dated 10 September 2018 amending and supplementing a number of articles of Decision No. 37/2011/QĐ-TTg of the Prime Minister dated 29 June 2011 on the support mechanisms for development of wind power projects in Vietnam ("**Decision No. 39**").

² A copy of the Draft New Circular in Vietnamese can be obtained on the website of the MOIT at http://legal.moit.gov.vn/default.aspx?page=document_bill&do=detail&doc_id=906&rand=636766626016740863 (last accessed on 5 November 2018).

³ Circular No. 32/2012/TT-BCT of the MOIT dated 12 November 2012 on the procedure for development of wind power projects and model PPA for wind power projects; and Circular No. 06/2013/TT-BCT of the MOIT dated 8 March 2013 on the contents, order, procedure for preparation, appraisal and approval of wind power development plans.



investment registration certificate), in most cases from the provincial People's Committees and the provincial Department of Planning and Investment.

Under the Draft New Circular, the MOIT clarifies further that:

- a) In the event that the investor wishes to adjust the project implementation schedule/progress, or divide the project into phases different from the approved contents in the PDP, the investor will need to report to the relevant PDP approval authority for review of the adjustment to the PDP before the investor can implement the project.
- b) For wind power projects which have been approved to be included in the list of wind power projects under the relevant provincial-level Wind PDPs, if their interconnection plans are no longer appropriate for the current status of the local electrical grid systems, the provincial People's Committee must report to the MOIT for review and approval for the adjusted / updated interconnection plans and related schedules of construction implementation.

The MOIT introduces these clarifications to remain informed of any future changes or mismatches to the project's capacity, development progress and related interconnection plans following the approval on the PDP.

Inclusion of new wind projects in the PDP

The Draft New Circular provides for updated guidelines for inclusion of newly proposed projects into the PDP on a project-by-project basis. Compared to the current regulations, the Draft New Circular introduces stricter requirements for developers applying for approval of their proposed project into the PDPs.

Specifically, under the Draft New Circular, the contents and documents required for the application for approval of a newly proposed wind farm in the PDP must include the following:

- a) **Basic information of the investor**, including documents on legal capacity, business registration, key personnel, and documents evidencing the investor's financial capability in accordance with the applicable regulations.
- b) **Report on the proposal of a wind power project**, including the following key contents:
 - 1) The necessity to invest in the project and the conditions to implement investment and construction;
 - 2) Proposed objective, scale, location (including location and coordinates) and form of project implementation;
 - 3) Need to use land and natural resources:
 - Clearly specifying the survey area, temporary use area, permanent use area and area affected by the safety corridor;
 - A list of the types of land, coastal/sea areas and analysis of the state of efficiency of the use of land, resources and coastal/sea areas; and



- An evaluation of the appropriateness of the land use plans, any overlaps with other specialised plans, such as mineral plans, forest plans, agriculture plans, irrigation plans, etc.
- 4) Report on the wind data;
 - 5) Brief on the technological solution:
 - analysing the technological selection based on the wind characteristics of the project area; and
 - wind turbine positioning plans.
 - 6) Preliminary design plan, including:
 - Construction location, type and the level of the main construction work;
 - Layouts of preliminary design of the project grounds; and
 - Layouts and preliminary explanations on the foundation solution chosen for the main construction facilities.
 - 7) Report on the selection of the plan for interconnection of the wind power plant to the power grid system, which clearly states:
 - the current state of power source and grid, power source development plan (current and planned), and grid development plan;
 - comparison of interconnection plan options, calculation of the impact on local power source and grids when the proposed project is included; and
 - evaluation of the absorbing capability of power grids when the project is put into operation.
 - 8) Preliminary solution for: transporting of super-length and super-weight equipment ; implementation schedule, technical solutions for construction;
 - 9) Brief on total investment amount, capital arrangement capability, capital return and debt repayment capability.
 - 10) Preliminary evaluation of the socio-economic effectiveness and impact of the project.
- c) **Written consents and opinions from the provincial People's Committee** on the location planning and area of land use; written opinions of the competent authority on the use of natural resources and sea/coastal areas of the proposed project; and
 - d) **Written opinions from the regional Power Corporation or National Power Transmission Corporation** (if connected to the transmission power system) **and EVN** on the application dossier for inclusion in the PDP.

In addition, we note that under current regulations and in practice, for wind farms which have an installed capacity of larger than 50MW, which are subject to inclusion in the national-level PDP, the MOIT also obtains written opinions from other relevant ministries (e.g., Ministry of Construction, Ministry



of Agriculture and Rural Development, Ministry of Natural Resources and Environment, Ministry of Finance) before the MOIT submits a consolidated report and proposal to the Prime Minister for final approval for inclusion of such projects in the national-level DPP.

Requirements for assessment of wind potential

a) For onshore wind projects

The Draft New Circular inherits the current requirement that wind measurement must be implemented within a period of at least twelve (12) consecutive months.

In terms of location of wind met mast, however, under the Draft New Circular, wind met mast can be set up in either of the following ways:

- within the area scope of the project, or
- within a 10-km radius from the centre of the project (if the land layout is relatively uniform).

Method and equipment for wind measurement must conform to international standard of the International Electrotechnical Commission ("IEC").

b) For offshore wind projects

For offshore wind measurement, under the Draft New Circular, the developer is required to use wind measurement equipment with new technology which meets international standards, in which such standards have been certified to measure wind data, collect data and evaluate the potential of a wind power project for investment approval.

For wind power projects which have been included into the PDPs, the developer must have the results of wind potential survey and assessment prior to approval of feasibility study (FS) report.

In terms of the height of met mast, the Draft New Circular inherits the current requirement that wind measurement data must be collected from wind mast with a height of at least sixty (60) metres, a frequency / length of collection of ten (10) minutes at a time, and a collection cycle of a minimum of twelve (12) months at the measurement location within the project's area.

Feasibility Study (FS) report requirements

Under the Draft New Circular, the FS report of a wind power project must include the following key contents, among other things as required under the Construction Law:

- Report on wind energy potential;
- Location, coordinates, permanent land use area and temporary land use area; sea area (if offshore) of the wind power project;
- Interconnection plan of the plant and assessment of the impact of the project's interconnection plan on local power grid system; and
- Estimate and plan on costs and techniques for removal and settlement of wind project facilities and equipment after the project has ended.



Basic design appraisal requirement

Under current regulations, the basic designs of wind projects with a capacity of up to 30MW are subject to appraisal by the provincial-level Department of Industry and Trade whilst larger projects' basic designs are subject to appraisal by the MoIT's Electricity and Renewable Energy Authority.

The Draft New Circular adds a specific guideline on the application documents for the regulatory appraisal of basic designs of wind power projects. Specifically, wind power developers are required to submit the following application documents:

1. Description of the investment project and the legal, corporate, and project documents of the project;
2. Report on the construction assessment; acceptance and approval for construction assessment results of the developer;
3. Basic design of technical and construction facilities, including contents on the plant, electrical lines, substations, conductor and other construction facilities;
4. Documents on agreements with EVN's relevant entities related to interconnection with grid systems, including:
 - a. Grid Connection Agreement documents;
 - b. SCADA Agreement documents;
 - c. Protective Relay System Agreement documents; and
 - d. Metering Agreement;
5. Agreements with the competent authorities on the location of the project, used land area, natural resources and used sea area and project ground planning;
6. Regulatory approval on wind power turbine height;
7. Regulatory opinions / certifications on fire fighting and prevention design / solution;
8. Report on appraisal of basic design application dossier for the wind project; and
9. Capacity documents of consultants in charge of design, appraisal and survey of the construction facilities.

Process of testing and commissioning of wind farms

The Draft New Circular provides for the following general guidelines:

- Wind power plant facilities will be brought into operation after they are accepted for taking over in accordance with applicable regulations; and
- For wind power plant facilities which require examination by the competent authority on the testing for acceptance and taking over, the MOIT's Electricity and Renewable Energy Authority shall organise the examination of the acceptance and taking over process and issue a



written approval on the result of acceptance before the interconnection date.

Under the current regulations and in practice, before the commercial operation date ("**COD**") of a wind farm, the developer is required, among other things, to (i) conduct the procedure for testing and acceptance of metering system, certification of energy output from tested wind turbines, (ii) reach agreement on the coordination procedure of the operation of the wind farm with EVN's local power corporation and (iii) reach agreement and recognition from EVN's Electricity Power Trading Company on the actual COD of wind turbines.

Tariff for onshore and offshore wind turbines

Decision No. 39 approves the new FiT of UScents 8.5 per kWh (for onshore wind power projects) and UScents 9.8 per kWh (for offshore wind power projects).

Given the difference in tariffs between new FiT for onshore and offshore projects, Draft New Circular clarifies that the tariff of a wind farm will be determined on a turbine-by-turbine basis, specifically:

- The tariff of a wind farm will be determined for each wind turbine of an onshore or offshore wind farm; and
- If a wind farm includes both onshore turbines and offshore turbines, the project developer (i.e. seller) must reach EVN's agreement on the project's specific plan for installing meters and metering method to separate energy outputs from the project's onshore turbines and offshore turbines.

Requirements for efficiency of wind farms

The Draft New Circular inherits the current requirement that:

- Wind farm facility equipment must meet the Vietnamese technical standards and regulations, international standards of IEC, or equivalent standards; and
- Wind turbines must have not been used and must not have a manufacturing date of more than five (5) years preceding their operation. Wind turbines must have an appropriate certificate of origin and manufacturer's certificate. If a wind power project uses a second-hand wind turbine, it must be reported to the MOIT for review and a decision in collaboration with other relevant agencies.

However, the Draft New Circular proposes the removal of the current requirement that the efficiency of a wind farm (wind turbines' arrangement) must not be less than ninety percent (90%).

Land use limitation for wind farms

The Draft New Circular inherits the following limitation on the land use area for a wind farm:

- The land use area for a wind farm must be consistent with the scale of work capacity;



- The rate of land use in a specific period/term (i.e., on a permanent basis) for a wind farm may not exceed 0.5 ha per MW; and
- Land use area on a temporary basis for a wind farm may not exceed 0.7 ha per MW;

Under the current regulation, in case where roads to the project have complex topography that must be widened to facilitate the transportation of wind turbines and towers in the construction and operation of a wind farm, the provincial People's Committee can consider allowing for a higher rate of land use on a permanent basis during the operation term of the project of up to 1 ha per MW. However, the Draft New Circular suggests the removal of this provision, meaning that the land area permanently used during the operation term of a wind farm shall be limited to 0.5 ha per MW as mentioned above.

Process of negotiation and execution of wind PPAs with EVN

a) Order and process for execution of a wind PPA with EVN

The Draft New Circular includes the following guidelines:

- The developer must prepare and submit an application dossier to EVN for negotiation of a draft PPA with EVN and for EVN's appraisal, approval, and execution of the PPA before the power developer commences construction of the project;
- Within a period of 15 business days from the date of receipt of a complete and valid dossier, EVN shall proceed with organizing a review of draft PPA for execution of the PPA with the power developer.

In practice and under EVN's procedure, once the dossier is submitted to EVN's Electricity Power Trading Company ("**EPTC**"), the power developer will have to sign a minutes of negotiation meeting and initial finalised draft PPA for EPTC's submission to EVN's management for internal approval before EPTC can officially sign the PPA on behalf of EVN.

b) Dossier of application documents for a wind PPA

The Draft New Circular requires the power developer to submit the following documents to EVN's EPTC:

- 1) The power developer's official request letter;
- 2) Legal, corporate, and project documents of the project;
- 3) Draft PPA;
- 4) Grid Connection Agreement, SCADA Agreement, Protective Relay System Agreement, and Metering Agreement; and
- 5) Written calculations of the loss of capacity and energy of substations and electrical lines from the power plant to the connection point with the national power grid system; and written calculation of electricity self-used in the power plant.

Among the above documents, we note that item 5) is a newly proposed document.

In addition, as a matter of practice, EVN's EPTC also requires submission of the regulatory appraisal for the basis design of the project, meaning that the



developer will have to obtain the basic design document before it can officially sign the PPA with EVN.

Model PPA for wind farms

The Draft New Circular includes a revised model PPA for wind farms. Compared to the current model PPA, the revised model PPA proposes certain revisions. However, most of the revisions are minor and are limited to making them more in line with the model PPA for solar power projects and to reflect the new FiT under Decision No. 39.

Under the Draft New Circular, the power developer and EPTC are required to provide explanations for revisions or supplementations compared to the contents of the model PPA.

Implications for operating wind farms

Further to recent guidance under Decision No. 39 on the new FiT, the Draft New Circular specifies that wind farms operating before 10 September 2018 may elect to re-sign the PPA with EVN to reflect the new FiT for the remaining term of the existing PPA.

Potential wind auction for post-1 November 2021 period

Following Decision No. 39, under the Draft New Circular, the MOIT instructed the Electricity and Renewable Energy Authority to study and propose an auction mechanism and new tariff for wind power projects for the period from 1 November 2021 to submit to the Prime Minister for decision.

In this respect, the tariff policy for the post-1 November 2021 period remains uncertain as the MOIT and its consultants are in the studying and proposal process (whether and how to transition from the current FiT scheme to reverse auction scheme or their scope of application, whether in certain provinces or nationwide).

www.bakermckenzie.com

Baker & McKenzie (Vietnam) Ltd.
12th Floor, Saigon Tower
29 Le Duan, Blvd District 1
Ho Chi Minh City, Vietnam
Tel: +84 28 3820 5585
Fax: +84 28 3829 5618

Baker & McKenzie (Vietnam) Ltd.
– Hanoi Branch
Unit 1001, 10th floor
Indochina Plaza Hanoi
241 Xuan Thuy Street
Cau Giay District
Hanoi 10000, Vietnam
Tel: +84 24 3825 1428
Fax: +84 24 3825 1428

Implications for wind turbine and equipment manufacturers and suppliers

Following Decision No. 39, under the Draft New Circular, the MOIT instructed the Electricity and Renewable Energy Authority to study and propose a specific mechanism for the encouragement of development and manufacturing of domestic wind power equipment and the increase of local content in wind power projects in Vietnam, to submit to the Prime Minister for a decision.

* * *

Please note that the proposed amendments under the Draft New Circular are still in draft form, members of the private sector can recommend further revisions and supplementations to the Draft New Circular.

If you would like to discuss the potential impacts of the Draft New Circular to your specific project, necessary steps going forward, as well as opportunities for investment in wind or other renewable power projects in Vietnam, please do not hesitate to contact us.