

STATUS OF VIETNAM'S OFFSHORE WIND PROJECTS

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With its long coastline Vietnam has a large potential to generate energy from offshore wind. This is especially true in the South, South Central and the Mekong Delta regions. The Government expects that 6,000 MW will be generated from wind power projects within the next five years. The capacity of offshore wind power projects (“**OWPP**”) could reach 90,000 MW by 2050. The problem, however, is that to date, there is no detailed guidance on the development of OWPPs. This has caused several companies to retrench and to curtail their development activities. But, the Government is drafting a Decree that will provide regulations on renewable energy projects (including OWPPs). This Article will discuss notable points of the current Draft Decree that relate to OWPPs.

Conditions to develop OWPPs. Investment in OWPPs is conditional under the Investment Law, but the Investment Law does not specify the conditions. The conditions are now set out in the Draft Decree. In the draft, conditions for foreign investors are more restrictive than they are for domestic investors. Among other things, and for security reasons, foreign investment in waters adjacent to Vietnam will be carefully considered and monitored. In the draft, foreign investors must meet the following conditions:

- (i) have implemented at least one other OWPP (with equivalent scale) either in Vietnam or elsewhere;
- (ii) have financial capacity, manpower, expertise and experience to implement the OWPP. The value of the investors’ total net assets during the last three years must be greater than the total investment capital of the project;
- (iii) foreign investors must cooperate with domestic investors in the form of a joint venture company; foreign ownership is limited to 65%;
- (iv) a foreign investor must have obtained approvals from of the Ministry of National Defense (“**MOND**”), Ministry of Public Security (“**MOPS**”) and Ministry of Foreign Affairs (“**MOFA**”) that allow them to develop the project.

In addition, selection of foreign investors will be conducted through a bidding process whereby the electricity price offered by the foreign investor (for domestic consumption) must not exceed the ceiling price notified by the Ministry of Industry and Trade (“**MOIT**”), and the electricity price offered by the foreign investor (for export purposes) must not be lower than the ceiling price notified by MOIT.

There is an exception in which bidding can be avoided. The exception applies to both domestic and foreign investors. That is, the Prime Minister may approve and appoint investors in any one of the following circumstances:

- (i) OWPPs that are not subject to bidding requirements (as proposed by MOND or by the MOPS);

- (ii) OWPPs that are required to be developed in order to secure power supply for the national power system (as proposed by the MOIT);
- (iii) OWPPs proposed by 100% state-owned enterprises (“SOEs”) (in case of a joint venture with foreign investors, the participation of SOEs must be greater than 50%).

The Draft Decree further provides that the transfer of interest in OWPPs involving foreign investors must be approved by the MOND, the MOPS, the MOFA and other responsible authorities. The process to obtain approvals from these authorities can be expected to take time.

Selection of survey companies. Several investors may wish to conduct a survey on the proposed project site. However, there is no guidance on the selection of a survey company. As such no survey companies have been approved by the licensing authorities. The Draft Decree provides certain conditions that a survey company will need to meet:

- (i) they have performed at least one survey involving OWPPs or have developed and operated at least one OWPP in Vietnam or elsewhere;
- (ii) must have adequate financial capacity, manpower, expertise, experience and equipment;
- (iii) must have an appropriate and feasible plan to carry out wind measurement, investigation and survey of geological, oceanographic and environmental factors;
- (iv) must prove their expertise and experience, and must set out what they expect to achieve in completing the survey;
- (v) must have the financial and human capacity to develop the OWPP after completing its survey, if selected;
- (vi) must prove the economic, social and environmental efficiency and feasibility of the OWPP.

Investment Incentives. OWPPs are especially encouraged by the Government. They are entitled to exemptions/reductions of rental of sea surface. They can also qualify for tax incentives. Below are tax incentives applicable to OWPPs:

| Incentives | Corporate income tax | Import duty |
|-------------------------------|---|--|
| Preferential tax rate | 10% tax, applicable for 15 years; can be extended to 30 years in special cases. | |
| Tax exemption (0% tax) | Maximum exemption period: Four (4) years. | Goods imported to create fixed assets, and materials, raw materials and semi-finished products which Vietnam does not produce, and which are imported for the project will be duty-free. |
| Tax reduction (50%) | Maximum reduction period: Nine (9) years. | |

At the initial stage, the Government will provide special incentives for OWPPs that are licensed before January 1, 2031. Under the Draft Decree, these OWPPs will be entitled to enjoy the following incentives:

- (i) Exemption from rental of sea surface during the construction period;
- (ii) Reduction of rental of sea surface by 50% for 12 years from the date operation begins;
- (iii) Exemption from land use levy and land rent during the construction period. After the construction period, the exemption and reduction will be fixed in accordance with the laws on investment and land.
- (iv) During the term when loans are being repaid, at least 80% of the electricity output generated by the OWPP can be sold to the national power system. This guarantee can help owners maintain a stable cash flow. The maximum period, however, is limited to 12 years.

The Government may grant favorable state loans for OWPPs, but only those developed by 100% state-owned enterprises.

Self-production and self-consumption mechanism. Owners of OWPPs can develop OWPPs for self-consumption (eg, to produce hydrogen for their own production purposes). In such cases they must provide certain information to the local Department of Industry and Trade (“DOIT”) (including capacity, location, and construction period). If owners of OWPPs would like to sell the remaining output (after self-consumption), they need to enter into a grid connection agreement with Vietnam Electricity (“EVN” being a state-owned group) or with EVN’s subsidiaries. In any event, the volume of electricity (ie, the remaining output) which EVN will purchase from OWPPs is limited to 10% of the total capacity of the OWPPs, and the price at which EVN will purchase electricity from OWPPs will be the average market price of the previous year.

Obligation to remove OWPPs after termination of operations. The Draft Decree requires owners of OWPPs to disassemble and remove power plants within two to three years from the date they terminate operations.

Conclusion. Vietnam’s plan to develop OWPPs is an effort to support and promote the global program to reduce CO2 emissions. The plan is also intended to at achieve the country’s own mixed power plan. The industry is expected to develop commercially during the next ten years as cost reductions are achieved. Investment in offshore wind projects will benefit from the mandated closure of coal powered plants in 2045. In the meantime, further reductions of investment costs can be achieved. The Government believes that electricity generated by OWPPs will eventually represent 15% of the entire industry’s capacity. There are many factors to influence whether OWPPs will become an important part of Vietnam’s power mix strategy. The export of electricity generated by OWPPs to neighboring countries has created a level of options. Achievement of this target requires the Government’s support. To begin with, the Government should apply favorable tariffs to OWPPs until the young industry is ready to compete with other sources of power. Of course, Government guarantees and subsidies are welcomed by the private sector. In return, Vietnam will have a sustainable source of clean and green power, and Vietnam can reaffirm its national claim and interest in the ocean areas where OWPPs are constructed.