

## FRASERS LEGAL ALERT - NEW CIRCULAR ON SOLAR ENERGY

On 12 September 2017, the Ministry of Industry and Trade (**MOIT**) issued the long awaited Circular 16/TT-BCT (**Circular 16**) on the development of solar energy projects, together with solar power purchase agreement templates (**Solar PPA Templates**).

Circular 16 will take effect on 26 October 2017. Significant provisions of Circular 16 include the following:

- **Feed-in-Tariff (FIT)**

Circular 16 confirms the FIT stipulated in Decision 11/2017/QD-TTg issued by the Prime Minister on 25 April 2017 (**Decision 11**) being 9.35 USD cents/kWh. Circular 16 provides that this FIT will be applied for a period of 20 years to solar power projects that will start commercial operations before 30 June 2019. However Circular 16 is silent on the applicable FIT for solar power projects that will commence commercial operations after 30 June 2019.

- **Conditions for grid-connected solar power projects**

In addition to the general condition that every solar power project must be in accordance with the national solar power development plan and provincial plan, Circular 16 sets out new specific conditions applicable to grid-connected solar power plants as follows:

- i) The ratio between the owner's equity and the total investment capital for the solar power project must not be lower than 20%; and
- ii) The permanent land area used for the project must not exceed 1.2ha per 1 MWp.

- **Investment in rooftop solar power projects**

Rooftop solar power plants having capacity of less than 1 MW are not required to obtain an electricity operation licence. However, investors operating rooftop solar power plants having capacity of 1 MW or higher must obtain an approval for the power plant to be included in the power master plan, and are required to obtain an electricity operation licence.

- **Solar PPA Templates**

Circular 16 clearly specifies that solar power producers and Electricity Vietnam (**EVN**) must use the Solar PPA Templates attached as an annex to Circular 16, according to which EVN shall purchase for a term of 20 years the electricity generated from solar power producers at the specified FIT. Circular 16 provides two separate Solar PPA Templates applicable, respectively, to grid-connected solar power plants and to rooftop solar power plants.

Parties to the Solar PPA may add terms and conditions to the applicable template in order to clarify the rights and obligations of the parties, but they are not permitted to modify the main contents of the templates.

The Solar PPA Templates are relatively similar to the power purchase agreement templates adopted for wind power projects. However, it is worth noting that the force majeure events under the Solar PPA Templates are more limited than those applicable to wind power projects. For example, an eventual nationalization of the power producer's assets is not included among the force majeure events provided for under the Solar PPA Templates. The limited list of force majeure events may raise concern for investors when investing in solar power plants in Vietnam.

Further provisions contained in the Solar PPA may present problems for investors, including among others:

- i) A number of scenarios in which EVN is not obliged to purchase the electricity generated by the solar power plant, including in the case of events that are beyond the control of the power producer (for example, if there are problems with the transmission grid or distribution grid of EVN, or if EVN's grid needs repair or maintenance after an incident), therefore in practice shifting the risk of certain disruptions to the solar power producers.
- ii) Article 8 of the Solar PPA provides for a dispute resolution mechanism that allows the parties to submit their disputes to the Electricity Renewable Energy Department for mediation. If the dispute cannot be resolved by mediation, either party can request the Electricity Regulation Authority of Vietnam (**ERAV**) to settle the dispute. Either party can challenge ERAV's decision before a Vietnamese court. There is however no provision in the Solar PPA Templates permitting the parties to the Solar PPA to agree to resolve their disputes through domestic or international arbitration.
- iii) Article 7.5 provides that in a case where the Solar PPA is suspended due to a breach by EVN, the solar power producer is only entitled to compensation up to the value of the electricity output actually generated by the producer in the 12 months prior to the suspension.

Several international financial institutions have already voiced their concerns with respect to the above issues. The next few months will therefore be crucial to determine how investors will react to the new provisions contained in Circular 16 and in the Solar PPA, and how this will impact the future of solar power projects in Vietnam.

### Ho Chi Minh City

Unit 1501, 15th Floor, The Metropolitan  
235 Dong Khoi Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84 28 3824 2733

Email: [legalenquiries@frasersvn.com](mailto:legalenquiries@frasersvn.com)

### Hanoi

Unit 1205, 12th Floor, Pacific Place  
83B Ly Thuong Kiet Street, Hoan Kiem District  
Hanoi, Vietnam  
Tel: +84 24 3946 1203

Website: [www.frasersvn.com](http://www.frasersvn.com)

---

This article provides a summary only of the subject matter covered, without the assumption of a duty of care by Frasers Law Company.

The summary is not intended to be nor should it be relied on as a substitute for legal or other professional advice.