

Circular Regulating the Operation of the Competitive Electricity Generation Market

In 2004, Vietnam passed the new Electricity Law that outlines the development of a competitive electricity market in 3 phases: in Phase 1, it is contemplated that a competitive power generation market would be established; Phase 2 envisions the development of a competitive electricity wholesale market, and Phase 3 involves development of a competitive electricity retail market. It is estimated that the market restructuring process will take up to 20 years to complete. If successful, a competitive generation market will replace the current State ownership. Generation will be separated from transmission and distribution functions and the current State owned monopoly, Electricity of Vietnam, will be restructured and all subsidiaries privatised. It is envisioned, however, that the transmission network will continue to be State owned. Such market reforms aim to create competition in electricity generation, thereby increasing the effectiveness and responsibility of each power plant and benefiting consumers. To implement Phase 1, the Ministry of Industry and Trade (“MOIT”) issued Circular No. 18/2010/TT-BCT on 10 May 2010 regulating the operation of the competitive electricity generation market (“Circular 18”).

Scope

Circular 18 regulates activities of a competitive electricity generation market and responsibilities of the participants in such market. It is issued to implement legislation already in place with respect to

the establishment of a competitive electricity generation market. We discuss these below.

Legal framework for the competitive electricity generation market

With the enactment of the Electricity Law on 3 December 2004 (“Electricity Law”), the Government of Vietnam started to pursue a far reaching electricity sector reform policy:

- The State policy for the electricity sector is to develop an electricity market on the principles of transparency and competition to achieve economic efficiency, to attract investments from both State and non-State sources to the energy sector and to ensure legitimate rights of consumers and investors in this sector.
- The State monopoly in this sector will be limited to power transmission, national load dispatch and strategically important large power plants, leaving power distribution and non-strategic power generation to potential private sector investors.
- The State encourages investments from foreign private sector investors and joint ventures between foreign investors and domestic enterprises in the electricity sector.

The MOIT is entrusted with the responsibility of establishing a competitive electricity market in Vietnam.

The Electricity Regulatory Authority of Vietnam (“ERAV”) was established on 19 October 2005 by the Prime Minister under Decision No. 258/2005/QD-TTg. ERAV is a department under the MOIT and is empowered with, among other things, the following key functions:

- Establishing the master plan for electricity sector development;
- Advising the MOIT on power market structure and industry restructuring policy;
- Designing the electricity market for each phase and regulating competition among the electricity market participants;
- Issuing and enforcing licenses to electricity sector entities;
- Establishing the tariff setting principles including transfer pricing between sector entities; developing tariffs for regulated activities;
- Adopting electricity purchase agreements of the single buyer;
- Ensuring the procurement of adequate new generation and transmission capacity;
- Monitoring the progress of implementation of new projects in generation and transmission projects;
- Monitoring the functioning of the electricity market.

Road Map for Electricity Market Development

To implement Article 18.2 of the Electricity Law, the Prime Minister has approved the roadmap, and the conditions for establishing and developing a competitive electricity market in Vietnam in Decision No. 26/2006/QD-TTg dated 26 January 2006 (“Decision 26”).

Pursuant to Decision 26, Vietnam’s electricity market will be established and developed in 3 phases:

- Phase 1 (2005 - 2014): Competitive electricity generation market
- Phase 2 (2015 - 2022): Competitive electricity wholesale market
- Phase 3 (from 2022 onwards): Competitive electricity retail market

In Phase 1, a competitive electricity generation market will replace the current system of State monopoly and subsidies.

In Phase 2, a competitive wholesale power market will be established. The distribution companies owned by the Electricity of Vietnam Group will be allowed to convert into independent power producers (IPPs) to directly buy electricity from generation entities.

The generation entities, in turn, will compete to sell to these IPPs. The wholesalers will also compete to sell to the distribution companies and large wholesale customers.

In Phase 3, eligible customers will be allowed to choose electricity suppliers that best suit their demand (retailers) or purchase electricity directly from the spot market.

Obligation to participate in the electricity market

Circular 18 requires all licensed power plants with a capacity of 30MW and above to join the competitive power generation market except the following:

- Power plants under Build-Operate-Transfer form of investment;
- Wind power plants and geo-thermal power plants; and
- Power plants which belong to industrial parks and which sell only a part of their total output to the national electric grid and cannot determine their long-term electricity selling plan.

In addition, Circular 18 provides plans for operating the electricity market including real-time operation, export and import, calculation of power prices, electricity market software, information systems and regulations for information disclosure and reports on the operating of the electricity market. It also sets out provisions for dispute resolution and deals with violations.

Circular 18 took effect on 25 June 2010.

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