

Decision 13 – A long-awaited solar power regulation in Vietnam

After a long discussion and consideration since the former Decision No.11/2017/QĐ-TTg, dated 11 April 2017, expired its validity on 30 June 2019 (“**Decision 11**”), Decision No.13/2020/QĐ-TTg has just now been issued by the Prime Minister of Vietnam on 06 April 2020 (“**Decision 13**”). Decision 13 will take its full effect on 22 May 2020, providing mechanisms to encourage the development of solar power projects in Vietnam.

This paper just highlights some major points of the new regulation:

Solar power category

In addition to grid-connected solar power projects as formerly defined under Decision 11, *floating solar power project* and *ground-based solar power project* have now been defined and first introduced under Decision 13, while much more details have been added to definition of *rooftop solar power system*. Under Decision 13, rooftop solar power system means solar power system with (A) solar cells being installed on the roof of construction buildings, (B) its capacity of not exceeding 01 MW, and (C) direct or indirect connection to the power grid of voltage of 35 kV or lower of the buyers.

Offtake obligation and power buyer

It is clear under Decision 13 that power buyers shall be responsible for buying *all solar power output* generated by grid-connected solar power projects, while that responsibility is required for *whole or part* of rooftop solar power projects. A new point under Decision 13 is that it allows *entities other*

than the Electricity of Vietnam (“EVN”) or its authorised subsidiaries to buy power for wholesale and retail in Vietnam. Of course, to do so, those entities must obtain and maintain valid power operation licenses in the field of power wholesale and retail.

Power purchase agreement (PPA)

PPAs to which EVN or its authorised subsidiaries is a party must be made on the basis of the template provided by the Ministry of Industry and Trade (“MoIT”). It is noted that the term of a PPA (for both grid-connected and rooftop solar projects) shall be 20 years from the commercial operation date (“COD”), which could be extended or renewed at the end of the term, subject to agreement of the parties and the applicable laws at that time. Decision 13 requests the MoIT to promulgate a PPA template for grid-connected solar power projects and the same for rooftop solar power systems, which must be used in case where EVN or its authorised subsidiaries is a party. By having such request, it may reasonably be interpreted that the PPA template which is currently provided by Circular No.16/2017/TT-BCT, dated 12 September 2017, of the MoIT, for grid-connected power projects, and the similarity by Circular No.05/2019/TT-BCT, dated 11 March 2019, of the MoIT, for rooftop power projects (which amended the said Circular 16), will be no longer valid once Decision 13 takes full effect.

While no flexibility is found in respect of grid-connected solar power projects, it seems that in respect of rooftop power systems, buyers (other than EVN and its authorised subsidiaries) may be free to have a PPA agreed with their sellers, just in accordance with applicable laws, without being requested to use the PPA template to be provided by the MoIT.

Feed-in-Tariff (FiT) and foreign exchange rate

Before 1 July 2019, Decision 11 provided only one single price

of 9.35 US cents per kWh for both grid-connected and rooftop solar power projects that achieve COD by 30 June 2019. However, under Decision 13, different prices are offered to different categories of solar power projects, as shown in the table below:

| No. | Solar power category | Price | |
|-----|--------------------------|-------------|-----------------------------|
| | | VND per kWh | US cents equivalent per kWh |
| 1. | Floating solar power | 1,783 | 7.69 |
| 2. | Ground-based solar power | 1,644 | 7.09 |
| 3. | Rooftop solar power | 1,943 | 8.38 |

It is noted that Decision 13 offers higher price (i.e. 9.35 US cents per kWh) for certain grid-connected solar power projects located in Ninh Thuan province, which have CODs before 01 January 2021 and the total cumulative capacity of not exceeding 2,000 MW. It is also noted that the said price does not include applicable value-added tax and may be adjusted in accordance with the variation of the foreign exchange rate of VND against USD, which shall be announced by the State Bank of Vietnam (“**SBV**”) on the date of invoices by the sellers (in respect of grid-connected solar power) and on the last date of the preceding year for setting the price for the following year (in respect of rooftop solar power). The said price (and adjustment mechanism) shall be applicable for 20 years from the COD.

In all cases, to enjoy the said offered prices, all solar power projects (whether grid-connected or rooftop solar power projects) *must have the solar cell performance ratio of more than 16% or have the module of more than 15%*. In addition, to enjoy the said price, all solar power projects (whether grid-connected or rooftop solar power projects) must satisfy some

other conditions. In respect of grid-connected solar power projects, the said price shall be applicable to those (or a part of those) of which the investment policy has been approved before 23 November 2019 and the COD falls in the period starting from 01 July 2019 and ending on 31 December 2020. Similarly, in respect of rooftop solar power projects, the said price shall only applicable to those of which the date of power generation and meter record falls in the period starting from 01 July 2019 and ending on 31 December 2020.

While Decision 13 is silent on any (price) competition in respect of rooftop solar power projects, it is clear under Decision 13 that in respect of grid-connected solar power projects which do not satisfy the above said conditions, the price applicable to those projects shall then be determined through (price) competition.

—