

Vietnam LNG sector update

October 2023

In this report, we give an overview of the liquefied natural gas (**LNG**) market in Vietnam, and look at the opportunities, main investment steps and key challenges relevant to foreign investment in it.

Market overview and opportunities

THE NEED FOR LNG PROJECTS

Vietnam's need for LNG projects is greater than ever, due to the instability of the power system, power shortages caused by delayed investment in other power projects, decarbonisation commitments and energy security requirements. Coal and hydro resources are running out, local gas fields are being depleted, renewable energy relies on specific weather conditions, energy storage is new and nuclear power projects are on hold. In these circumstances, imported LNG and gas power are comparatively desirable solutions to the myriad issues. While the potential is considerable, currently there are no LNG terminals in operation (at the time of writing, Thi Vai terminal had received its first commissioning delivery) and only a few gas-fired power plants operating in Vietnam.

The need for LNG projects has been confirmed in various policy documents that formulate the strategy for the development of energy in Vietnam. In particular, Resolution 55 issued by the Communist Party of Vietnam, dated 11 February 2020, highlights the development of gas-fired power projects as a priority, with a roadmap for appropriate reduction of the relative ratio of coal-fired power. Vietnam is encouraging investment in technical infrastructure and the development of integrated LNG projects, as well as investment in LNG projects in public-private-partnership (**PPP**) form. Following Resolution 55, the country's near and mid-term focus on LNG power has been confirmed in certain reports and correspondence from the Ministry of Industry and Trade (**MOIT**) and other government sources. In the most recent power development power master plan, it was confirmed that Vietnam intends to develop 22,400 MW of LNG-to-power by 2030. To give some context, this is equivalent to around 25% of Vietnam's currently installed generation capacity.

Underpinning much of the policy position on LNG is that, following Vietnam's commitment at COP26 to achieve net zero by 2050, it is seen as a key transitional fuel to help reach this target.

In a welcome step for financing of Vietnam's green transition, on 14 December 2022 leaders from Vietnam and the International Partners Group, including the European Union, the United Kingdom, France, Germany, the United States, Italy, Canada, Japan, Norway and Denmark, entered into a Just Energy Transition Partnership (**JETP**) agreement. Under JETP, a package of US\$15.5 billion of public and private funds will be mobilised over the next three to five years, to power the energy transition and decarbonisation in Vietnam. Its detailed implementation, including the types of projects eligible for funding under JETP, are yet to be clarified. While LNG is not the greenest fuel around, LNG-to-power is classified as a new type of energy, and generally considered an important stepping stone in Vietnam's net zero journey – as such, there is an opportunity for JETP initiatives and funds to support private investment in LNG projects in Vietnam.

LNG PROJECTS IN THE RELEVANT MASTER PLANS

The master plan for the gas industry until 2025, with a vision to 2035, was issued by Vietnam's Prime Minister under Decision 60/QD-TTg, dated 16 January 2017 (the **gas master plan**).

Under the gas master plan, the scale of Vietnam's gas market and imported LNG is projected to grow steadily through to 2035. However, following the more recent overarching Law on Planning, it appears the gas master plan will cease to be a standalone national sector master plan. Notably, the former Law on Petroleum, which contained the procedure to issue the gas master plan, has been repealed, and all references to a master plan for gas development have been removed under the new Law on Petroleum, which became effective on 1 July 2023. In addition, the current gas master plan only formally covers development of the gas industry through to 2025 and

there is no indication of a new one to cover the period after 2025. As a result, it is understood that the gas master plan will no longer be a key planning document for the development of the gas industry in Vietnam after 2025. Instead, it will likely be regulated at a macro level by the following:

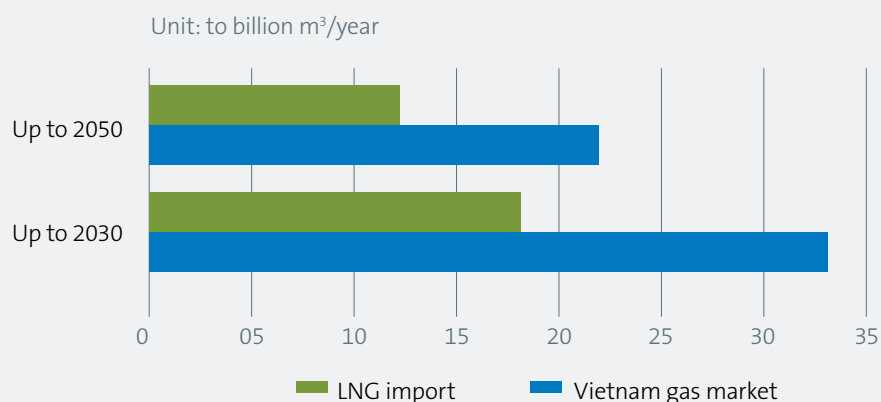
- the national overall master plan;
- the national power development master plan (covering LNG-to-power projects);
- the national energy master plan; and
- the master plan for the development of infrastructure for reserve and supply of petrol, oil and gas.

While the national overall master plan is being prepared at the time of writing, the Prime Minister has recently issued the following:

- the national power development master plan for 2021–2030, under Decision 500/QD-TTg, dated 15 May 2023 (the **PDP8**);
- the national energy master plan for 2021–2030, under Decision 893/QD-TTg, dated 26 July 2023 (the **Overall Energy Master Plan**); and
- the master plan for the development of infrastructure for reserve and supply of petrol, oil and gas for 2021–2030, with a vision to 2050, issued under Decision 861/QD-TTg, dated 18 July 2023 (the **Petroleum Infrastructure Master Plan**).

In general, the Overall Energy Master Plan sets out a general framework and key content for other energy-related master plans, including the Petroleum Infrastructure Master Plan and the PDP8. According to the Overall Energy Master Plan, Vietnam plans to import 15.7–18.2 billion m³ of LNG (per annum) by 2030, and 10.6–12.2 billion m³ (per annum) by 2050 (the reduced figure over time reflecting an intention to convert some LNG power plants to other forms of fuel, such as hydrogen, or retire them).

Chart 1 – Gas market and LNG import forecast for Vietnam



It appears that the Petroleum Infrastructure Master Plan supersedes certain content in the gas master plan on LNG infrastructure. In particular, the Petroleum Infrastructure Master Plan contains updated information regarding existing LNG terminals (construction stage); and new and upgraded LNG projects (see Appendices VIII and X of the Petroleum Infrastructure Master Plan). Tables 1 and 2 set out key current and coming LNG storage facilities in Vietnam, and Table 3 sets out key pipeline projects according to the Petroleum Infrastructure Master Plan.

Table 1 – LNG storage facilities to continue according to the Petroleum Infrastructure Master Plan

No.	Name of project	Location	Capacity (thousand m ³)	Output (million m ³ per year)	Expected operation period	Notes
1.	Hai Linh Vung Tau LNG storage and regasification facilities	Ba Ria-Vung Tau	220	3.4	2023	LNG terminal in Cai Mep Industrial Zone (Hai Linh LNG Terminal): the terminal is being developed by Hai Linh Energy Joint Stock Company, licensed in accordance with the Investment Law regime. Hai Linh LNG Terminal has finished construction and is undergoing testing. It is expected to be put into operation in 2022.
2.	Thi Vai MMTPA LNG 1 storage facilities	Ba Ria-Vung Tau	180	1.0	2023	Thi Vai LNG terminal: the first of its kind in Vietnam, it is being developed by PVGas (a Vietnam State-owned enterprise (SOE)). Construction started in October 2019, with the EPC contractor being Samsung C&T and PTSC. On 10 July 2023 the facility received its first gas.
3.	Northern LNG storage facilities (Phase 1)	Hai Phong	50	0.7	2026	Nam Dinh Vu LNG terminal: it was added to the gas industry development master plan by the Prime Minister in 2020. The developer is reported to be ITECO, a Vietnamese company. Public media has reported that Japan Petroleum Exploration signed a share purchase agreement with (or for shares in) ITECO in December 2021, showing a clear appetite to participate in Vietnam's rising LNG market.
	Northern LNG storage facilities (Phase 2)		30		2026 – 2030	

Table 2 – LNG storage facilities to be built and/or expanded according to the Petroleum Infrastructure Master Plan

No.	Name of project	Output (million m ³ per year)		
		2021 – 2025	2026 – 2030	2031 – 2050
I Northern Region			0.5 – 1	1 – 3
1.	LNG storage facilities in Hai Phong, Thai Binh supply for industrial uses		0.5 – 1	0.5 – 1
II Northern Central Region			0.5 – 1	1 – 3
1.	LNG storage facilities in Thanh Hoa, Ha Tinh, Thua Thien Hue		0.5 – 1	0.5 – 1
III Southern Central Region			5 – 6	10 – 18
1.	Lien Chieu, Da Nang LNG storage facilities		0.5 – 1	1
2.	Son My (Binh Thuan) LNG storage facilities integrated with Son My power plants		3.6	6
3.	Son My (Binh Thuan) LNG storage facilities supply for industrial uses		1	1
4.	LNG storage facilities in Thanh Hoa, Ha Tinh, Thua Thien Hue			6 – 10
III Southeastern Region			3 – 5	3
1.	Thi Vai LNG storage facilities expansion		2	3
2.	LNG storage facilities in Ba Ria – Vung Tau, Long An		1 – 3	
III Southwestern Region			1 – 3	
1.	Southwestern LNG storage facilities (FSRU/onshore) (in Ca Mau, Kien Giang)		1 – 3	
Total			10 – 16	15 – 23

Table 3 – Gas pipeline projects to be built and/or expanded according to the Petroleum Infrastructure Master Plan

No.	Name of project	Forecast output (million m ³ per year)	Length (km)
I 2021 – 2025 period			
1.	Pipeline from the Thi Vai LNG terminal to Phu My Gas Distribution Center (GDC)	6.5	10
2.	Pipeline from the LNG storage at Cai Mep Industrial Zone to gas distribution system (GDS) station at Phu My 2 Industrial Zone to supply industrial uses in Phu My area	2.5 – 4	8 – 13
3.	Pipeline from the LNG storage at Cai Mep Industrial Zone to GDS station at Long Son to supply industrial uses	2.5 – 4	10 – 14
4.	Expansion of pipelines to supply uses in Southeastern Region	0.5 – 3	130 – 150
5.	New and expanded low-pressure pipeline system to distribute for usage in Dong Nai, Ho Chi Minh City, Ba Ria – Vung Tau	0.1 – 0.7/pipeline	
II 2026 – 2030			
Northern Region			
1.	Hai Phong – Thai Binh pipeline	1 – 3	60
2.	Pipeline from onshore receiving point in Thai Binh to user	0.2 – 3	
3.	Low-pressure pipeline system to distribute for usage in Northern Region	0.1 – 0.5/pipeline	
Central Region			
1.	Pipeline from GDC at Tam Quang to Industrial Zones in Quang Nam	0.6 – 0.9	10 – 15
2.	Pipeline from GDC at Dung Quat to Dung Quat Industrial Zones	0.7	10 – 15

No.	Name of project	Forecast output (million m ³ per year)	Length (km)
3.	Pipeline system from Quang Tri/Thua Thien Hue gas treatment plant to nearby user	6.5	
4.	Pipeline system from Northern Central Region LNG (Thanh Hoa, Ha Tinh, Thua Thien Hue) storage facilities to power plants and user	6 – 9	
5.	Pipeline system from Southern Central Region LNG (Son My – Binh Thuan; Lien Chieu – Da Nang; Phu Yen, Khanh Hoa, Ninh Thuan) storage facilities to power plants and user	0.5 – 3/pipeline	
6.	Son My – Southeastern LNG pipeline	9	
7.	Low-pressure pipeline system to distribute for usage in Central Region	0.1 – 0.3/pipeline	
Southeastern Region			
1.	GPP2 to Thi Vai LPG pipeline	0.5 – 1	28
2.	GPP2 to Thi Vai Condensate pipeline	0.5 – 1	28
3.	Thi Vai to user Condensate/LPG pipeline	0.5 – 1	18
4.	Connecting pipeline between Southeastern Region to user in Ba Ria – Vung Tau	1 – 2	18
5.	Pipeline distributes natural gas/LNG regasified to user, Ba Ria – Vung Tau, Dong Nai, Binh Duong, Long An, Tien Giang Industrial Zones	0.5 – 5	

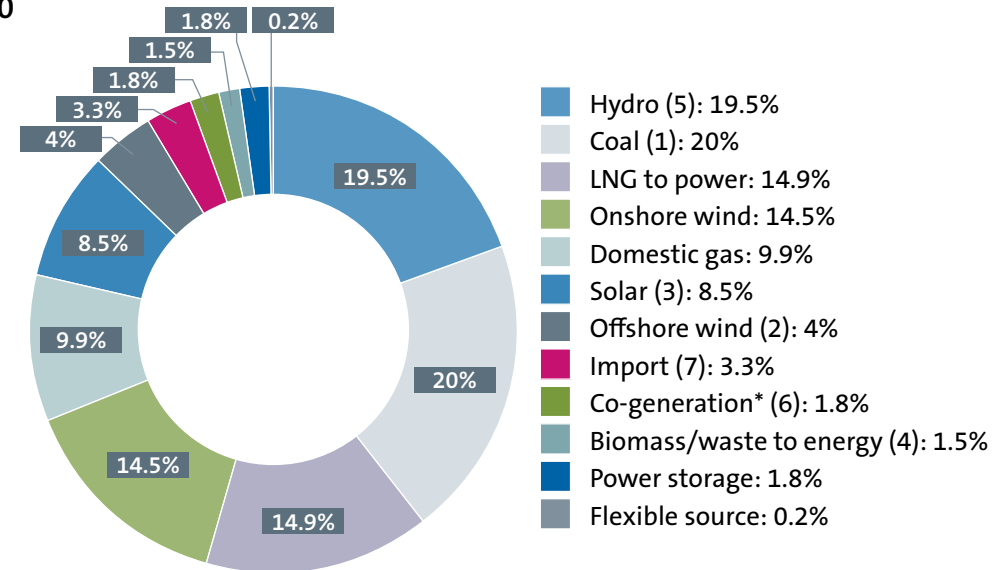
No.	Name of project	Forecast output (million m ³ per year)	Length (km)
6.	Connecting pipeline between Southeastern Region to Southwestern Region	2 – 5	
7.	New and expanded low-pressure pipeline system to distribute for usage in Southeastern Region	0.1 – 0.7/pipeline	10 – 15
Southwestern Region			
1.	Pipeline system from Southwestern Region LNG storage facilities to power plants and user	1 – 3	
2.	Pipeline system from Ca Mau gas treatment plant to nearby user	0.5 – 5	
3.	Low-pressure pipeline system to distribute for usage in Southwestern Region	0.1 – 0.3/pipeline	
III 2031 – 2050			
1.	Pipeline to user in Northern Region (Hai Phong – Hai Duong – Bac Giang – Hanoi – Vinh Phuc)	0.5 – 5	
2.	Pipeline from onshore receiving station (LFS Tien Hai) to user in Thai Binh area	1.5 – 2	
3.	Low-pressure pipeline system to distribute for usage in local areas	0.1 – 0.7/pipeline	

LNG AND VIETNAM'S POWER DEVELOPMENT STRATEGY

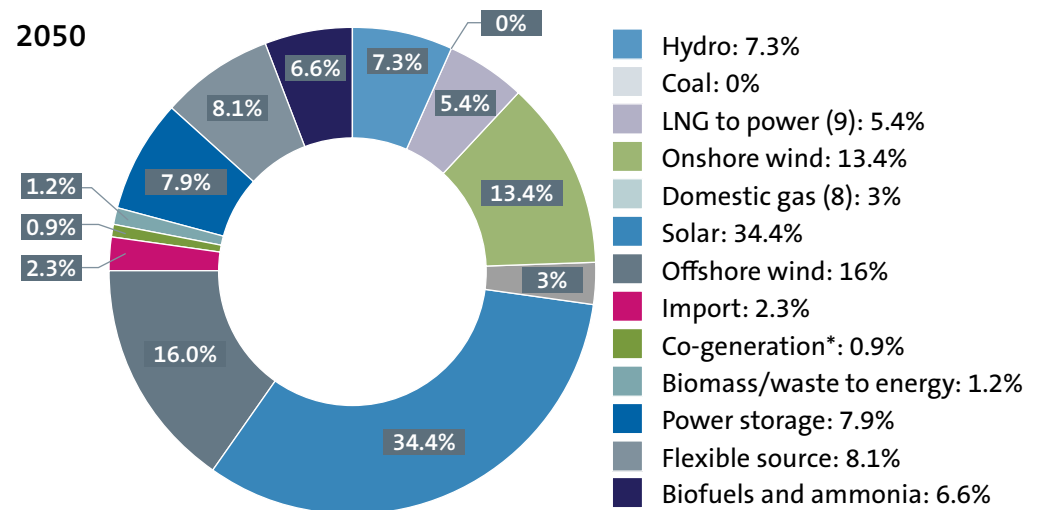
Under the PDP 8, LNG gas-fired power plants will account for around 15% of Vietnam's total power capacity by 2030.

Chart 2 – Power source structure by 2030 and 2050 under the PDP 8

2030



2050



The PDP8 approved implementation of 17 gas-fired power plants that will use imported LNG as follows:

Table 8 – LNG-to-power project under the PDP8

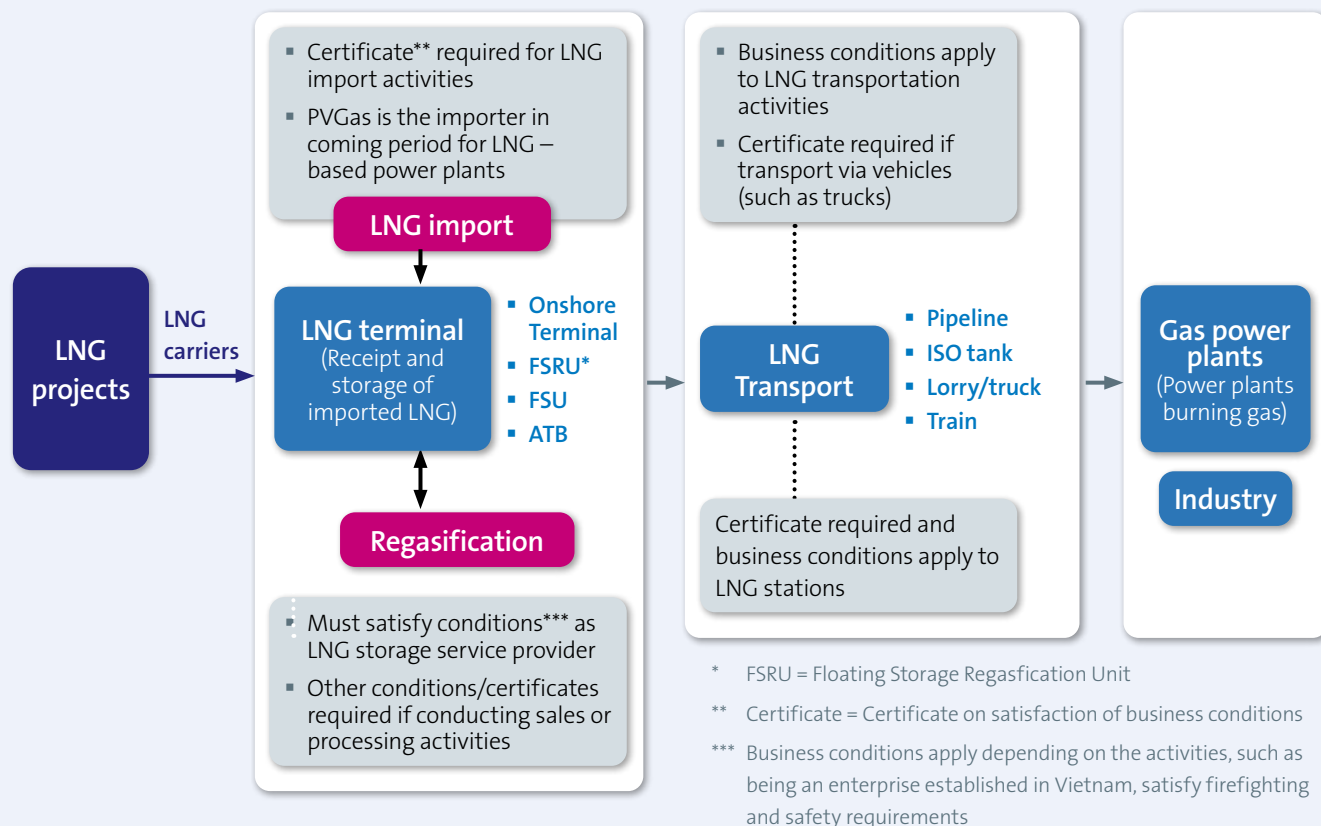
No.	Name of project	Capacity (MW)	Notes
2021 – 2030			
1.	Quang Ninh	1,500	A consortium of Marubeni, PVPower, Tokyo Gas and Colavi was selected to be the project's investors in 2021.
2.	Hai Lang Phase I	1,500	A consortium of T&T Group, Hanwha, KOGAS and Kospo was approved as this project's investors in 2021.
3.	Ca Na	1,500	No investor selection process yet.
4.	Son My II	2,250	Using imported LNG from Son My terminal. AES as investor.
5.	Son My I BOT	2,250	Son My 1 LNG power plant with total capacity of 2,250MW, using imported LNG from Son My terminal. The project has been granted to EDF, Sojitz, Pacific and Kyushu Electric Power, to develop as a build-operate-transfer (BOT) project.
6.	Nhon Trach 3 and 4	1,624	Nhon Trach 3 and 4 LNG power plant with total capacity of around 1,500MW, using imported LNG from Thi Vai terminal. These projects are currently granted to PVN/PV Power. These projects are the most advanced in overall progress.
7.	Hiep Phuoc Phase I	1,200	
8.	Long An I	1,500	Converted from coal-fired power project to LNG-fired power project, as approved by the Prime Minister in August 2020.
9.	Bac Lieu	3,200	Delta Offshore Energy Pte.Ltd (Singapore) is currently named this project's investor.
10.	Quang Trach II	1,500	Approved for conversion from coal to LNG.
11.	Nghi Son	1,500	
12.	Thai Binh	1,500	
13.	Quynh Lap/Nghi Son area (exact location to be determined)	1,500	Potential locations used as spares, in case the other projects are behind schedule or face implementation difficulties.
14.	Thai Binh, Nghi Son, Nam Dinh, Quynh Lap, Vung Ang, Chan May, Mui Ke Ga, Hiep Phuoc 2, Tan Phuoc, Ben Tre, Ca Mau	N/A	
2031 – 2035			
1.	Long Son (delayed schedule)	1,500	In national power development plan 7, Long Son was planned for 2025. However, the PDP8 has moved it to 2031– 2035. There is no particular information as to the reason.
2.	Long An II	1,500	Converted from coal-fired power projects to LNG-fired power projects, as approved by the Prime Minister in August 2020.

LNG projects – potential investment considerations

LNG TO POWER CHAIN AND BUSINESS CONDITIONS

The below chart demonstrates a typical business model for an integrated LNG project, in which LNG imported by sea is received and stored at LNG terminals before being regasified and transported via pipelines to power plants.

Chart 3 – A typical LNG value chain

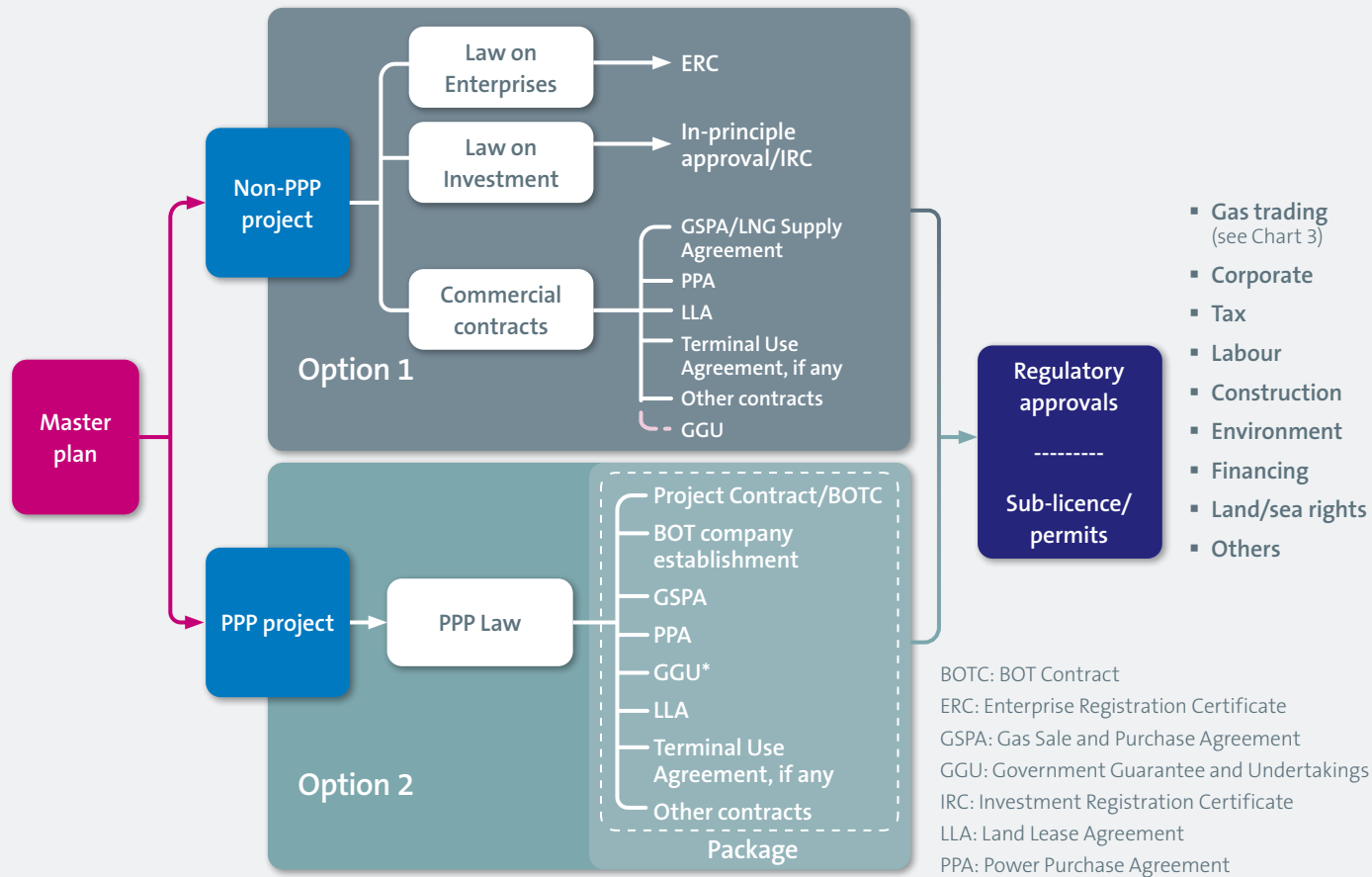


THE INVESTMENT PROCESS AND POTENTIAL STRUCTURE

In the absence of a legal instrument stipulating otherwise, an investor may pursue development of an integrated LNG project, or a part of the project chain, using the ‘regular’ direct investment pathway, similarly to many other types of foreign investments in Vietnam; or by using a PPP structure designed primarily to attract investment in the infrastructure sector. It seems possible that one sub-project could be structured as a PPP project (eg the power plant component) and other sub-projects be structured as non-PPP projects (eg terminals and pipeline components). A potential example of this is the case of Son My – the terminal is under development as a non-PPP project by AES and PV Gas, and the downstream Son My II thermal power plant is expected to be a PPP (BOT) project developed by AES. Although Resolution 55 stated it is encouraged that energy investment projects be implemented in the PPP form, including BOT, it appears that the PPP form is not currently in favour; the Government seems to prefer LNG-to-power projects be independent power producers.

The below chart shows, at a high level, the key steps required to implement an LNG project in Vietnam, in the form of either a PPP or non-PPP project. For further detailed analysis of the PPP investment form, please see our [publications on the PPP Law](#) and its [implementation regulations](#).

Chart 4 – Potential process for an integrated LNG project



GGU (*): The PPP Law provides a specific regulatory pathway to seek government guarantees and support, though now on a limited basis. Outside the PPP regime, there are limited precedents for government support. So far, we are aware of only two cases where the Government has provided GGU for megaprojects not carried out in PPP form. In another non-PPP, the Government issued a guarantee for the loan obtained by the project company (for repayment obligations only). In recent times, bidding documents for specific power projects have stated that no government support will be given.

The underlying legal basis used to develop potential LNG-to-power projects in Vietnam has a substantial impact on the form and substance of key project documents underpinning the project in question. If investors develop a project as a non-PPP project, it will be developed under the general Law on Investment and Law on Enterprises, rather than specific PPP regulations that include BOT projects. Historically, large-scale power projects instigated and developed by the private sector with foreign investment have almost all used the BOT form of investment, meaning there is little meaningful precedent for projects on the scale of a typical LNG to power project to proceed under the 'general investment' regulations. A critical implication of not using a PPP form is that there will likely be no concession agreement allocating risk between the investors and the Vietnam Government in relation to the project. In addition, it is generally accepted that there is greater flexibility for a BOT project to negotiate a bespoke, bankable power purchase agreement (PPA), with the ability to point to multiple previous examples accepted by international investors and lenders over the past 20 years.

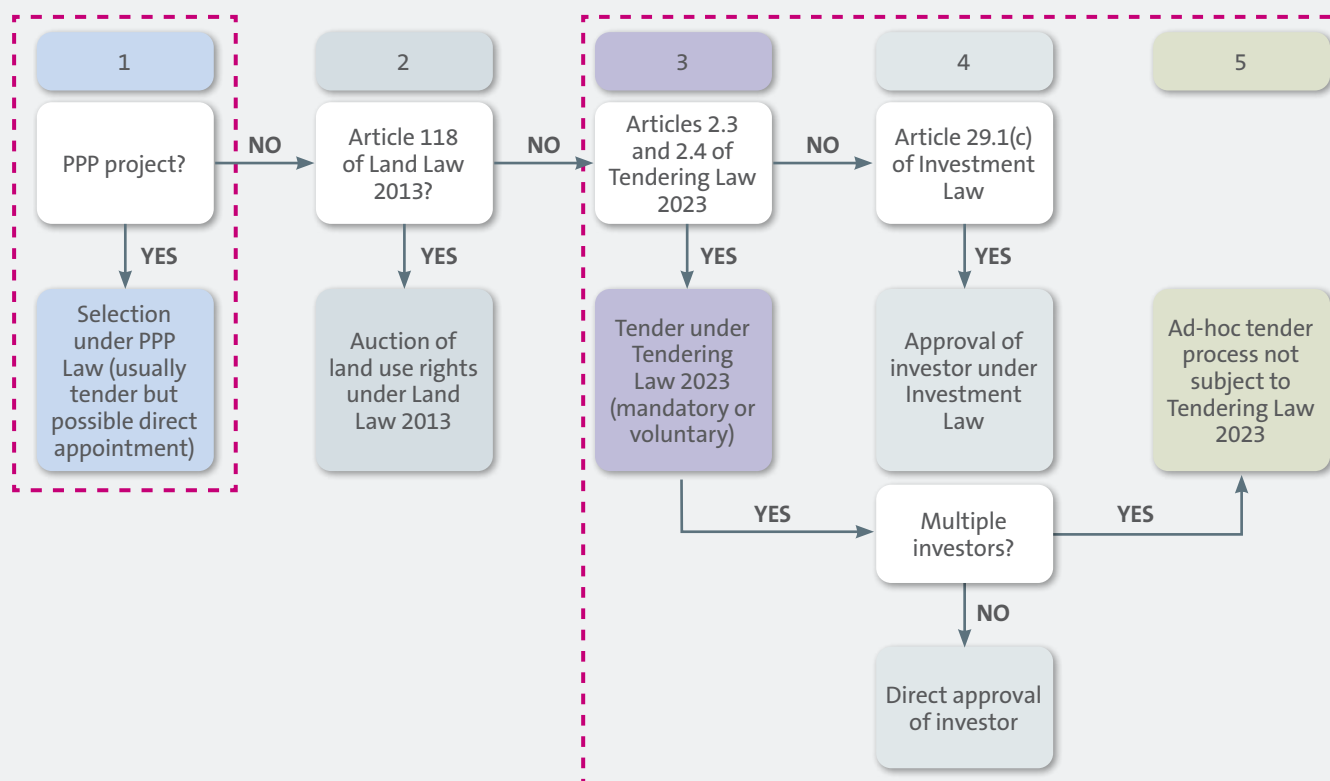
By contrast, it is likely the PPA of a non-PPP LNG-fired power project will follow the standard PPA applicable to power projects with installed capacity of more than 30MW connected to the national power system issued under Circular 57/2020/ND-CP by the Government, dated 31 December 2020, on the method for calculating the power-generating tariff and PPA (**Circular 57**). This standard form PPA lacks depth and clarity in certain critical areas that affect overall bankability (eg take-or-pay, termination rights and payments, lenders' step-in rights, force-majeure). For further details, please see our [Insight on Circular 57](#).

THE INVESTOR SELECTION PROCESS

Under the current law, investors can be selected by the following route:

- (i) regarding a PPP project, a tendering process in accordance with the PPP Law and its guiding regulations (**method 1**);
- (ii) regarding non-PPP projects:
 - an auction of land use rights (**LUR**) in accordance with the Land Law in certain cases stipulated thereunder (**method 2**);
 - a tender under the Tendering Law (**method 3**), being either:
 - a mandatory tendering process under the Tendering Law in accordance with specialised laws or regulations on socialisation of investment; or
 - a tendering process under the Tendering Law where the competent authority voluntarily chooses to apply such a process.
 - a process under the Law on Investment through which the investor is selected and approved at the same time as the project's investment policy approval (required for an LNG-to-power project) is issued (**method 4**). This applies to cases where LUR auctioning under the Land Law or tendering under the Tendering Law does not apply. Where there are more than two investors interested in the project, tendering may apply, though it is not required that the tender follow the Tendering Law (except where more than one investor proposes to develop their project(s) in the same location within a statutory timeframe).

Chart 5 – Investor selection methods



Notably, the Government is currently working on a Decree (implementing the Tender Law) specifically to regulate selection of investors in the power sector for non-PPP projects. Several drafts of this Decree have been made public, though it is unclear when it might finally be issued. Fundamentally, the Decree's purpose is to provide an efficient and specialised investor selection regime for non-PPP power projects. In short, it says that investors for power projects will be selected using one of the following methods:

- open bidding (generally expected to be the preferred standard approach for investor selection);

- competitive negotiation;
- appointment of investors; or
- another method, as determined by the Prime Minister, if the projects have special characteristics that prevent the application of the other methods.

We expect that the Draft Decree will be subject to significant changes. Interested power sector investors are advised to follow its development and issuance closely.

Key issues

Below are some of the key issues when considering investment in the LNG sector in Vietnam. (Some are common across most large-scale infrastructure projects in Vietnam and therefore not specific to LNG.)

THE LACK OF A LEGAL FRAMEWORK

Given the LNG market is relatively new in Vietnam, the regulations governing the sector are still in the early stages of development. In addition to general regulations applicable to foreign investment, such as the Law on Investment, investment in LNG trading in Vietnam is currently subject to Decree 87/2018/ND-CP of the Government, dated 15 June 2018, as amended from time to time (together **Decree 87**). Decree 87 sets out the conditions, rights and obligations regarding different business activities involving LNG, liquefied petroleum gas and compressed natural gas, including the importation and distribution of such gas products. Under Decree 87, enterprises conducting gas trading activities, such as gas import and gas distribution activities, must obtain a ‘certificate’ from the authorities, certifying that certain conditions have been met before they commence. Broadly, the conditions for conducting LNG trading activities as set forth in Decree 87 are general and high level. They require further regulations to be implemented in practice.

MASTER PLANS AND IMPLEMENTING REGULATIONS

Any LNG-to-power project must be consistent with the overarching power sector masterplan before it can be developed. The master plan approval process has been in ‘go slow’ mode in recent years, partly due to a new Law on Planning that came into effect on 1 January 2019. It contains some ambiguities,

such as MOIT’s authority during the planning appraisal process, and the timeline and process to add new projects to existing master plans. Decree 37/2019/ND-CP of the Government, dated 7 May 2019, on implementing the Law on Planning does not, unfortunately, entirely resolve these ambiguities.

In May 2023 the PDP8 was issued after a long delay, with multiple drafts having been circulated for consideration. Ostensibly covering 2021–2030, with a vision to 2050, the delay finalising the PDP8 means that Vietnam is left with the target of doubling its current generation capacity in around seven years. On the positive side, though, the PDP8 is, uniquely, a master plan with built-in flexibility and a dynamic nature. Unlike prior power master plans, it does not purport to be set in stone, and permits – in theory, at least – the Government to adjust plans to technical and commercial realities without having to go through the time-consuming and uncertain process of formally amending the master plan. Even so, the PDP8 needs supporting implementing regulations to be practically applied. Specifically, key implementing steps include a PDP8 Implementation Plan, an amended Electricity Law and the above-mentioned Decree on investor selection for power projects. While all are in draft form at the time of writing, it is quite possible that delays will continue to frustrate rapid rollout of the PDP8 and its planned LNG-to-power projects.

FOREIGN OWNERSHIP CAPS, AND THE RIGHT TO IMPORT AND SELL LNG IN VIETNAM

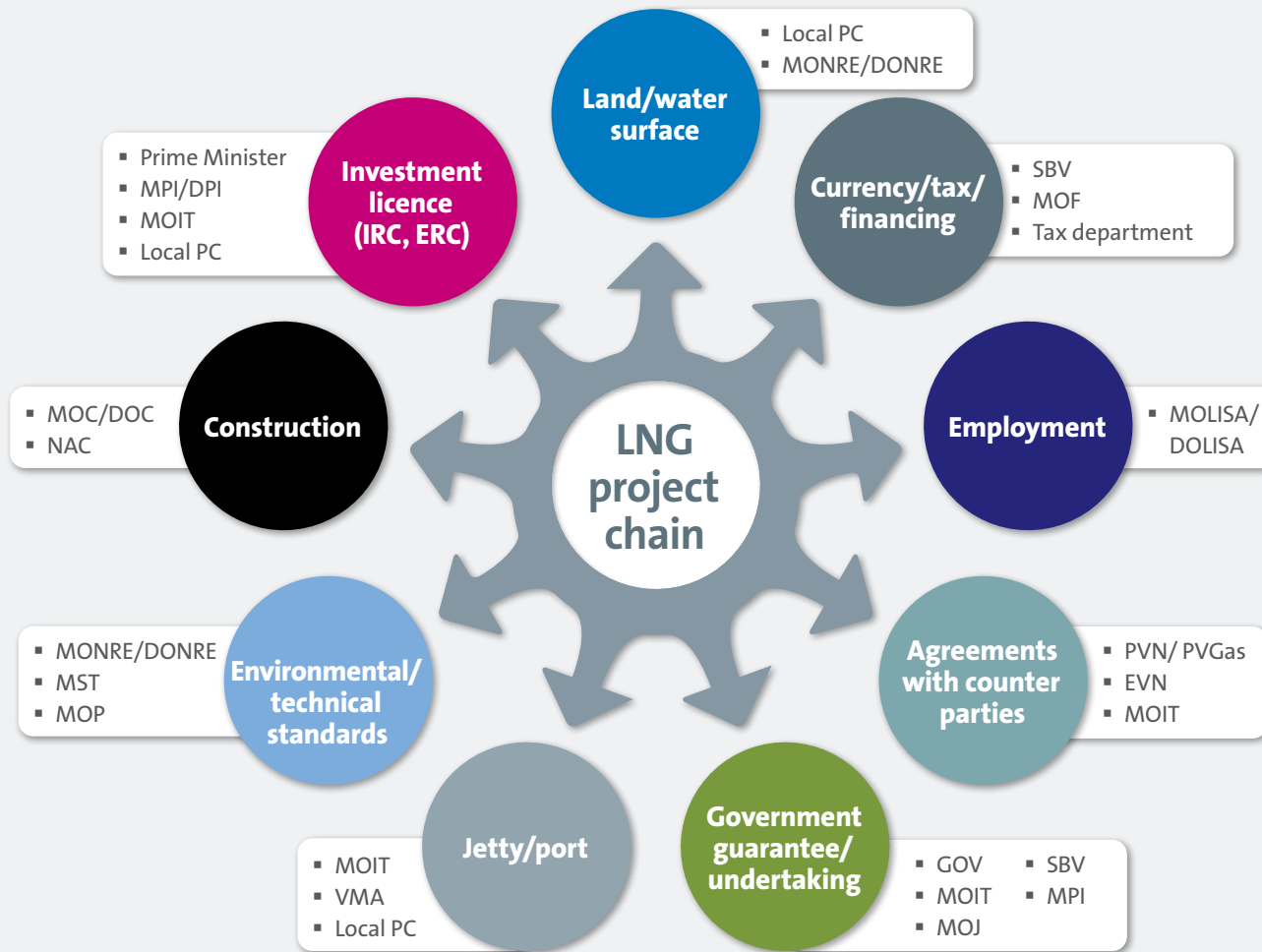
Generally, there is no limitation on foreign ownership regarding the main activities associated with LNG projects, including LNG regasification facilities, pipeline transportation of regasified LNG, and LNG-based power plants. However, investors should be mindful that foreign ownership limitations may apply as to certain ancillary activities. For example, foreign investment in a company engaging in LNG tanker towing services is capped at 49%. Accordingly, LNG investors should check whether a foreign ownership cap may apply to any of their proposed business activities.

As for the importation and distribution of LNG, Vietnamese law does not impose foreign ownership restrictions, or expressly limit the right of foreign investors and foreign invested enterprises in Vietnam to import and distribute LNG. Therefore, legally speaking, it is possible for the latter to import LNG, regas and/or then distribute/supply gas in Vietnam. However, gas import, distribution and/or supply are subject to technical conditions and require sub-licences be obtained. At the time of writing, it appears that only PetroVietnam Gas JSC (**PVGas**) has been licensed to carry out such activities in Vietnam. Also, as a matter of practice, it is important to note that a policy decision regarding two specific gas-fired power projects in Vietnam has been issued by the Prime Minister, which suggests PVGas is the designated importer of LNG bound for LNG-based power plants in Vietnam in the coming period. Although it is not clear from the decision how long this will apply and whether this policy only addresses these two specific gas-fired power projects (which, in our view, is likely the case) or if it also covers other gas-fired power projects, foreign investors eager to carry out LNG import activities in the near future would probably need to partner with PVGas, or obtain approval or endorsement from the Prime Minister, to participate in such activities.

LENGTHY REGULATORY APPROVAL PROCESS FOR THE FULL PROJECT CHAIN

Unlike more developed LNG markets such as Japan and South Korea, which already have ample LNG infrastructure and an assortment of domestic LNG consumers in place, Vietnam’s LNG sector will require substantial investment in all aspects of the LNG project chain, including the development of in-country transportation facilities and LNG-based power plants, to ensure a sustainable long-term LNG market. Investors in Vietnam’s LNG sector must therefore be prepared for the complex and time-consuming regulatory approval process associated with each component of the LNG-to-power chain, which must be completed before an LNG project chain can be implemented. In addition to the regulatory approvals required

Chart 5 – Regulatory approvals and authorities involved



MPI: Ministry of Plan and Investment
 MOIT: Ministry of Industry and Trade
 MOC: Ministry of Construction
 MOLISA: Ministry of Labour, Invalids and Social Affairs
 MONRE: Ministry of Natural Resources and Environment
 MST: Ministry of Science and Technology
 MOF: Ministry of Finance
 MOJ: Ministry of Justice
 MOT: Ministry of Transport

MOT: Ministry of Tax
 SBV: State Bank of Vietnam
 PC: People Committee
 DPI: Department of Plant and Investment
 DOLISA: Department of Labour, Invalids and Social Affairs
 DONRE: Department of Natural Resources and Environment
 DOC: Department of Construction
 NAC: National Acceptance committee
 VMA: Vietnam Maritime Administration

under local law mentioned below, it is important to note that lenders typically require projects to comply with their own principles and policies (such as equator principles, in addition to local laws on the environment).

PRICE PASS-THROUGH

Given the volatility of international LNG prices, it is important for LNG project investors to have assurances the price fluctuation risk they take from wholesale suppliers will be passed through to end-users. Vietnamese laws currently lack guidelines on LNG pricing, and the price issue seems to be addressed differently on a case-by-case basis.

In terms of policy, Resolution 55 of the Communist Party states that Vietnam will encourage development of integrated projects, from supply and storage of fuel to construction of power plants, on the basis of power prices determined via a tendering process. However, it remains unclear how, and on what basis, tendering prices will be regulated in practice.

Under current regulations, Circular 57 at least provides some limited scope and legal basis to argue for a fuel price pass-through mechanism. According to the formula to calculate the power generating tariff, variations in the fuel price and the main fuel transport price (which will take into account the weighted average price and quantity of the fuel) are allowed for when calculating the PPA tariff of the power plant at the time of payment (please see our [Insight on Circular 57](#)). Further, Article 3 in the model PPA attached to Circular 57 provides that:

"for power plants having stipulations on fuel prices and offtake fuel quantity being permitted by competent state agencies to be added to the power purchase contract, the Buyer and the Seller shall add such contents accordingly."

Though not entirely clear, this provision suggests that the PPA can have a separate provision on the relationship between the power generating tariff and the fuel price (eg the gas price),

as long as such a provision is permitted by the competent authorities.

As a matter of practice, a decision of the Prime Minister on the LNG sector approves, in principle, that the price of LNG imported for Nhon Trach LNG power projects will be passed through to the electricity tariff. However, it is uncertain whether this price pass-through mechanism will serve as a precedent for future LNG projects. For the Bac Lieu LNG Project, effectively the first LNG-to-power project to start its development by the private sector under a non-PPP investment form, the price will purportedly be fixed. Public sources suggest that Delta Offshore Energy Pte. Ltd (as the project's investor) has committed to developing the project with a competitive price reflecting reasonable costs, estimated at around 7 US cents/kwh. However, until now – several years later – the price has not been agreed and the PPA is still being negotiated.

The whole sector is on the lookout for more specific guidance from MOIT and any development of the price pass-through mechanism in the upcoming period.

FOREIGN CURRENCY CONVERTIBILITY AND AVAILABILITY

As stipulated under Vietnam's Ordinance on Foreign Exchange Control, transactional prices between Vietnamese companies generally must be quoted and paid in Vietnamese dong without reference to foreign currency. As a result, an LNG project company incorporated in Vietnam may be exposed to losses when selling LNG (or the regasified LNG or power at a later stage in the downstream project component) to Vietnamese buyers during times of devaluation of the dong (ie compared with selling the LNG or gas in US dollars). There is also a risk that the availability of US dollars in the domestic market may be limited at times, which presents a challenge for investors who want to convert dong proceeds into US dollars.

While some high-profile foreign-invested projects in the past have been able to obtain guarantees from the Government regarding foreign currency availability, it has become increasingly reluctant to provide such guarantees for new projects.

LAND USE RIGHT AS SECURITY

The Law on Land allows foreign-invested enterprises to mortgage both their LUR in Vietnam and the assets that are attached to that land for financing purposes. However, the LUR can only be mortgaged where the land rent due to the authorities has been paid in full and up front. This means that for LNG project companies that pay land rent annually, or are exempted from land rent as part of project incentives, only assets attached to land can be mortgaged. Therefore, if lenders require an LNG project company to mortgage both LUR and the assets attached thereto, the company will need to pay the land rent in full and up front.

In addition, at law, LUR cannot be mortgaged to a foreign lender.

In some previous projects, these issues have been resolved as part of the Government's guarantee and undertaking, where it has allowed the mortgage of rental-free land and a local lender acting as agent for foreign lenders to hold the LUR as part of the security package for the project. However, it is not clear whether this approach can be taken in future projects.

Further complications arise regarding granting security for projects that are allocated sea use rights under Decree 11/2021/ND-CP, dated 10 February 2021 (**Decree 11**). Under Decree 11, there is no land use right certificate granted to investors over such sea areas; however, such a certificate is compulsory for registration of a mortgage over the LUR and assets attached to land. The Government is also drafting a decree to amend Decree 11 but there is currently no clear picture of this issue will be resolved.

GOVERNMENT EVENTS

Another common concern that foreign investors have is political risks, such as war, widespread strikes, repudiation of contracts, and the expropriation or nationalisation of assets. To mitigate such risks, some high-profile foreign-invested projects have been able to obtain government assurances that the investors will be compensated if an adverse political event occurs. For example, for some previous large BOT power plant projects, the underlying BOT contract with the Government gives investors the right to terminate upon the occurrence of certain political events, and to be compensated by the Government for such termination. Foreign investors in LNG projects may also attempt to include government and political risk provisions in their project agreements, which may be limited in the case of PPP projects where a standard form of project agreement is used.

GOVERNING LAW: VIETNAMESE LAW VS FOREIGN LAW

Foreign investors often prefer a well-developed foreign law, such as English law or Singaporean law, to be the governing law of the key project agreements, while Vietnamese counterparties (in particular, SOEs such as PVN, PVPower, PVGas and EVN) tend to strongly advocate for Vietnamese governing law. Whether an LNG project investor will be able to have its key project agreements governed by a foreign law will depend heavily on the negotiating power of such an investor and any restrictions that apply, such as under the PPP Law. In the Bac Lieu case, it is understood that EVN is strongly resisting having the PPA governed by foreign law unless there is clear guidance allowing otherwise from the Government – something that is very unlikely.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Vietnam is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, whereby it has agreed to allow enforcement of arbitral awards made in, or by, an arbitral tribunal of a country that is also a party to the New York Convention. However, to be enforced in Vietnam, a foreign arbitration award must be subject to the recognition and approval of the courts of Vietnam. Under the Civil Procedure Code of Vietnam, courts have the authority to refuse to recognise and enforce a foreign arbitral award in Vietnam if, in their view, it fails to comply with ‘the fundamental principles of Vietnamese law’. Again, since the meaning of this term is not clearly defined, it gives Vietnamese courts significant discretion in deciding whether to enforce a foreign arbitral award. LNG investors need to take this issue into consideration when drafting project agreements’ dispute resolution provisions, as well as preparing alternative solutions in case a foreign arbitral award cannot be enforced.

INVESTIGATION INTO THE POWER SECTOR

Around mid-2023 the Government conducted a number of inspections of the power sector and its key players. These included one by the Government Inspectorate into non-compliances of competent authorities in exercising powers and duties concerning development and management of the revised power development plan 7 (notably in relation to a number of solar and wind projects in several provinces in Vietnam); and an inspection by MOIT of operational inefficiencies, regulatory non-compliance and critical infrastructural delays by EVN and its affiliated entities. While the inspection findings identified non-compliance by some investors curing the development of certain power projects, their primary focus was on actions of the competent authorities regulating and administering the power sector, rather than investors. In addition, short-term blockage and tension within the governmental agencies and EVN is expected, given that further handling of the non-compliances will require time and resources, leading to delay and reluctance around the decision-making process within the Government. As a result, we expect that there will be ongoing delays with licensing processes for power projects (including LNG-to-power projects) – something that will ultimately ramp up the pressure to develop projects quickly once approvals are in place, in order to meet the country’s power needs.

What’s next?

With 22,400 MW of LNG-to-power projects to be put into operation in Vietnam this decade, it is clear that LNG will play a key role in its energy transition journey. However, the complexity and novelty of these projects, coupled with the tumultuous global gas trading markets and the new project development paradigms in Vietnam, mean there are major challenges ahead for the Government, project sponsors and lenders. Still, at this relatively early stage of the sector’s development, there are certain critical areas interested parties should focus on to determine and assess opportunities.

First, interested foreign investors should closely follow the status of the PDP8 Implementation Plan (in draft at the time of writing), and of various additional implementing regulations expected to be issued in the near future that are the key to progress in the power sector: eg the amended Electricity Law; the amended Land Law; the Law on Tendering 2023 (effective from 1 January 2024); the new decree amending Decree 11 on allocation of sea use rights; and the Decree on selection of investors applicable to power projects. These regulations will shape fundamental project issues, including which will be prioritised, how investors will be selected, what finance structures will be supported and what offtake arrangements might be allowed.

Second, the relevant authorities are preparing different master plans contemplated under the new Law on Planning and various resolutions implementing the Law on Planning. Several important master plans are being drafted and are expected to be finalised in the near future. These (such as the general national master plan (quy hoạch tổng thể quốc gia) and marine spatial master plan) will likely have a major impact on the investment in LNG. Therefore, potential investors should pay close attention to their development.

Third, investors are advised also to pay close attention to developments regarding the most advanced LNG-to-power projects current under private sector development, such as the Bac Lieu, Long An, Hai Lang and Quang Ninh LNG-to-power projects. In practical terms, these projects will serve as precedents for subsequent ones.

If you would like to discuss, or require assistance with, the issues we have raised, please contact any of the people below.





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