

# LEGAL UPDATE

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## **Key points:**

- Vietnamese Government commitment to sustainable energy development through 2030 and vision to 2045.
- Pillar regulators governing the process for renewable power projects.
- Promotion measures in renewable energy for foreign investors:
  - (1) Feed-in-Tariff & tax incentives;
  - (2) Investment credit incentives;
  - (3) Land incentives;
  - (4) Incentivizing research on renewable energy for high-tech.
- Challenges in implementing renewable energy projects in Vietnam.

## **Renewable Energy Policy Framework in Vietnam**

### **1. Overview**

As an embark on renewable energy project in Vietnam, it is important to note that renewable energy has become a crucial solution to address environmental concerns, such as land pollution, water pollution, and global warming, and to promote sustainable living standards promoting a green economy. Therefore, Vietnamese government has first demonstrated its commitment to national energy security and sustainable development through its strategic orientation for sustainable energy development through 2030 and vision to 2045, as outlined in Decision No. 2068/QĐ-TTg dated November 25, 2015 (“**Decision 2068**”). Recently, the Central Committee promulgated Politburo’s Resolution No. 55-NQ/TW on orientations of strategy for national energy development by 2030 with a vision towards 2045 on February 11, 2020 (“**Resolution 55**”).

Through these general strategies, the Government stated the mission to devise breakthrough policies and mechanisms to encourage robust development of renewable energy sources.

Regulations governing the process for development of a renewable power project is not included in in one specific law but are scattered in different legal documents, including:

Implementing Step		Regulation
1	<ul style="list-style-type: none"> <li>Register and form renewable energy project</li> </ul>	<ul style="list-style-type: none"> <li>Investment Law 2020</li> <li>Enterprise Law 2020</li> </ul>
2	<ul style="list-style-type: none"> <li>Carry out feasibility study of the project, apply for a construction permit, and construction of the power plant</li> </ul>	<ul style="list-style-type: none"> <li>Construction Law 2014</li> </ul>
3	<ul style="list-style-type: none"> <li>Operating renewable energy project involving land use rights</li> </ul>	<ul style="list-style-type: none"> <li>Land Law 2013</li> </ul>
4	<ul style="list-style-type: none"> <li>Obtain sub-license relating to environmental standard compliance</li> </ul>	<ul style="list-style-type: none"> <li>Environmental Protection Law 2020</li> </ul>
5	<ul style="list-style-type: none"> <li>Comply with regulations in operation of power plant, generation of electricity and sale of electricity</li> </ul>	<ul style="list-style-type: none"> <li>Electricity Law 2012</li> </ul>

## 2. Promotion measures in renewable energy for foreign investors

Vietnam's unique geographical location with abundant resources makes it an excellent place to invest in renewable energy, such as solar and wind power projects. By investing in renewable energy projects in Vietnam is being considered to contribute to the “green energy” development goals, so that can be benefit from the government's supportive policies and favorable conditions. It is worth noting that to date, all investment projects in renewable energy have been licensed under various law regime since long time ago, which is entitled to various incentives from the government, mainly categorized as: (i) feed-in-tariffs/tax, (ii) investment credit, (iii) land, and (iv) incentives for research and development in the high-technology sector, recently being updated as follows:

### 2.1. Feed-in-Tariff/Tax incentives

On January 07, 2023, the Ministry of Industry and Trade (“**MOIT**”) promulgates new ceiling prices annually for solar and wind energy in Vietnam, which is the basis for Vietnam Electricity (EVN) to enter into tariff negotiations with developers of transitional solar and wind energy. Maximum electricity prices (exclusive of VAT) applied to transitional solar power plants and wind power plants in 2023 are specified below<sup>1</sup>:

<sup>1</sup> Decision No. 21/QĐ-BCT dated January 07, 2023 on promulgation of the transitional framework for electricity prices of solar power plants wind power plants.

No.	Type	Maximum price (VND/kWh) (exclusive of VAT)
1	Ground-mounted solar power plant	1,184.90
2	Floating solar power plant	1,508.27
3	Floating solar power plant	1,587.12
4	Offshore wind power plant	1,815.95

**Regarding import tax incentives:** the development projects producing renewable energy shall be entitled to import duty for such imported goods as raw materials, supplies and components that cannot be domestically manufactured and are imported for manufacture of the projects in accordance with current regulations of law on import and export tax. Projects will also be exempt from import tax for imported goods within 05 years from the manufacture commencement date, provided that the imported goods fall within the specified products as above<sup>2</sup>.

**Regarding corporate income tax (“CIT”):** an exemption and reduction of CIT for the development projects using renewable energy shall be done the same as the projects in the field of investment incentives in accordance with current regulations of law on tax. In particular, Article 15 Decree 218/2013/ND-CP dated December 26, 2013 (“**Decree 218**”) and Decree 12/2015/ND-CP dated February 12, 2015 (“**Decree 12**”) stipulates that:

- (i) Projects producing renewable energy shall be entitled to receive an incentive tax rate of 10% within 15 years. This sector may also receive tax exemption and reduction, including 04 year of tax exemption and 50% of tax reduction for the following 09 years<sup>3</sup>. Hence, the projects will be CIT exempted from the first 04 years of revenue generation, followed by 09 years of 50% tax and 02 years of 10% tax before being subject to the standard CIT rate of 20%.
- (ii) Manufacturing projects of new energies, clean energies, energy-saving technology registering capital in which is disbursed within 05 years from the day on which the investment is licensed, may apply for the extended duration of application of concessional tax up to 15 years.

<sup>2</sup> Article 12.19 The Law on export and import duties 2016, Article 1.8 Decree No. 18/2021/ND-CP dated March 11, 2021.

<sup>3</sup> Article 3 Circular 212/2015/TT-BTC dated December 31, 2015 (“Circular 212”), Article 12 Circular 96/2015/TT-BTC dated June 22, 2015 (“Circular 96”)

- (iii) Projects that are large-scale and require special investment attraction due to high or new technology, the duration for the incentive tax rate may be extended beyond 15 years, but the total period of the reduced tax rate of 10% shall not exceed 30 years.

## **2.2. Investment credit incentives**

Investment projects on building power plants using wind or solar power, geothermic, biological or biomass energy and other renewable energy resources are eligible for state investment loans from the Vietnam Development Bank to conduct production and business activities. Accordingly, the investor may borrow up to 70% of the total investment capital for such projects, with a maximum loan term of 15 years.

Moreover, the State Bank's Governor issued promulgating the strategy for developing Vietnam's banking industry by 2025 with a vision towards 2030 as the basis for Decree No. 08/2022/ND-CP dated January 7, 2019 for the investment projects offering environmental benefit are entitled to be granted green credit and issue green bonds. With aforementioned incentives, a series of banks have been implementing lending programs for renewable energy projects with very large lending rates. The loan ratio of the project investment capital requirement in VPBank, VietCapital Bank are up to 80%, 85% respectively.

## **2.3. Land incentives**

The investor with renewable energy projects in Vietnam shall receive the exemption or reduction of land use fees or land leasing fees in accordance with current regulations. In general, the projects are entitled to exemption of land rental for up to 03 years for fundamental construction commencing on the date of the land lease decision. Other than that, pursuant to Decree 46/2014/ND-CP dated May 15, 2014 ("**Decree 46**") and Decree 135/2016/ND-CP dated September 9, 2016 ("**Decree 135**"), the projects may apply for extension of exemption which depends on the project's location as follows:

- (i) For projects locating in areas outside the list of administrative divisions of investment incentives: 11 years after the period of fundamental construction.
- (ii) For projects locating in areas under the list of administrative divisions facing difficult socio-economic conditions: 15 years after the period of fundamental construction.
- (iii) For projects in administrative divisions of rural districts belonging to the list of administrative divisions facing extremely difficult socio-economic conditions: entire lease term under the land lease decision.

## **2.4. Incentives for research relating to development and usage of renewable energy in high-technology sector**

Priority is given to the research related to the development and use of natural resources of renewable energy in the field of scientific and technological development and high-tech industrial development. The Vietnamese government has prioritized the development of renewable energy and high-tech industries. The Ministry of Science and Technology has issued Decision No. 38/2020/QD-TTG dated December 30, 2020, which lists high technologies that are prioritized for development investment<sup>4</sup>, and encouraged for development<sup>5</sup>, including but not limited as follows:

- (i) Hydrogen energy;
- (ii) Power generation technologies using large capacity renewable energy storage;
- (iii) Technology for designing and manufacturing control devices and power electronics converters for renewable energy generating stations;
- (iv) High capacity, large capacity renewable energy storage systems and equipment;
- (v) Control equipment, high-performance electronic conversion equipment for renewable energy generating stations.

Furthermore, the renewable companies who are eligible for the high technologies given priority according to the Decision 38 above will be applied with an incentive tax of 10% rate for 15 years<sup>6</sup>. These initiatives could have significant implications for the country's renewable energy landscape and economic development in Vietnam.

## **3. Conclusion**

In conclusion, investing in renewable energy projects in Vietnam can be a viable option for investors looking to diversify their portfolios and contribute to sustainable development. However, investors should be aware of the legal issues and regulatory challenges that they may face during the project development and operation phases. The scattered regulations related to renewable energy projects in Vietnam can make compliance a complex task, especially for foreign investors. Additionally, conducting a thorough due diligence investigation of the project and the company proposing the project can help identify potential legal or regulatory issues and minimize risks. Ultimately, compliance with all applicable laws and regulations is crucial to the long-term success of the renewable energy project in Vietnam.

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<sup>4</sup> Appendix I Decision No. 38/2020/QD-TTG dated December 30, 2020

<sup>5</sup> Appendix II Decision No. 38/2020/QD-TTG dated December 30, 2020

<sup>6</sup> Article 11 (b) Circular 96/2015/TT-BTC dated June 22, 2015

## CONTACT US

For more information about any of these legal briefs, please contact our Partners:



### Mr. Hong Bui

Corporate/M&A, Foreign Investment

*hong.bui@Intpartners.com*



### Mr. Binh Tran

Real Estate, Infrastructure, Corporate/M&A, Labour

*binh.tran@Intpartners.com*



### Ms. Quyen Hoang

Corporate/M&A, Foreign Investment, Labour

*quyen.hoang@Intpartners.com*



### Dr. Net Le

Financial Services, Arbitration, Infrastructure, Corporate/M&A, Tax

*net.le@Intpartners.com*



### Dr. Tuan Nguyen

Competition, Corporate/M&A, Labour, Intellectual Property

*tuan.nguyen@Intpartners.com*



### Mr. Thuy Nguyen

Corporate/M&A, Foreign Investment, Labour, Tax

*thuy.nguyen@Intpartners.com*



### Ms. Minh Vu

Financial Services, Corporate/M&A, Foreign Investment, Tax

*minh.vu@Intpartners.com*

## Our Location

### Ho Chi Minh City Office

Level 21, Bitexco Financial Tower  
No.02 Hai Trieu Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84 28 3821 2357

### Hanoi Office

Level 12, Pacific Place Building  
83B Ly Thuong Kiet Street,  
Hoan Kiem District,  
Hanoi, Vietnam  
Tel: +84 24 3824 8522

### Singapore Office

Level 40, Ocean Financial Centre 10  
Collyer Quay, 049315  
Tel: (+65) 6808 6228

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