

VIET NAM ENERGY PARTNERSHIP GROUP

Consultation Document on

Draft MOIT Circular Stipulating Project Development and Standardized Power Purchasing Agreement for Solar Power Projects

The following comments and questions from energy sector stakeholders were collected and documented by the VEPG Secretariat during the public consultation period of the Draft Circular stipulating Project Development and Standardized Power Purchasing Agreement for Solar Projects which was published on the VEPG's Website between 4 May 2020 to 12 May 2020. This document was forwarded to the Electricity and Renewable Energy Authority (EREA) as a part of the consultation of the Draft Circular.

Topics	Comments / Questions from Stakeholders
Interpretation of terms	
Rooftop Solar System	<ul style="list-style-type: none"> The Circular should define clearly the term "roof solar PV system" and all components included in the term to ensure proper binding of powers of responsibility in relationships between stakeholders (investors, owners, roof leaser). According to Decision 13/2020/QD-TTg, it is stipulated that to qualify for a "roof solar power system" the system must be put on the roof of construction works. To clarify this concept, an explanation of the term "construction works" or reference to specialized laws (Construction Law) is required to ensure uniformity in application.
Electricity Seller and Electricity Buyer	<ul style="list-style-type: none"> The terms "Electricity buyer" and "Electricity seller" should be further explained in the Circular. Can the electricity seller be the investor or system owner?
Conversion between units: W and Wp	<ul style="list-style-type: none"> The Circular should explain clearly the conversion between W and Wp
Development of Grid-Connected Solar Power Projects	

	<ul style="list-style-type: none"> • At present, there is no legal framework on licensing the use of water surface of irrigation / hydropower reservoirs for investors in the case that the license for the use of the land area of the reservoir for a limited period was issued to another entity. (For example: In the case of the floating solar power projects on Trĩ An hydropower reservoir, the investor is now applying for construction permits, but EVN has been granted the license to use the land area of the reservoir. The license for using water surface for a limited period has no legal basis). Will MOIT or another government agency develop a new legal basis for licensing the use of reservoir water surfaces? • The requirement of max. 1.2 ha/MW land-use seems not suitable for floating solar power systems but only for ground-mounted solar PV systems. The circular should consider adding an additional area requirement for floating solar power systems (if needed at all, since the requirement was introduced to reduce land-use conflicts which usually do not exist on water surfaces/hydropower reservoirs). In general, the 1.2 ha/MW requirement seems to be too static and limiting the options of project developers e.g. in cases where geography/landscape does only allow projects with a higher ratio but otherwise do not inflict any land-use conflicts. • Providing that the minimum 20% equity is inconsistent with higher legal regulations as prescribed in Article 10 of Decree 63/2018 / ND-CP, for the project of over VND 1500 billion, the minimum equity is 10% and according to the provisions of Article 14 of Decree 43/2014 / ND-CP, the equity is required to be at 15% of total investment capital for projects with land use scale of 20 hectares or more. • The Circular should provide details on including the grid-connected projects in the power development plan or make clear further regulations on this will be issued.
<p>Amending Sub-clause 3, Article 3, Circular 36/2018/TT-BCT</p>	
	<ul style="list-style-type: none"> • The scope of the Draft Circular does not include the amendment of Circular 36/2018/TT-BCT. Therefore, if the Draft Circular were to amend Circular 36/2018/TT-BCT, the name of the Draft Circular should reflect this. • The amendment to this sub-clause 3, Article 3 of Circular 36/2018/TT-BCT is not necessary as the Electricity Regulatory Authority of Viet Nam (ERAV) is developing a similar circular with detailed proposals on electricity licenses and amending Circular 36/2018/TT-BCT • The circular should clarify the requirement for “01 location”, especially for large industrial park/zone. Will multiple systems on different buildings within an industrial park/zone be considered as 01 location? a rooftop can be classed as one location

or if it can be broken up into separate locations by installing a number of 1MWp systems on the same roof (e.g. on a large factory) provided these have separate inverters and meters?

Procedures for Development of Rooftop Solar Power System

Business models

- The circular should clearly define **different investment models** to sell electricity (Investor, owner, roof leasing cases) with **different customers** such as selling electricity to EVN, selling electricity directly to the third parties, or selling electricity without using EVN's power grid to facilitate the application, while developing the appropriate procedures for applying the Circular. For example, in case the Electricity Buyer is not EVN, the application of steps to confirm the ability of the Electricity Buyer to connect, release the capacity or register the connection as prescribed in Clause 2, Article 6 is not suitable.
- The circular should clearly define who may be the electricity seller to EVN of surplus generated from the system if a PPA has been signed between an Electricity Seller and an Electricity Buyer not being EVN, the system owner or the industrial customer (if not the system owner). Can this be freely agreed by the parties to the private PPA?
- The circular should clarify if every electricity seller needs to register the business line [VSIC 3511] of electricity generation. For example, if the electricity seller's main business is not power generation (such as a manufacturer that sells surplus to EVN) compared with a developer / investor whose main business is the investment in solar rooftop systems and power generation, does such seller need to register the relevant business lines to sell excess electricity to EVN.
- A number of provinces take the view that for a rooftop solar developer to own a rooftop solar system that is installed on a factory inside an industrial park, the developer (if not already registered in that province) would **need to obtain a registration for a local business establishment** (such as a branch or business location). For foreign-invested rooftop solar developers, this means having to obtain an **investment registration certificate** (IRC) in that province. Based on the feedback from a number of industrial park management boards, a developer would only be permitted to register a branch/business location (and, for foreign-invested solar developers, to obtain an IRC) if the developer **leases its own factory** in the industrial zone. **A lease of rooftop space of an existing tenant** would be **insufficient** in the eyes of some of the industrial park management boards. This would severely impact on the feasibility of expanding solar rooftop projects and guidance from the MoIT to the industrial park management board in this respect would be crucial to ensure the success of the rooftop solar policies.

<p>Procedures guidance development and for</p>	<ul style="list-style-type: none"> The Draft Circular should clarify and clearly identify the procedures and requirement for applications for the development of solar power projects, especially for the rooftop solar power project. The procedures and requirements should be agreed with EVN and be unified among PCs. The information for the procedures and requirement should be published and widely disseminate in a transparent manner.
<p>Forecasting requirement</p>	<ul style="list-style-type: none"> The Circular must clarify the minimum installed capacity to provide the load dispatch authority with hourly forecast of generation capacities. It is difficult to provide hourly forecast for systems below 200 kWp as this will add investment costs as well as provide the load manager with large huge amount of information.
<p>Opinions about the ability to connect and release capacity</p>	<ul style="list-style-type: none"> The Circular should clarify the mechanism of assessment (post-inspection) of the Purchaser's performance of responsibilities. The Circular should clarify the responsibilities of the buyer and ensure the rights of the seller as the buyer cannot refuse to buy without valid reason. The Circular should be clear about procedures for connecting and releasing capacity for different customers such as households, industries, and commercial buildings, which should be clarified because each customer classification has Various installation conditions and sizes. Power companies need to publicize and update regularly the designed capacity for solar power of each regional substation / electrical system so that customers / investors are known to invest accordingly.
<p>Perform Monitoring, testing, and Commission</p>	<ul style="list-style-type: none"> The Circular should clearly state the separate responsibilities of the parties, including the investor, owner, seller and buyer in this process.
<p>Entry into Force</p>	
<p>Circular 16/2017/TT-BCT and Circular 05/2019/TT-BCT</p>	<ul style="list-style-type: none"> The Draft Circular once issued will replace Circular 16/2017/TT-BCT, however, the Draft Circular does not mention Circular 05/2019/TT-BCT. Will the Draft Circular will also replace Circular 05/2019/TT-BCT?

Power Purchasing Agreement for Grid-Connected Solar Power Projects	
Environmental attribute	<ul style="list-style-type: none"> It would be a positive step forward for the model PPA to include a clause concerning environmental attributes like RECs, and to make it clear that these are to be allocated to the project owner.
Article 1, Clause 6 Average inter-bank transaction interest rate	<ul style="list-style-type: none"> Average inter-bank transaction interest rate is the 1-month inter-bank average interest rate announced by the State Bank of Vietnam at the time of payment.
Article 4, Clause 5, Sub-clause b Compound interest	<ul style="list-style-type: none"> The term compound interest (<i>ghép lãi</i>) has no meaning and definition in finance. The dispute is calculated at the interbank interest rate of 1-month using interbank interest rates which is incompatible with financial transaction practices in Vietnam. Loan contracts & financial transactions do not use the interbank interest reference but are often used as the average of deposit interest 12-month individuals of VCB, VietinBank, and BIDV. Interbank interest rates do not reflect the Seller's financial costs / benefits and interbank interest rates are lower than commercial bank deposit rates for the same term about 1.5%.
Article 5 Force Majeure	<ul style="list-style-type: none"> The definition and a list of force majeure events should be included in the PPA. In addition, the force majeure events should not have to be “published by state agencies or other organizations”
Article 7, Clause 5 Termination of the Agreement in case of breach	<ul style="list-style-type: none"> In the case in which the Seller is the indemnity holder and decides to terminate the Agreement, Seller's right to indemnification is capped at an inadequate/excessively low level. The indemnity should be calculated in a different method to ensure appropriate indemnity for the sellers (i.e Percentage of the remaining PPA period)
Article 8 Dispute settlement	<ul style="list-style-type: none"> It would be more comfortable for foreign investors if the PPAs would include international arbitration as an option for dispute resolution

<p>Article 9, Clause 1</p>	<ul style="list-style-type: none"> • It is not clear why in the event of an entrustment or transfer of the agreement, the regulations on rights and obligations shall remain effective for the parties' legal representatives or authorized representatives. Commonly, as security, only the rights under the PPA should be assignable. The seller (as owner of the power plant) would remain responsible for the obligations under the PPA, however, not the legal representatives or authorized representatives in their individual capacity. • Does the Circular allow a concurrent transfer of the agreement (together with a transfer of the project), which would be a welcome development to improve the bankability of the PPA • The Regulation on transfer and entrustment of the power purchase agreement must be approved in writing by the buyer. This provision needs more details on the length of time for the Buyer to issue this document when the order is received and the conditions for refusal to issue the document. The Circular should ensure that the electricity buyer should not be allowed to refuse without valid reasons. • The phrase "trusted part is approximately equal to the value of the operating equipment, is valid" in this case, is it understood that the entrustment is automatically valid and does not require the buyer's written letter of acceptance? • The Circular should clarify the method to estimate the approximate value of the device (For example: how much is the difference, the value is the market price, the original cost depreciated, the depreciation method) to avoid the buyer has no basis to issue the letter of acceptance.
<p>Change of law</p>	<ul style="list-style-type: none"> • The PPA model does not mention what will happen in the case of change in laws or regulations. This creates negative perception on the return of the project for possible international investors. We would like to suggest the model PPA should accommodate the change in law provisions under Article 13 of Vietnam Law on Investment 2014.
<p>End of PPA Period</p>	<ul style="list-style-type: none"> • The possible solutions at the end of PPA period (extension of PPA or new PPA) and are not specified in a way that let the Seller to evaluate them in a financial model. The present statement includes two possibilities both subject to negotiation but does not specify the conditions if an agreement is not reached (change of ownership or dismissal of the plant).