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ADB

**SE Asia Energy Sector Development, Investment
Planning and Capacity Building Facility**

Development of ESCOs in Vietnam

Project overview and update

VEPG Technical Working Group 4

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Introduction

ADB

ADB's support programme for Viet Nam is focused on transitioning to a green economy, promoting the private sector and social justice.

ADB has committed USD 16.5 billion to Viet Nam under a programme of loans, grants and technical assistance.

In 2023 ADB has implemented technical assistance to develop and scale up energy service companies (ESCOs) in Viet Nam in cooperation with the Department of Energy Efficiency and Sustainable Development (DEESD), Ministry of Industry and Trade (MOIT).

The technical assistance includes a research programme with the purpose of providing recommendations for legislative reform to support ESCOs under the Law on Efficient and Economical Use of Energy (EE Law) and related legislation.

Project Team

The project team is comprised of a consortium of Pioneer International Consulting (PIC), VILAF and Vici Law.

PIC is a Singapore-based strategic advisory firm with a Hanoi office, focused on energy policy and clean energy project development in Viet Nam.

VILAF and VICI Law are leading law firms in Viet Nam, working with various investors and developers, delivering advice to both governmental and non-governmental agencies.

Development and Scaling-Up Energy Service Companies (ESCOs) in Vietnam

Project Team



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Agenda

1. Definitions and background

2. Regional review of ESCO market and super ESCOs

3. Overview of the current ESCO market in Viet Nam

- ESCO models
- Challenges
- Key legal and regulatory reform for the Viet Nam ESCO market

4. Viet Nam - proposed super ESCO model

- Super ESCO model
- Challenges
- Key legal and regulatory reform for a Viet Nam super ESCO

Definitions and background

1. Energy Service Companies (ESCOs)

An ESCO is an energy service company, which specialises in providing comprehensive energy solutions, including, but not limited to:

- Design and implementation of energy saving projects, energy conservation, energy infrastructure leasing.
- Implementing energy service packages including planning, construction, installation, O&M, optimization and financing.
- Insuring investment costs, energy-saving outcomes and commercial risks for energy efficiency (EE) solutions.

An ESCO can be a privately owned or state owned company. Public non-business agencies and clients who self-invest in EE measures may also act as ESCOs.

2. Super ESCO

A super ESCO is an entity established by public and/or private investors which provides comprehensive energy performance contracting (EPC) services, including adapted financing on a large scale.

Regional review of ESCO market and super ESCO

A comparative analysis has been made with respect to international experience in developing ESCO markets and super ESCOs.

Review of models in China, India, the United States (US), Korea and Thailand.

Focus on the China model.

Comparison in terms of:

- Models and ownership structure of ESCOs (non-super or super, SOEs or private).
- EPC models such as shared savings, guaranteed savings, ESC.
- Scope of activities.
- Investment incentives.

Overview of the current ESCO market in Viet Nam

1. Current ESCO models in Viet Nam

The main ESCO models in Viet Nam include:

- **Shared savings:** ESCOs develop, finance and implement projects. Payments based on savings shared pursuant to the terms of the Energy Performance Contract (EPC).
- **Guaranteed savings:** ESCOs develop and implement projects financed by clients. Fees for services on the basis of savings guaranteed by the ESCO pursuant to the terms of the EPC.
- **Energy supply contracting:** ESCOs operate and maintain energy supply equipment and sell energy (i.e., electricity, gas, hot water) to clients.
The equipment may be invested by the client or by the ESCO and then transferred to the clients

Current ESCO market in Viet Nam

Challenges

- High upfront costs under the shared savings model and ESC (in case of equipment invested by ESCO).
Limited access to financing and no financial support or incentives for ESCOs.
- Limitations under the regulatory and policy framework.
 - EE activities of ESCOs are not currently defined.
 - No complete standard EE measurement system.
 - EE projects costs and expenses are not classified as valid and deductible expenses (Deductibles).
 - Public ESCOs are restricted in transferring assets to clients at the end of shared savings EPCs (auction requirement).
- Limited protective measures under EPCs and inadequate dispute resolution:
 - ESCOs bear the risk of assets financed by the ESCO. Assets are located on client premises.
 - No protective mechanism for ESCOs under EPCs.
 - No specialised agency to resolve disputes arising from the ESCO model and with respect to EPCs.
- OBF mechanism: Power utilities (under EVN) not currently permitted to receive payments from EE projects via electricity bills as the payment of electricity bills must be compliant with electricity tariffs.

Overview of the current ESCO market in Viet Nam

Challenges

- Limited State incentives and support mechanisms: Limited financial support under Circular 23/2017/TT-BCT.
- No legal framework for State incentive and support mechanisms applicable to ESCOs and EE activities.
- Limited EE Fund scope to support DR programmes.

- No separate association for ESCOs.
- Public entities face budget cuts as a consequence of energy savings.
- Lack of incentive scheme to provide for ESCOs .

- Energy supply contracting (ESC): The drawbacks of ESC being a form of EPC are (i) duplication between EE Law and Electricity Law, (ii) difficulties in the State's management.

Establishing a Viet Nam ESCO market

Key legal and regulatory reform

- **ESCO business and tax treatment of ESCO expenses**

- Amend the EE Law to
 - (i) Define ESCO business activities.
 - (ii) Classify related costs and expenses as Deductibles.
- Supplement Decision 27/2018/QD-TTg with a general definition of EE activities of ESCOs.
- Guidance under the CIT Law to classify related costs and expenses as Deductibles.

- **Asset transfer mechanism**

- Supplement Decrees on financial management regulations of SOE ESCOs to permit transfer of assets under a shared savings EPC between them and their clients (with specific criteria).
- Revision to the Public Asset Management Law and its guiding documents.

- **EE measurement system and template EE contracts**

- Development of a standard system to measure and verify the EE value which is applicable to the EE activities in Vietnam market.
- Issue a template/standard EPC contract.
- Certified Measurement & Verification Professional (CMVP) certification to recognise the professionals in the EE area.

Key legal and regulatory reform

- **OBF mechanism**

- Revise the Electricity Law and Decree 137/2013/ND-CP to cover revenue streams arising from EE projects.

- **State incentives and support**

- Establish an EE Fund to provide subsidies/direct payments as commercial support under Circular 23/2017/TT-BCT and other forms of incentives including tax exemption, concessional loans (interest support) and loan guarantees.
- Develop a roadmap for different levels of incentives according to the ESCO market's maturity and/or government capabilities.
- Authority in charge of managing the EE Fund may concurrently assume the responsibility for managing ESCOs.
- Confirming tax incentives (CIT, VAT, import tax) in relevant laws and provide guidelines under sub-law documents.
- ESCO achievements should be recognized and certified, which could be in forms of State certificate or honour with regulatory criteria.

Key legal and regulatory reform

- **Dispute Resolution**
 - Build a protective mechanism and institutions for ESCOs.
 - Standard EE measurement system for the purpose of determining EE values and a template EPC.
 - Supplement Decree 96/2022/ND-CP to permit MOIT to act a dispute resolution agency.
- **Association/community to promote the ESCO market**
 - Establish an ESCO association which is separate from and independent of the VECEA.
 - Public entities should be relieved of budgetary pressures/cuts due to energy cost savings.
 - ESCO achievements should be recognized and certified, in the forms of State certificate or honour with regulatory criteria.

Viet Nam - proposed super ESCO model

1. Super ESCO model

- In the first instance, it is recommended that EVN or an EVN Entity is the first Viet Nam super ESCO.
- Going forward a super ESCO can also be a non-EVN SOE.
- A private super ESCOs should also be considered and encouraged.
- Super ESCOs to be subject to the same incentives and financial support as that for non-super ESCOs on an equal basis.

2. Challenges

In addition to the key challenges for ESCOs in general, key current challenges for EVN acting as a super ESCO are:

- EE business activities are not EVN's core business.
- EVN Entity is not able to compete with other ESCOs at a competitive price due to strict regulations on the financial management of SOEs.
- EVN Entity is not permitted to transfer EE assets directly to the client at the end of term due to restrictions on the use of assets funded by the State budget and application of a required auction process.
- Performing the function of a super ESCO is not a government mandate for EVN. Implementation of an ESCO business by EVN is subject to strategic and economic benefit assessment.

Viet Nam - proposed super ESCO model

3. Key legal and regulatory reform required to introduce the Viet Nam super ESCO:

In addition to the key legal and regulatory reform required for the general ESCO market, there should be:

- Supplement Decree 26/2018 on EVN's charter to reflect the business lines of EVN and the responsibilities of supporting ESCOs and the EE market.
- Government's mandate should be issued in the form of a Decision under which EVN is mandated to perform its responsibilities of a super ESCO with (i) specific scope of EE activities, (ii) implementation roadmap and (iii) specific support and incentives.

Next Steps

- 1. Submission of the recommendations and reform roadmap to the MOIT (November 2023).**
- 2. MOIT internal workshop and consultation (November/December 2023).**
- 3. Finalisation of the report.**
- 4. Intra-government consultation process on the recommendations and reform roadmap (December 2023).**
- 5. Public workshop on recommendations and roadmap (Q1 2024).**