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Vietnam Wind Energy Guide



Introduction

The Vietnamese economy is one of the fastest growing in the Asia-Pacific region, averaging close to 7% growth over the past decade.¹ Vietnam was one of the very few countries globally to achieve economic growth in Covid-disrupted 2020, recording an increase in GDP of 2.9%.²

Home to a population of close to 100 million, Vietnam's energy needs are substantial and ever-increasing. Consuming more energy per unit of economic output than the Philippines, Malaysia, Indonesia and India, Vietnam is one of the world's most energy-intensive economies.³ It is expected that Vietnam's electricity demand will continue to increase at an average rate of up to 9% annually over the next decade.⁴

Vietnam's onshore, nearshore and offshore wind power potential is particularly significant, and is attracting diverse global interest, including recent characterization by the World Bank as world class.

This guide seeks to provide investors with a brief overview of the current Vietnamese wind energy market, exploring the primary opportunities and challenges from a legal perspective.

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- 1 The World Bank Group, Macro Poverty Outlook, East Asia and the Pacific (Vietnam), April 2021.
 - 2 Ibid.
 - 3 Le, P.V., Energy Demand and Factor Substitution in Vietnam: Evidence from Two Recent Enterprise Surveys, *Journal of Economic Structures*, 8:35 (2019); The World Bank Group, Energy Intensity Level of Primary Energy, 2019.
 - 4 Fitch Ratings, Fitch Affirms Vietnam Electricity at 'BB'; Outlook Stable, 15 September 2020.





Current Policy Settings and Market Overview

As a means to avoid anticipated mass energy shortfalls by as early as 2030, recent draft versions of the National Power Development Master Plan VIII (2021-2030 with a vision to 2045) (**PDP8**) confirm that Vietnam is seeking to attract up to US\$128 billion in energy investments, including US\$32 billion in grid infrastructure, for the period from 2021 to 2030.⁵ PDP8 is expected to be released in Q4 2021, and solidify Vietnam's commitment to wind energy and renewables more broadly. Current draft wind targets aim for up to 12 GW by 2025 and 19 GW by 2030, inclusive of both onshore and offshore asset classes.⁶ PDP7 (revised edition) previously set wind capacity targets of up to 2 GW by 2025 and 6 GW by 2030.⁷

Such commitments are further supported by Resolution 55, Vietnam's other core energy policy instrument along with PDP8, providing strategic guidance on the development of the energy sector to 2030 with a vision to 2045.⁸ Resolution 55, released by Vietnam's Politburo in early 2020, sets an objective to achieve a 25-30% renewables ratio by 2045,⁹ prioritizing the development of the offshore wind sector, amongst other asset classes, in pursuit of this objective.

Vietnam's topography and climate naturally lends itself to wind power development, with more than 3,000 km of coastline, average annual wind speeds of 6m/s (as high as 10m/s in the southeast provinces of Binh Thuan and Ninh Thuan), and favourable offshore water depths.¹⁰ Natural conditions are most attractive in the southeast regions and it is anticipated that a 500 kV transmission line will be

⁵ Ministry of Industry and Trade, Draft Proposal (Version 3, 22 February 2021), National Power Development Master Plan VIII (2021-2030 with a vision to 2045).

⁶ Ministry of Industry and Trade, Draft Proposal (Version 3, 22 February 2021), National Power Development Master Plan VIII (2021-2030 with a vision to 2045).

⁷ Decision on the Approval of the Revised National Power Development Master Plan for the 2011-2020 Period with a Vision to 2030, Decision No. 428/QĐ-TTg, 18 March 2016.

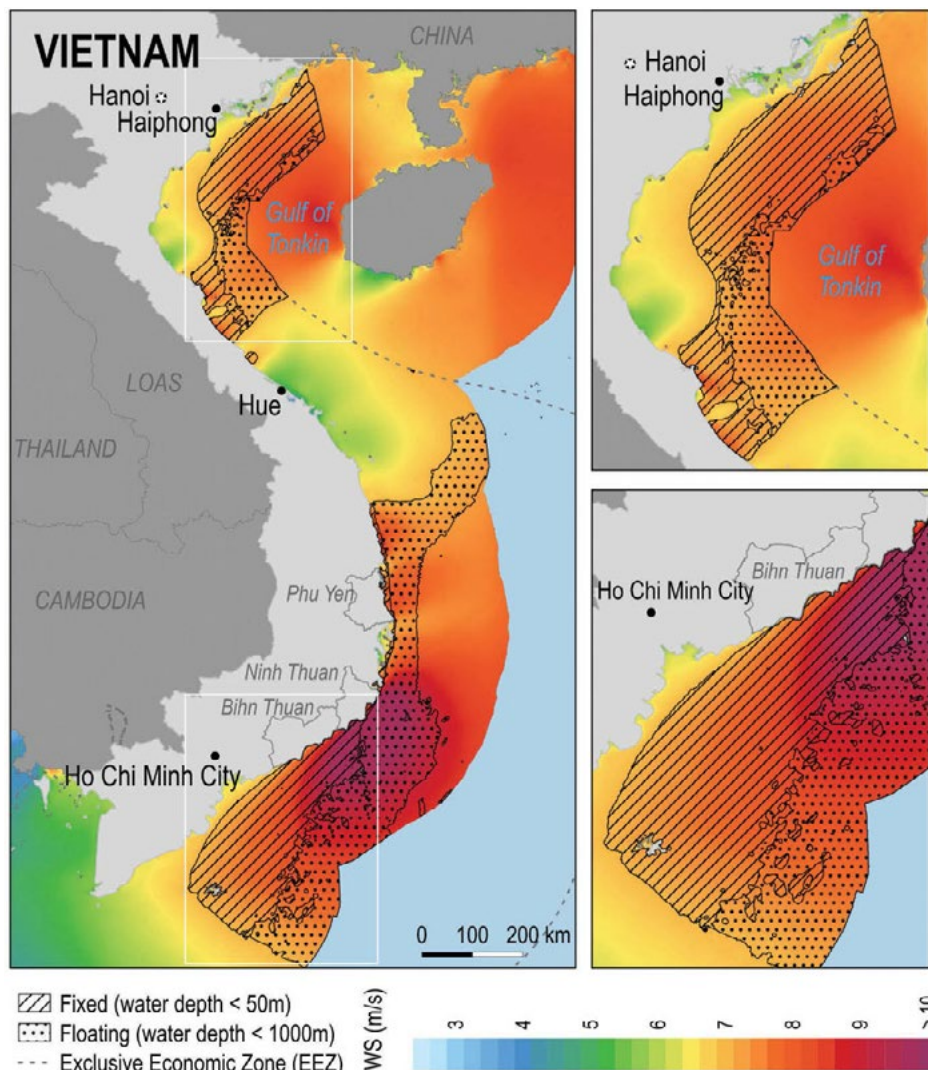
⁸ Resolution of the Politburo Regarding the National Energy Developmental Strategy of Vietnam to 2030 with [an] Outlook to 2045, Resolution No. 55-NQ/TW, 11 February 2020.

⁹ Ibid.

¹⁰ The World Bank Group, Going Global: Expanding Offshore Wind to Emerging Markets, October 2019.

development in these regions.¹¹ Grid upgrades are also necessary and expected in the northern regions around the Gulf of Tonkin, catering for increased capacity flowing to the greater Hanoi area.¹² Significantly, the latest World Bank forecasts indicate a technical potential for offshore wind alone of up to 475 GW (within 200 km), inclusive of both floating and fixed installations,¹³ whilst Wood Mackenzie expects Vietnam to account for 66% of total new wind capacity (onshore and offshore) to be added in Southeast Asia to 2030.¹⁴

As at June 2021, government figures confirm that close to 600 MW were in operation, 130 projects signed power purchase agreements (PPAs) with Vietnam Electricity (EVN), with approximately 5.6 GW of those projects on track to achieve commercial operation prior to the feed-in tariff deadline of 1 November 2021.¹⁵ Thirty-five potential offshore wind projects were also listed in the latest draft PDP8, with several 3 GW+ projects proposed,¹⁶ although many of these are very early-stage and subject to further approval processes.



Going Global: Expanding Offshore Wind to Emerging Markets: Going Global: Expanding Offshore Wind To Emerging Markets (English). Washington, D.C.: World Bank Group, page 27.

11 Ibid.

12 Ibid.

13 Ibid.

14 Wood Mackenzie, Southeast Asia's Wind Power Needs US\$14 billion [of] New Investments by 2030, 22 September 2020.

15 EVN Official Letter to Ministry of Industry and Trade, No. 3331/EVN-TTD, 14 June 2021.

16 Ministry of Industry and Trade, Draft Proposal (Version 3, 22 February 2021), National Power Development Master Plan VIII (2021-2030 with a vision to 2045).

Legal Framework

FOREIGN OWNERSHIP, INVESTMENT FORMS, AND CORPORATE STRUCTURING

Foreign investors may own up to 100% equity in wind energy project companies as no foreign ownership restrictions currently exist in regards to the renewable energy sector under Vietnamese law. Developers are also able to invest in wind power projects on an entirely greenfield basis. Nevertheless, foreign investors typically seek to enter into joint venture arrangements with a local partner.

A special purpose vehicle or project company will be established under Vietnamese law in the form of a limited liability company (single or multi-member) or joint stock company. It is common for investors to initially incorporate a limited liability company to complete early-stage development activities, and then potentially convert that entity into a joint stock company at a later phase of the development cycle when greater capital and financing requirements come into play.

It is also common for foreign investors to acquire equity interests in pre-existing wind energy projects via the acquisition of charter capital or shares in a Vietnamese project vehicle.

Preliminary licensing, permit and land allocation procedures can be cumbersome. Project companies which have already obtained fundamental early-stage investment approvals (such as inclusion in the relevant power development plan, environmental and construction permits, land use right certificates, PPA execution, etc.) are increasingly being viewed as attractive M&A targets by foreign investors looking to bypass complex development phase regulatory hurdles.

Vietnam's first Public-Private Partnership (**PPP**) Law also recently came into effect on 1 January 2021.¹⁷ The PPP Law provides an alternate pathway for foreign investment into greenfield wind energy projects with a Vietnamese government counterpart. The PPP legal framework was previously represented in numerous outdated circulars and decrees which primarily focused on the build-operate-transfer (BOT) model. The new PPP Law acts as a uniform law-level instrument and provides

¹⁷ Law on Public-Private Partnership Investment Form, Law No. 64/2020/QH14.





enhanced transparency in the form of competitive bidding processes. In addition to BOT (which to date has been the most common Vietnam PPP structure), other PPP structures such as build-own-operate and build-transfer-lease are recognized. Whilst it is mandatory that Vietnamese law govern the core project agreements, parties remain free to select independent third country arbitration should a dispute scenario arise. Investors may also propose their own projects directly to the relevant state agency (in addition to those on which investors may bid). The express inclusion of a minimum revenue guarantee is also attractive, whereby in certain circumstances the state will share with the investor 50% of the difference between the project's actual revenue and 75% of the committed revenue under the financial plan. Finally, additional guidance in the form of Decree 35 was released in March 2021, providing welcome clarification in confirming that the PPP Law applies to renewable energy projects when the total investment value of the project is VND 500 billion or more (approximately US\$22 million).¹⁸

Feed-in Tariff

The feed-in tariff (**FiT**) currently applicable to utility-scale wind power plants is 8.5 US cents per kWh for onshore projects and 9.8 US cents per kWh for offshore projects.¹⁹ Projects must reach commercial operations prior to 1 November 2021, the statutory expiry of the current tariff scheme.²⁰ The FiT is valid for a 20-year contractual duration under the mandatory standard form PPA.²¹

The Ministry of Industry and Trade (**MOIT**) has recently outlined a proposal to extend the current FiT mechanism for wind power projects until the end of 2023.²² Such considerations are largely motivated by Covid-19 related supply chain disruptions and would potentially provide newer developments with more time to align equity and debt financing for their projects to realistically meet the revised deadline.

The MOIT also proposed the creation of a higher tariff for projects which reach commercial operation prior to December 2022 and a lower tariff for those projects which reach commercial operation prior to December 2023,²³ although at the time of publication no formal update or amending legislation has been enacted in this regard.

There are also discussions that, consistent with other renewable energy asset classes, wind power may move to an auction-based competitive bidding system to replace feed-in tariffs post-2021.

Project Finance, Taxes and Incentives

It is common for utility-scale renewable energy projects in Vietnam to be funded by a mix of debt and equity, including through the use of shareholder loans (which are treated as debt under Vietnamese laws) and syndicated secured debt facilities. Debt funding on a full non-recourse basis remains more challenging, and lenders may require some level of sponsor support depending on the project.

Several international lenders have collaborated with domestic banks to develop innovative debt financing structures, including via offshore re-financing post-commercial operation, sponsor-backed financing, and ECA financing backed by guarantees issued by domestic credit institutions.

Domestic credit institutions, which include Vietnamese subsidiaries of foreign banks, will often act as security agents on behalf of the syndicate in offshore/onshore lending structures as only Vietnamese credit institutions may take security over immovable assets under Vietnamese law.

The following preferential tax rates and incentives generally apply to renewable energy projects, including wind power plants:²⁴

18 Decree Making Detailed Provisions and Providing Guidelines for Implementation of the Law on Public-Private Partnership [PPP] Investment Form, Decree No. 35/2021/ND-CP.

19 Decision No. 39/2018/QĐ-TTg.

20 Ibid.

21 Circular Regulating Project Development and Standard Form Power Purchase Agreement [PPA] for Wind Power Projects, Circular No. 02/2019/TT-BCT.

22 Ministry of Industry and Trade, Official Letter No. 8159/BCT-DL, 28 October 2020.

23 Ibid.

24 Decision Approving the Development Strategy of Renewable Energy of Vietnam by 2030 with a Vision to 2050, Decision No. 2068/QĐ-TTg.

- Corporate income tax: Exemption for the first 4 years of the project; a 50% income tax reduction for the following 9 years; and a preferred income tax rate of 10% for the first 15 years.
- Land lease fees: Depending on the location of the project, an exemption on land use fees from 15 years to the entire project life.
- Import duties: Exemption on duties for goods imported to form fixed assets and project materials which cannot be manufactured within Vietnam.

Power Purchase Agreement²⁵

Utility-scale wind energy generators are required to enter into a formal PPA with EVN as offtaker.²⁶ EVN, pursuant to electricity regulations, is currently the only wholesale purchaser of electricity in Vietnam and enjoys a market monopoly in regards to the purchase, transmission, storage and distribution of electricity.

The regulatory framework underpinning the PPA does not provide for the possibility of any government guarantees in relation to EVN's offtake obligations or any non-performance events under the PPA, such as a failure to render payments due to the generator. Vietnam is currently reluctant to issue government guarantees for IPP projects beyond those already available under the Investment Law.

EVN credit is therefore a key concern on any renewable power project. EVN and six of its subsidiaries have recently received a revised outlook from Stable to Positive, affirming a Long-term Issuer Default Rating of 'BB'.²⁷

The terms of the PPA are provided in standard form under Circular 2,²⁸ and are typically non-negotiable. Although there is no express prohibition on proposing amendments in negotiations, EVN cannot agree to anything which will change its 'basic contents'.

The standard form PPA for wind plants is substantially the same as other utility-scale renewable energy PPAs in Vietnam, including for solar and biomass assets.

Particular issues in the PPA to be aware of (and which will be even more acute in the context of large scale offshore wind projects being proposed) are as follows:

PAYMENT TERMS

Payments from EVN to the project companies are made in Vietnamese Dong and adjusted for the official State Bank of Vietnam VND/USD exchange rate on the date of invoicing. However, payment may be made up to 25 business days after the invoice date. The PPA does not provide for any guarantee as to same-day conversion to USD nor with respect to commercial availability of USD. Developers are therefore exposed to some short-term exchange rate risk in particular as hedging options are generally limited.

There is no adjustment mechanism to reflect economic inflation or increases in production costs.

GRID CONNECTION AND CURTAILMENT

Where the plant has achieved commercial operation but the grid is unable to absorb power, generators are not protected and no deemed commissioning mechanism is offered.

The PPA also provides favourable terms to EVN with regards to grid disruption in that EVN is not contractually obliged to purchase power when the electrical grid is under repair or disrupted. No express compensation mechanism is offered to generators to compensate for financial loss should such scenarios arise.

STEP-IN RIGHTS

The PPA does not provide an express right for lenders to step-in and cure an unremedied material breach by the project company nor does it contemplate the use of a direct agreement between the parties.

²⁵ Circular Regulating Project Development and Standard Form Power Purchase Agreement [PPA] for Wind Power Projects, Circular No. 02/2019/TT-BCT.

²⁶ Ibid.

²⁷ Fitch Ratings, Fitch Revises Outlooks on Vietnam's PVN, EVN and Six EVN Subsidiaries to Positive; Affirms 'BB' IDRs, 7 April 2021.

²⁸ Circular Regulating Project Development and Standard Form Power Purchase Agreement [PPA] for Wind Power Projects, Circular No. 02/2019/TT-BCT.

With regards to transfer, the template does not allow a project company to transfer the implementation of its obligations under the agreement to a lender (or any third party) without the prior written consent of EVN. EVN is not under any corresponding obligation to obtain prior consent from the project company however. As a general provision of Vietnamese law, lenders can take comfort that there is no prohibition on the project company mortgaging its contractual payment rights under the PPA to lenders (though notice to the counterparty is required to create a valid mortgage).

CHANGES IN LAW

The PPA is silent on the issue of adverse changes in law or tax, presenting as a risk to investors due to Vietnam's evolving regulatory framework in the area of energy and infrastructure developments.

GOVERNING LAW AND DISPUTE RESOLUTION

The terms of the standard form PPA must be governed by Vietnamese law and there is unfortunately no flexibility on this point. Vietnamese law, particularly in regards to the energy sector, is evolving rapidly, and the ability to select foreign governing law would provide greater comfort to the investor community. Resolution 55 does contemplate the enactment of a distinct uniform renewable energy law, however no further updates are available on this at the time of writing.

The terms of the PPA are also limited in regards to dispute resolution, whereby the parties are unable to select independent third country arbitration and instead are bound to resolve disputes via internal MOIT adjudication, with the availability of domestic litigation as a final dispute resolution step.

Looking forward

DIRECT PPAS

The MOIT is currently preparing to launch a direct PPA pilot program, allowing for the direct sale of

electricity between private generators and private offtakers, including in the form of virtual PPAs or contracts for difference.²⁹ The program is expected to run for two years, potentially paving the way for direct PPAs to enter the market on a permanent basis thereafter. Participation is via competitive application, and limited to utility-scale solar and wind power projects greater than 30 MW and with prior power development plan approval. At the time of publication, no formal instrument has been enacted. The pilot initiative, and any corresponding legislation, is expected to come into effect in the final quarter of 2021.

GRID INVESTMENT

From a policy perspective, Vietnam is acutely aware of issues with regards to grid inadequacy, and will seek to attract up to US\$32 billion and US\$52 billion in grid infrastructure investments for the period from 2021 to 2030 and 2031 to 2045, respectively.³⁰ As noted above, EVN currently has a monopoly over transmission, storage and distribution under electricity regulations. The Politburo, via Resolution 55, has confirmed the need for private sector investment in domestic energy infrastructure.³¹

Vietnam's first privately sponsored transmission line, the 17km 220/500kV Ninh Thuan line, came online in October 2020.³²

The PPP Law also provides an alternate pathway for private investment in electrical infrastructure via PPP contractual structures. This is an evolving area of law and at the time of publication there is no absolute position on the ability of private sponsors to invest in standalone electrical infrastructure assets. Express amendments to electricity regulations would be welcomed by the investor community, and we have already seen great interest in regards to the financing of ancillary offshore wind infrastructure, including subsea cables and transmission lines.

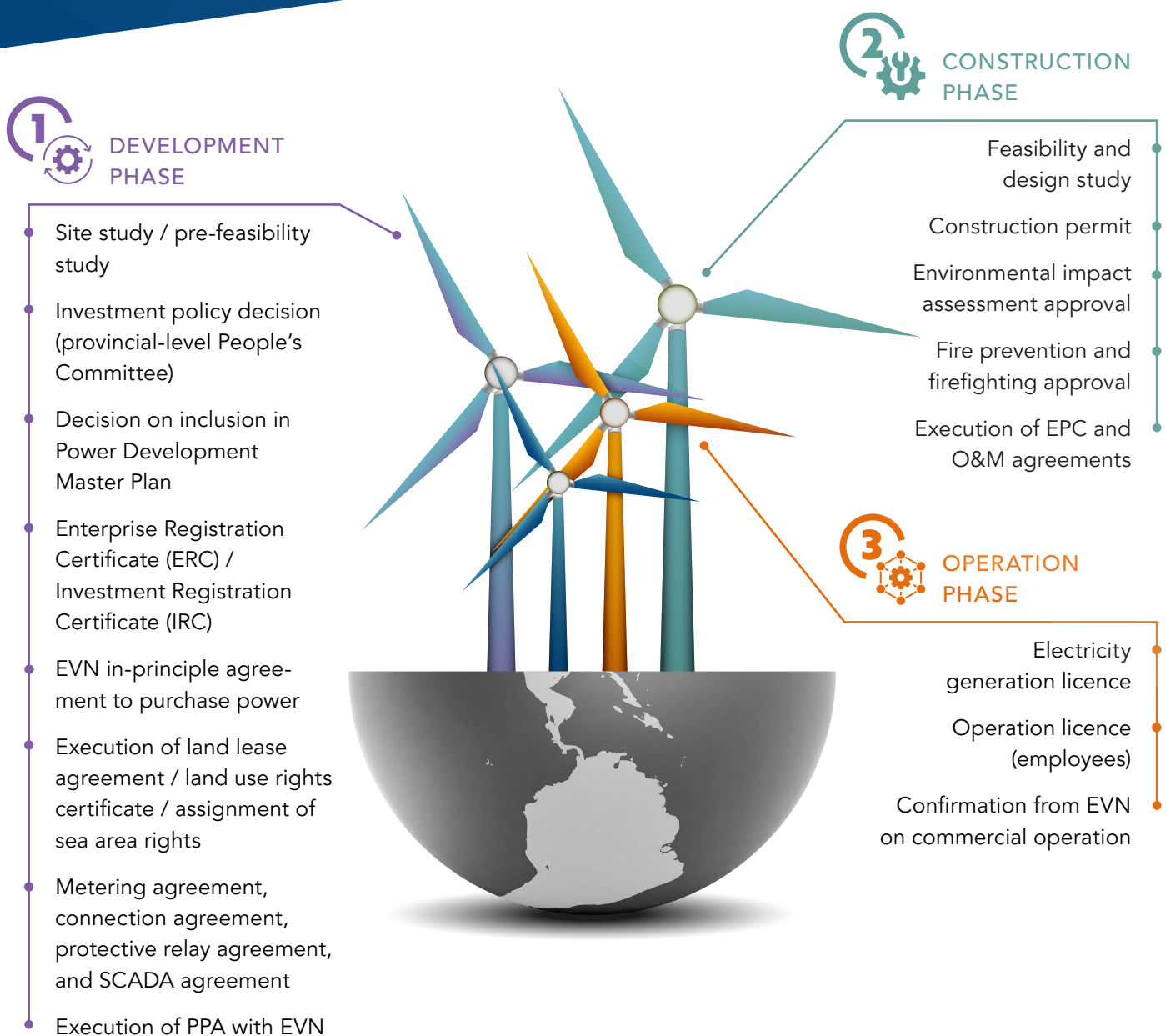
29 Ministry of Industry and Trade, Proposal No. 544/TTr-BCT.

30 Ministry of Industry and Trade, Draft Proposal (Version 3, 22 February 2021), National Power Development Master Plan VIII (2021-2030 with a vision to 2045).

31 Resolution of the Politburo Regarding the National Energy Developmental Strategy of Vietnam to 2030 with [an] Outlook to 2045, Resolution No. 55-NQ/TW, 11 February 2020.

32 Vietnam Investment Review, Trung Nam Kicks Off Vietnam's Largest Solar Farm Project, 13 October 2020.

Regulatory Process – Greenfield Wind Power Developments³³



³³ Please note that this section provides a general overview of the regulatory process and further specific advice may be required as to both approval sequence and timing.



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