

SOUTHEAST ASIA ENERGY TRANSITION PARTNERSHIP

REPORT ON VIET NAM'S LEGAL SYSTEM REVIEW AND SUMMARY OF DIFFICULTIES IN INVESTMENT OF POWER GENERATION, TRANSMISSION GRID PROJECTS



RESEARCHS

Proposal of a bidding/auction mechanism for power generation and transmission projects

Final report on policy proposal and legal recommendations

Date: September 5, 2023

01

Report on Viet Nam's legal system review and summary of difficulties in investment of power generation, transmission grid projects

Date: February 10, 2023

02

Research on international experience on energy bidding/auction and lessons learnt for Vietnam

Date: March 15, 2023

03

Report on legal recommendations for the development and implementation of bidding/auction mechanism for power projects in Viet Nam

Date: March 31, 2023

04

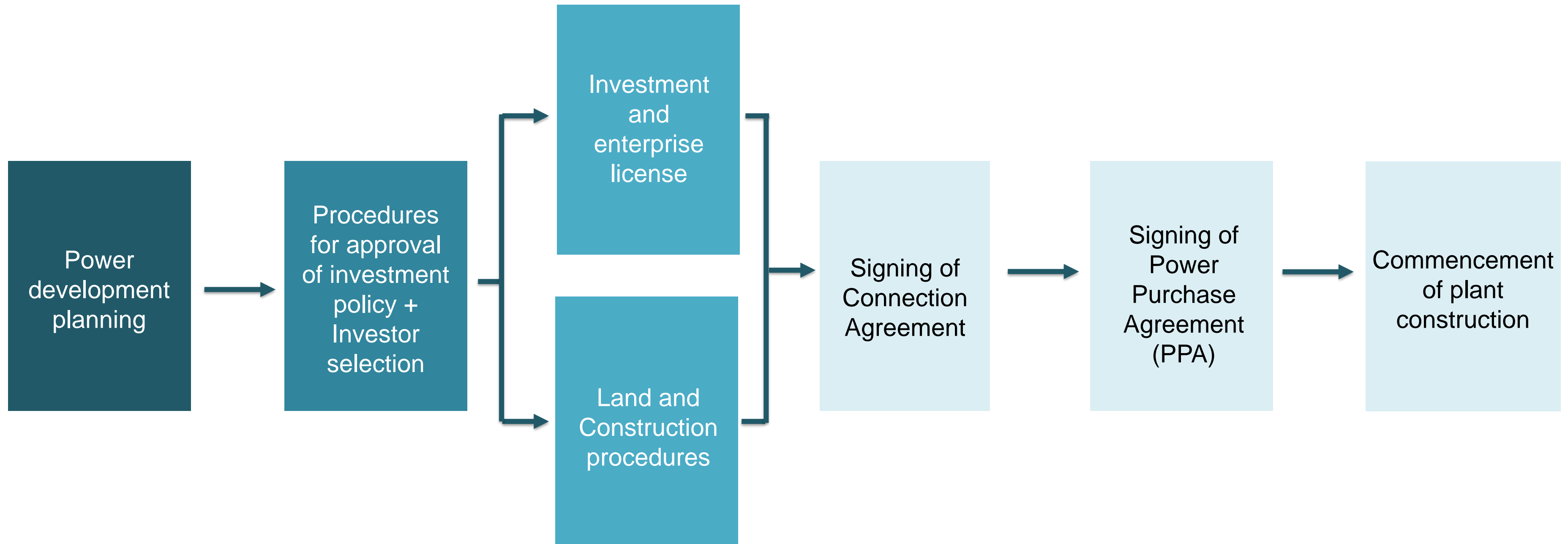
Report on the assessment of expected impacts of the proposed new policy on the bidding/auction mechanism for power projects

Date: May 31, 2023

Research 1: Review of Viet Nam's legal framework in investment activities of power sources, transmission grids



Overview of regulations and procedures on power project investment



Regarding power development planning

- Power development planning (PDP) is a sector **planning of national level** and must be consistent with the national master planning, the National Marine Spatial Planning and the national land use planning.
- Only projects that **are recognized or added to the National Power Development Planning** will be permitted to be implemented.
- The PDP VIII and the National Marine Spatial Plan have not been approved, affecting the implementation and operation of projects.
- There has been no consistent coordination among competent state agencies in planning.
- Without a clear development planning, the bidding mechanism for investor selection cannot be possible.

Regarding the procedures for approval of investment policy

- The Law on Investment and its guiding documents do not have any separate and specific regulations on the procedures for approving investment policy for power projects particularly, except for nuclear power plant projects with detailed regulations about the relevant approval authority of the National Assembly.
- Power projects have to be based on the nature, characteristics and scale of each investment project in general to determine the implementation of approving investment policies in accordance with the Law on Investment.



Regarding the form of Land use rights auction

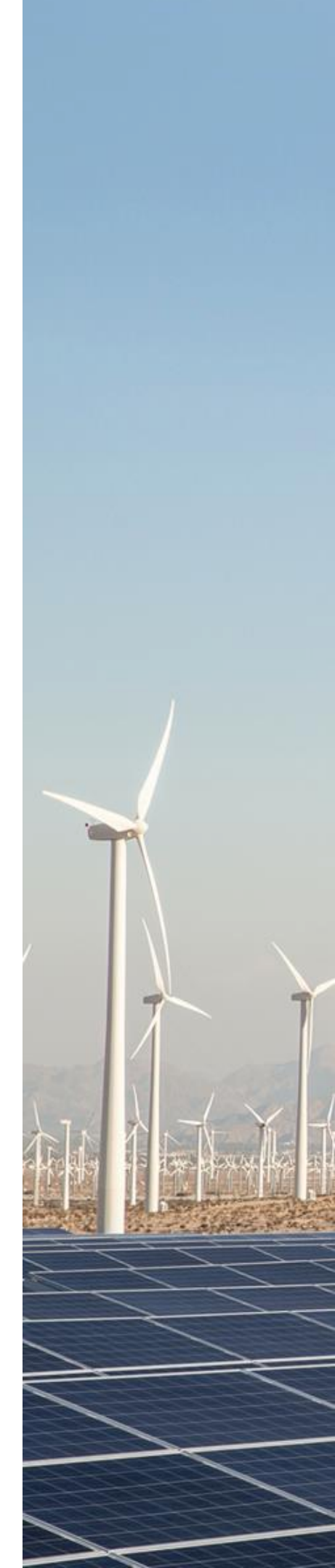
- The investor selection procedure through auction of land use rights is only carried out when (i) the project is subject to auction of land use rights under the Law on Land, and (ii) **land clearance has been completed** in the land area where the project is expected to be implemented.
- The form of land use right auction to select investors has not yet ensured all the technical, environmental, economic and social factors of power generation projects.

Investor approval

- Power generation projects that are not subject to auction or bidding for investor selection and are in one of the cases stipulated by law can be implemented in the form of investor approval.

Bidding for investor selection

- The available legal provisions **have yet to specify the application of the bidding mechanism to select investors** for power projects using land and power generation projects without land use.
- **It is not clear which cases of power generation projects must be implemented in the form of bidding, as well as the detailed bidding process** for power projects **has not been issued**.
- The applicable legal provisions are found to have overlaps and gaps in the process of bidding for investor selection with regard to power generation projects.
- **The applicable legal provisions have yet to address the mechanism of bidding for investor selection with regard to power projects with private capital**, except for (i) power projects involving the participation of the State and private investors governed by PPP Law; or (ii) cases in which the investors themselves apply for approval of investment policy.



Preliminary comments

The FIT mechanism was applied for solar and wind power by the Government of Viet Nam. Resolution 55 of the Politburo on the Orientation of the Viet Nam's National Energy Development Strategy to 2030 and outlook to 2045 requires building a competitive energy market.

Legal regulations related to power generation projects using renewable energy sources are found in many laws, such as Law on Investment, Law on Electricity, Law on Land, Law on Vietnamese Sea, Law on Natural Resources and Environment of Sea and Islands, Law on Planning, Law on Public-Private Partnership Investment, Law on Prices, Law on Property Auction, etc. This practice brings about difficulties in the implementation and deployment of power generation projects using renewable energy sources, especially offshore wind power projects. Law on Land and Law on Bidding are in the amendment process, and it is expected that new regulations will have a direct impact on the bidding mechanism for power development projects.

Many state agencies and organizations participate in the process of selecting investors or investment projects for a power generation project using renewable energy sources.

Viet Nam does not **commit and/or reserve the rights to allow foreign investors to invest in the development of power projects** in Viet Nam under Free Trade Agreements. Vietnamese investment laws also regulate restrictions on foreign investors in investing and developing power projects in Viet Nam.

Ministry of Planning and Investment assumes the general management over bidding, appraisal of selection plan of contractors and investors and the selection option of contractors and investors in cases under the decision-making competence of the Prime Minister in accordance with the law on bidding.

Ministry of Industry and Trade publicizes the list of energy projects under the planning on development of electricity, coal, oil and gas industry, new energy and renewable energy to attract construction investment; approves and manages the implementation of power development planning, new energy and renewable energy planning of provinces and centrally run cities, stipulates the electricity generation price bracket, electricity price bracket for new energy, renewable energy, electricity regulation.

Provincial People's Committee implements master plannings and plans on land use, manages sectors and fields within the provincial area, approves investment policies, issues investment registration certificates (Department of Planning and Investment) for investment projects, land allocation, land lease under the management of the Provincial People's Committee, organizes bidding, manages renewable energy within the provincial area.

Vietnam Electricity (EVN) is currently the exclusive unit in charge of electricity distribution, trading, committing to buy electricity produced from renewable energy sources, signing electricity purchase contracts with power generation projects using renewable energy sources, negotiating to determine the purchase price of electricity, etc.

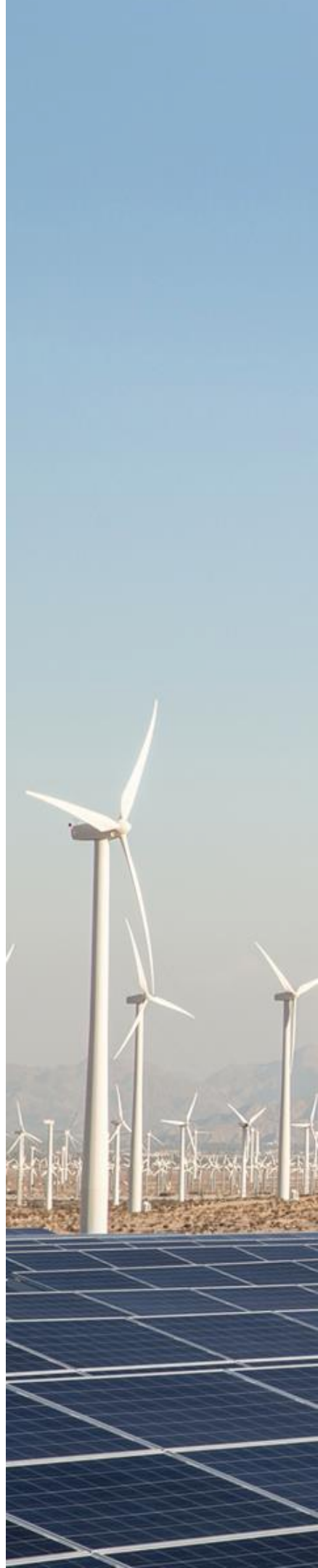
Some other state agencies are also involved in the case of renewable energy using power generation projects using land that affects the area for rice cultivation, land of natural heritage conservation areas, special-use forest conservation areas, cultural heritage areas, areas affecting security, national defense or offshore, etc.



Initial ideas for solution

A number of solutions are being studied to remove obstacles and difficulties related to investment in power generation and transmission grid projects:

- The main priorities for the power sector to pay attention to:
 1. Energy security;
 2. Ability to pay;
 3. Reducing emissions contributes to the country's international commitments (e.g. NDC, JETP, NZE);
 4. Technical, economic, legal and social enforceability.
- Other priorities that need detailed attention:
 1. Ensuring socio-economic development goals;
 2. Balance supply and demand, load, optimal system costs;
 3. The ability to apply appropriate technology, development of domestic supply chains, labor and employment, etc.



Initial ideas for solution

Some initial ideas for solution are being studied to resolve problems and difficulties in investment of power generation projects and power transmission grid projects:

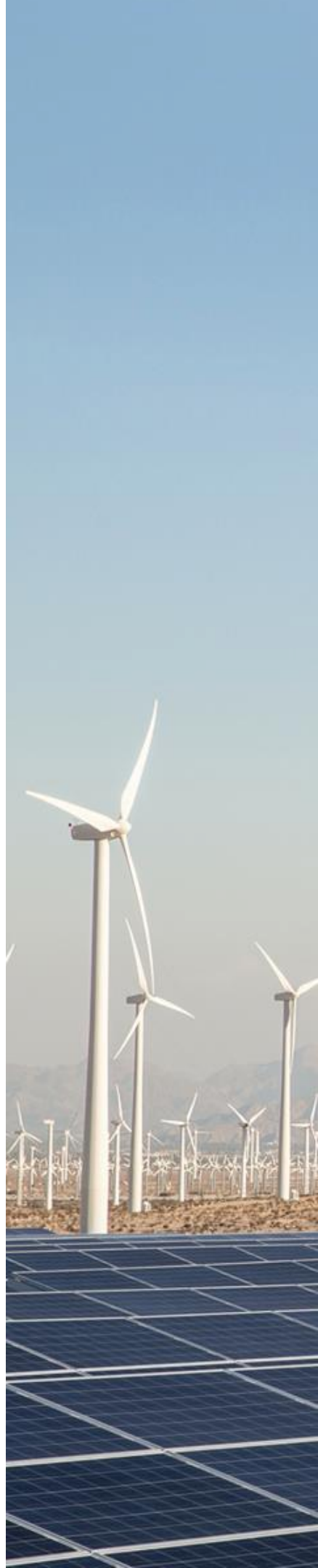
A. For power generation projects

- 1) Developing a bidding mechanism for new power generation projects which is implemented by the provincial People's Committee under the provisions of the investment law. The electricity purchase price will be applied according to the legal framework from time to time; or
- 2) Developing an auction mechanism for electricity purchase price. The licensing mechanism for new projects will follow the applicable law.

B. For power transmission grid projects

- 1) Developing a bidding mechanism for new power transmission grid projects implemented by the provincial People's Committee under the provisions of the investment law in case of transmission within the province. Large-scale power transmission grid projects are implemented under the current approval mechanism. The power transmission price will be applied according to the legal framework from time to time.

These solution orientations are continuing to be researched and completed according to other ongoing studies, including technical solutions, international experience, and so on.



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