

FRASERS LEGAL ALERT – NEW DECISION ON WIND POWER PROJECTS

New Decision No. 39/2018/QĐ-TTg on the support regime to develop wind power projects in Vietnam

On 1 November 2018, the new Decision No. 39/2018/QĐ-TTg of the Government entered into effect (**Decision 39**) amending and supplementing some articles of Decision No. 37/2011/QĐ-TTg dated 29 June 2011 on the support regime to develop wind power projects in Vietnam (**Decision 37**). Some of the key provisions contained in Decision 39, include:

1. Definitions of onshore and offshore wind power projects

Under Decision 39, the classification of onshore and offshore wind power projects is provided with a very comprehensive description. Accordingly, the investors shall be entitled to different feed-in tariffs (FiTs) on the basis of the type of wind power project, including:

- “Onshore wind power project” meaning “a grid-connected wind power project with wind power turbines constructed and operated on land [onshore] and on coastal areas whose outer border is the average lowest sea edge over several years (18.6 years);” and
- “Offshore wind power project” meaning a “grid-connected wind power project with wind power turbines constructed and operated outside the average lowest sea edge over several years (18.6 years) off the coast.”

2. FiTs for grid-connected wind power projects

Under the previous legislation, the general FiTs for wind projects were equivalent to USD cents 7.8 per kWh. Under Decision 39, the power price at the power delivery point shall now be increased as follows:

- For onshore wind power projects: VND1,928 per kWh (exclusive of VAT), equivalent to USD cents 8.5 per kWh; and
- For offshore wind power projects: VND2,223 per kWh (exclusive of VAT), equivalent to USD cents 9.8 per kWh.

Such FiTs are based on the exchange rate between VND and USD announced by the State Bank of Vietnam on 30 August 2018 (which is 22,683 VND/USD), and shall be adjusted in accordance with the fluctuation of the VND-USD exchange rate.

3. Commencement of the construction of wind power projects

The investors are only permitted to commence constructing the wind power projects when:

- satisfying all the conditions for commencing construction in accordance with the law on construction;
- there is a PPA signed with the power purchaser;
- there is a (grid) connection agreement with the power distribution or power transmission unit; and
- there is a report on wind measurement data covering a continuous period of at least twelve (12) months.

4. Limited time offer for new FiTs

Similarly to the recent Decision 11/2017/QD-TTg dated 11 April 2017 on solar power projects, Decision 39 provides that only part or the whole of any grid-connected wind power projects that reach its commercial operation date (**COD**) prior to 1 January 2021 will be entitled to benefit from these new FiTs. Additionally, the maximum application of such FiTs shall last for twenty (20) years as from the project's COD.

The COD, under Decision 39, means the date on which a part or all of a grid-connected wind power project is ready to sell electricity to the power purchaser and which satisfies the following conditions:

- the power project has completed initial tests of a part or all of its grid-connected wind power project and connection facilities;
- the power project has been issued with a licence for electricity/power activities in the power generation sector; and
- the power seller and the power purchaser have set the meter readings in order to commence making payments.

5. Reporting regime

The investors are required to send a certified copy of their investment policy decision or investment registration certificate (**IRC**) to the Ministry of Industry and Trade (**MOIT**) within five (5) business days after the issuance of such decision or the IRC. In the meantime, the provincial people's committees with wind power projects within their provinces must provide a report covering the previous six (6) consecutive month period on registration of investments in, and the status of implementation of, projects within the geographical area of the provinces to the MOIT prior to 15 January and 15 July each year.

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

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

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.