

Vietnam's New Solar PPA: Strong Developer Interest Despite Bankability Concerns

IN SHORT

The Situation: Vietnam's draft model power purchase agreement ("Model PPA") for solar power projects issued in April 2017 departed from international market practice and fell short on bankability.

The Action: Vietnam has now issued a final set of Model PPAs, which ignores key market recommendations and continues to depart from international market practice. However, the feed-in tariff remains attractive and offers investors the prospect of a higher return on investment.

Looking Ahead: Developer interest remains strong despite bankability concerns regarding the Model PPAs. This is because Vietnam offers an attractive feed-in tariff system and an abundance of land that is ideally suited for solar power generation.

On September 12, 2017, Vietnam's Ministry of Industry and Trade ("MOIT") issued Circular No. 16/2017/TT-BCT ("Circular 16"), which imposes a set of Model PPAs for grid-connected and rooftop solar power projects. Parties can supplement Circular 16 but may not alter its basic contents. The MOIT has ignored several key recommendations made by industry participants on the draft PPA issued in April 2017 and is instead banking on the significant investor interest in Vietnam's solar sector to overcome any bankability concerns.

While commercial banks and financial institutions have raised serious concerns, market consensus is that the feed-in tariff ("FIT") is attractive and weighs favorably against bankability shortfalls. Developer interest is high for those who have a risk appetite for smaller-sized projects and who are less dependent on funding from commercial banks and financial institutions.

We set out below the current position in the Model PPA.

Grid-Connected Solar Power Projects

Feed-in Tariff. Circular 16 confirms the FIT of US\$0.0935 per kWh (excluding VAT) for both grid-connected and rooftop solar photovoltaic power projects, applicable to projects achieving commercial operation before June 30, 2019, and for a 20-year term.

Equity and Land. The equity ownership ratio cannot fall below 20 percent of the total investment capital, and the long-term project area cannot exceed 1.2 hectares per MWp. Developers must also:

- Assess the project's impact on the local power system; and
- Install equipment connected to the SCADA or dispatch system to provide hourly forecast information on daily electricity generation.

Purchaser is EVN. Vietnam Electricity Corporation ("EVN") is the only permissible direct power purchaser.

Capacity Threshold. The MOIT can approve grid-connected projects of less than 50 MW. Larger-capacity projects require the Prime Minister's approval.

Rooftop Solar Projects

Net Metering. Rooftop solar systems are eligible for a net metering support scheme, and Circular 16 contains two Model PPAs for rooftop projects comprising:

- One version with a single-tariff meter for residential life or other purposes; and
- Another version with a three-tariff meter for manufacturing or trading, which determines prices based on electricity usage and by accounting for peak, normal, and off-peak hours.

Capacity Threshold. Projects less than 1 MWp may register with the provincial power utility company, whereas projects greater than 1 MWp require the MOIT's approval for the project's inclusion in the relevant power development plan.



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Bankability Concerns

A number of bankability issues remain in the Model PPA.

Grid Risk Allocation. The developer is responsible for grid connection costs and risks, with no adjustments for project capacity or distance from existing transmission lines.

Force Majeure. Circular 16 exempts liability for a duly notified force majeure event, defining it as any unforeseeable and objectively non-remediable event. The examples listed do not cover political force majeure.

Sole Off-taker. As EVN is the sole off-taker, providing credit support or a government guarantee would ease risk-allocation concerns. However, Circular 16 precludes projects enjoying the FIT from other price-support mechanisms.

Limited Off-taker Obligation. There is no deemed availability providing payment compensation if EVN is unable to take the electricity, whether due to EVN's failure to cooperate with implementation or otherwise. This leaves the seller exposed to fixed costs (e.g., debt servicing and fixed operating costs), including the loss of expected investment returns.

Termination Amount. In the event of termination due to EVN's default, the termination payment amount is limited to the value of the seller's actual electricity output during the past year up until the performance suspension.

Exchange Rate. The FIT is adjusted annually based on the State Bank of Vietnam's exchange rates. There is no contract indexation to address increasing costs or rising inflation.

Lenders' Step-in Rights. Circular 16 does not contemplate lenders' step-in rights. These will have to be negotiated separately, alongside any request for a Model PPA direct agreement.

Dispute Resolution. The governing law is Vietnamese law. In the event of failure to negotiate or mediate, the dispute may be litigated before the Vietnamese courts. There is no provision for international arbitration in a neutral venue and forum under internationally accepted rules, unless agreed otherwise.

Action Plan

Notwithstanding Circular 16, the MOIT has in the past departed from its stipulated position in other power projects. Developers and investors are urged to use experienced advisers to:

- Negotiate project documents using international best practices;
- Remain in keeping with local law; and
- Tap into bankable precedents from other Vietnam power projects.

Although it may not be possible to overhaul the Model PPA's basic contents, there is the possibility of negotiating a more bankable position.

THREE KEY TAKEAWAYS

1. Vietnam's Ministry of Industry and Trade released a finalized set of model power purchase agreements for solar power projects, but a number of significant issues—grid risk allocation, credit issues, political force majeure, and others—remain.
2. Despite bankability concerns, the Model PPAs offer an attractive tariff system, and developer interest remains high.
3. The Ministry of Industry and Trade has, in the past, deviated from its prescribed position in other power projects on a case-by-case basis to address commercial issues. While negotiating, investors and developers should rely on experienced advisers with bankable precedents in other Vietnam power projects.

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