



VIETNAM WIND POWER 2019

Key Issues with PPA and Possible Solutions

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Contents

- Wind PPA Template
- Key Issues
- Possible Solutions

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Wind PPA Template

- First introduced in 2012 and further updated in Feb 2019
- Mandatory: revisions must only be to clarify rights and obligations but not to change fundamental contents
- 2019 Template effective since 28 February 2019
 - Recent changes (both positive and negative) reflecting experiences gained during the first round by both regulators and market players
 - Internal Policy Maker's Debate
- No concession right agreement (such as a BOT contract)
- Over 2GW approved, why not benefiting from a “BOT” like regime?
- Exceptions? – Approval by MOIT/Prime Minister

Key Issues

- **PPA Negotiation Process**
 - “Subjective” process: timing uncertainty
 - Involving various stakeholders
- **No Step-in right for Lenders**
 - Enforcing security (over shares ownership or project development right): subject to regulatory process
 - No prior-arrangement for an automatic enforcement
- **Government Events not considered as Force Majeure Events**

Governing Law and Dispute Resolution

- **Governing Law**
 - Mandatory choice of Vietnamese law
- **Dispute Resolution**
 - Possibility for foreign arbitration?

Risk Allocations

- **Grid risks allocated to Sellers**
 - Sellers to bear all costs and risk for connection (e.g. distance to connection point, higher installation costs) or readiness of EVN's grid
 - Inability to dispatch due to unavailability or other risks of the grid
- **Curtailment risks**
 - Limited to technical reasons
 - EVN's obligations to minimize reduction/suspension in power offtake
 - EVN's default causing offtake reduction/suspension?
- **No deemed commissioning**
- **Termination Payment: a major improvement**

Lack of Government Guarantee

- **No contractual stabilization regime**
 - Change in law risk not addressed
- **Payment/Conversion Risks**
 - No contractual guarantee/security for Offtaker's payment
 - USD availability in Vietnam market for conversion

Possible Solutions

- **Direct/Corporate PPA?**
- **Heavy investment in transmission line (EVN capital, debt and potentially by private investors?)**
- **Potential Shift in Policy Rationale for a better PPA?**
 - The bad news (or reality) is hitting (lack of local money, technical capability etc.)
 - Potential shortage of electricity due to delay in the development of major gas fired and coal fired power project
 - Giving some “BOT” benefits to wind power projects?
- **Cost of high FIT vs. costs for regulatory changes/improvements?**

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Ha regularly counsels Fortune 500 clients in many of Vietnam's most complex and largest acquisitions, concession right negotiations, project development and financing works, disputes involving complex legal, political, and diplomatic considerations. He brings to the table his deep understanding of how project developers (both local and international), Vietnamese SOEs, and Vietnamese authorities operate as well as his strong relationships with governmental agencies and local business community to support the most complex private-public and foreign-local dealings.

Ha has been instrumental in the formation and drafting of the key policies and regulations for the entire energy chain (traditional power, renewable energy, and oil and gas). He has been consistently recognized by peers as a leading energy lawyer in independent directories such as Chambers & Partners, Legal 500, and IFLR.

Over the last few years, Ha succeeded in sourcing, negotiating and closing multiple solar and wind projects for his foreign clients.