LEGAL UPDATE

DIRECT POWER PURCHASE AGREEMENT PILOT PROGRAM IN VIETNAM

On 8 April 2021, the Ministry of Industry and Trade of Vietnam (**MOIT**) released the 2nd draft of the Circular regulating the direct power purchase agreement (**DPPA**) pilot program for renewable energy (**Draft Circular**) to solicit public comments before 6 June 2021.

The Electricity Regulatory Authority (**ERAV**) under the MOIT is currently finalising the Draft Circular, which is expected to be officially issued by the end of 2021. Due to its high relevance for the economics of renewable energy investments in Vietnam, the DPPA pilot program has attracted widespread interest from consumers and power developers. This legal update examines the most important takeaways from the draft circular.

1. DPPA Pilot Program

1.1 Scale

The program is planned for nationwide rollout and a total maximum capacity of selected wind or solar projects of 1,000 megawatts (**MW**). Should this number exceed the number of applications for this scheme, MOIT will select participants (both consumers and renewable energy generation companies (**RE GENCO**)) on a first-come-first-served basis.

1.2 Timeline

Once the Draft Circular becomes effective, the implementation timeline will be as follows::

Timeline (in working days)	Trigger	In Charge	Action
15	After the effective date of the Circular	MOIT	Public announcement of the DPPA pilot program
15	After MOIT's public accouncement	MOIT	Launch of a website where RE GENCOs and power consumers can submit applications to participate in the pilot program; and announcement of the 3rd party nominee of MOIT that will evaluate the applications
45	After the launch of DPPA program's website	n/a	RE GENCOs and power consumers who wish to participate should prepare and submit their registration application via the website
40	After closing of application	MOIT's nominee	Evaluate and select participants and projects for the program
5	After completion of the evaluation	MOIT	Announcement of selected projects
270	After the announcement of selected projects	RE GENCO	Execute relevant agreements, complete the construction, and put the project into commercial operation

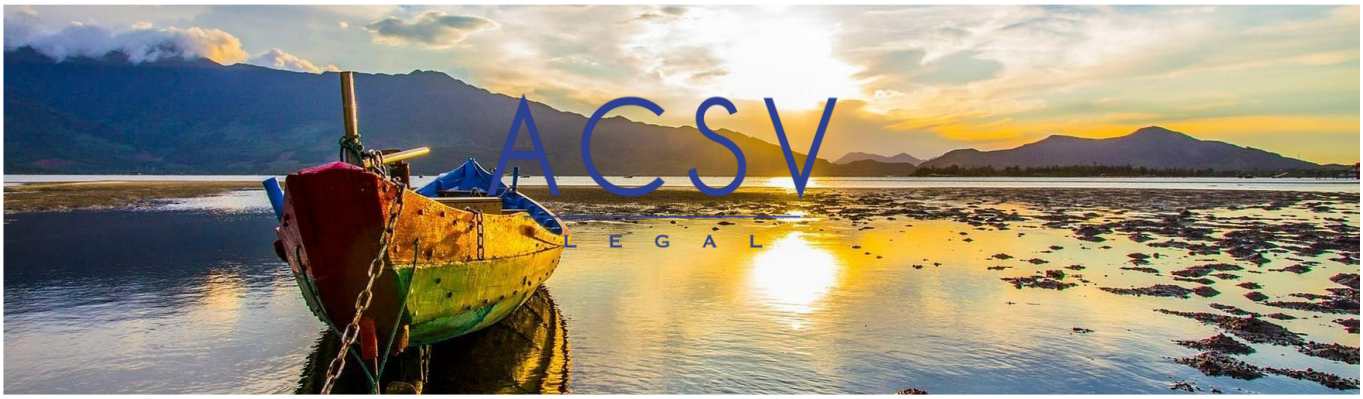
The Draft Circular does not specify consequences if the project fails to meet this deadline.

1.3 Duration

The pilot program will last for one year from the expiry date of the final deadline for putting projects into commercial operation. Subsequently, the ERAV will evaluate the market, technical, financial, and legal results and propose improvements to complement the DPPA mechanism.

2. Selection Criteria

RE GENCOs and power consumers that seek to enter the DPPA pilot program must satisfy certain conditions and submit their application together as co-applicants.



2.1 Consumer

To be eligible for the DPPA pilot program, the consumer undertakes:

- to purchase power for industrial use at 22 kiloVolt (kV) or higher voltage;
- to reach the target renewable energy usage;
- that for the first 3 years of its participation in the pilot DPPA program, the amount of power to be purchased from RE GENCOs within a year must be at least 80% of the total amount of power consumed and supplied by EVN/Power Corporation within that same year; and
- to have an in-principle binding agreement with the co-applicant RE GENCO, under the Draft Circular's template.

2.2 Project and RE GENCO

To be eligible for the DPPA pilot program, RE GENCOs must:

- have a grid-connected solar or wind power plant with an installed capacity of more than 30 MW (conversion rate of 1 MWp equal to 0.8 MW for solar plants), included in the power development planning approved by relevant authorities;
- be able to provide financial documents from credit institutions for the funding of the power plant project; and
- be a party to an in-principle binding agreement with their consumer counterparty, under the template provided by law.

3. DPPA Mechanism in the Pilot Program

The Draft Circular proposes a DPPA mechanism where the RE GENCO will not sign a private power purchase agreement (**PPA**) with the consumer. Instead, the RE GENCO will sell all produced power to Vietnam Electricity (**EVN**) under the applicable PPA through the Vietnam wholesale electricity market. EVN will then sell such power to the power corporation (**PC**) under EVN. Finally, the PC will sell such power back to the consumer.

The draft DPPA mechanism sets out 3 key agreements to support its underlying legal matrix, as depicted in the enclosed diagram (Appendix).

The first one is the fixed-term contract for differences (**CfD**) between RE GENCO and the power consumer, replacing a private PPA between RE GENCO and the consumer. The CfD governs the power supply commitments of the RE GENCO and contains a strike price agreed between RE GENCO and the consumer to manage spot price fluctuations. It will be subject to a term of at least 10 years but no more than 20 years. Second, the PPA between RE GENCO (seller) and EVN (buyer), which widely adopts MOIT's template PPA for wind and solar projects, with some minor adjustments. And finally, the Power supply agreement between power consumers (buyer) and EVN/power corporation (seller) regulating the supply and use of energy on consumers' side and forms the last link in this chain of agreements.

4. Relevance and Consequences of the DPPA Mechanism for Vietnam's Power Market

A significant advantage on the consumer side is more accessible renewable energy and a greater price stability. The DPPA mechanism allows both RE GENCOs and consumers to manage power price fluctuations better.

In addition, the envisaged bankability of the DPPA mechanism will significantly contribute to the process of funding RE GENCOs. On the back of the new mechanism, we may expect the renewable energy market to become more attractive to investors while at the same time increasing the generation and consumption of renewable energy.

Due to limited availability and eligibility hurdles, interested RE GENCOs and power consumers should familiarise themselves with the Draft Circular and prepare to submit their application as soon as possible after the new Draft Circular's finalisation.

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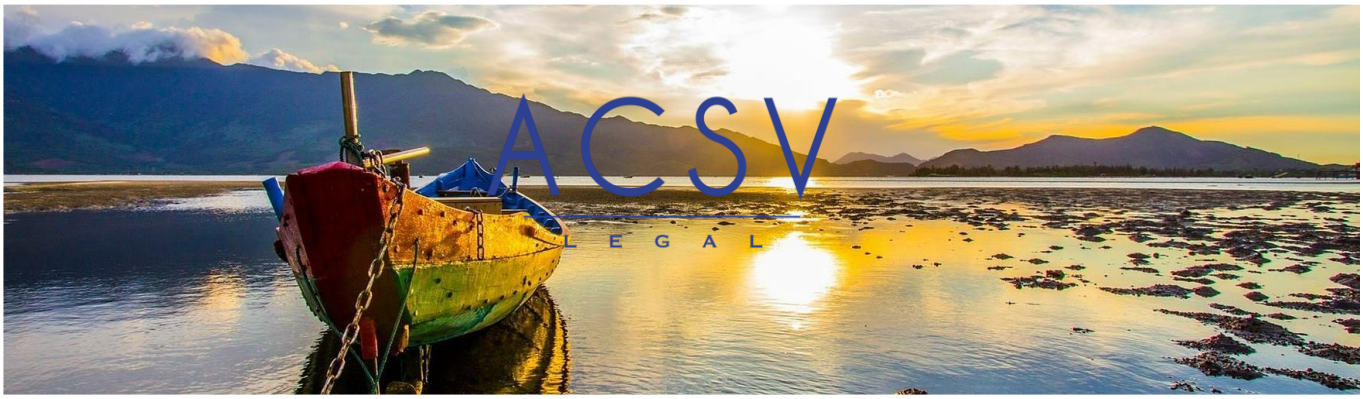
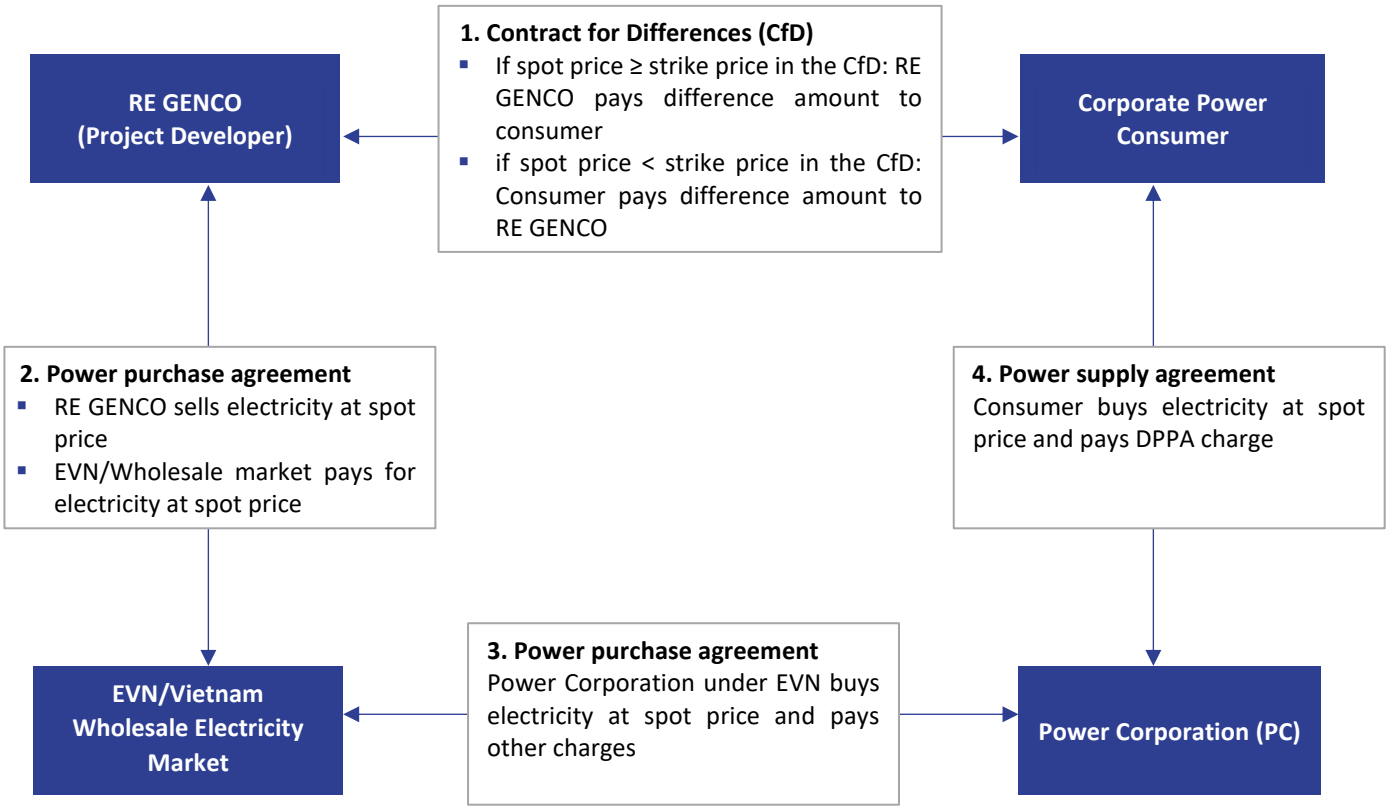


APPENDIX

STRUCTURE OF PROPOSED DPPA MECHANISM



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