Decree 135/2024/ND-CP on Rooftop Solar Power

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30 YEARS | FRASERS LAW COMPANY

Following the issuance of the National Power Development Plan for the period 2021 to 2030, with a vision extending to 2050 (***PDP VIII***), and its Implementation Plan, the Government of Vietnam and the relevant authorities have been actively speeding up the development and finalisation of the regulatory framework for the energy sector, targeting timely implementation of the PDP VIII as scheduled under its Schedule I. The PDP VIII and its Implementation Plan set an ambitious total capacity of 2,600MW for self-produced and self-consumed rooftop solar power by 2030. This total capacity has been allocated to different provinces and municipalities under the Implementation Plan (***Allocated Quota***).

On 22 October 2024, the Government of Vietnam adopted the long-awaited Decree No. 135/2024/ND-CP (***Decree 135***), creating a clearer legal framework and mechanisms for the development of self-produced and self-consumed rooftop solar power (***RTS***) projects, which have been put on hold for a few years after the favourable fit-in-tariff mechanism applicable to grid-connected solar power projects under Decision No. 13/2020/QD-TTg ceased to apply. In this legal update we set out some notable provisions of Decree 135.

Development Models

Decree 135 sets out two models for the development of a self-produced and self-consumed RTS project. Before we go into further details of the two models, it should be noted that the phrase "self-produced and self-consumed" refers to power projects that are implemented by individuals or organisations with a view to provide power for the self-consumption of such individuals and organisations, as opposed to projects whose main objective is to sell the power and earn a profit. The two models include systems that are connected to or physically linked with the national grid (***Grid-Connected Model***), and systems that are not connected to or physically linked with the national grid (***Off-Grid Model***). Each model shall require the relevant consumers to meet a suite of specific conditions and requirements as provided under the decree. Below points out the fundamental distinctions between these two models:

(i) Off-Grid Model: this RTS system model does not feed electricity into the national grid and only serves the relevant RTS consumers' electricity needs. Its generating capacity can be unlimited and is not required to be covered under the Allocated Quota of the relevant province or municipality.

(ii) Grid-Connected Model: this RTS system model gives the consumers an option to sell surplus power and feed it into the national grid. Consumers of this model are required to:

a. ensure that the generating capacity is smaller or equal to the total installed capacity of the existing load;

b. install devices connected to the controlling and supervising system required by the Vietnam Electricity if the project has a capacity of 100kW or higher; and

c. in certain cases, apply for an electricity operating licence and the necessary approval to be included under an approved master plan of power development (save for the case where the capacity has been covered under the Allocated Quota of the relevant province or municipality).

Ownership of RTS systems

The long-debated issue with respect to the ownership of RTS systems appears to have been clarified under Decree 135, where it does not impose an explicit requirement that RTS consumers must own the RTS systems. This gives the RTS consumers an opportunity to merely "lease" the RTS systems from a third party, rather than spending a significant amount of investment for the RTS systems.

Sale of Surplus Power to EVN

For Grid-Connected RTS projects, eligible consumers are permitted to sell to EVN their surplus power of up to 20% of the installed capacity of their respective RTSs system, subject to the following conditions:

(i) the sale price is the average market price of the preceding year; and

(ii) the term of the power purchase agreement is five years from the date the RTS system is put into operation.

The eligible consumers for the purpose of selling surplus electricity include:

(i) consumers being households or private residential properties (***Residential Consumers***) whose RTS systems have a capacity of below 100kW; and

(ii) all Residential Consumers and other organisations and individuals whose RTS systems align with the availability of the Allocated Quota, excluding those RTS systems installed on the rooftops of offices or constructions being public assets.

Allocated Quota

The decree does not require projects developed under the Off-Grid Model to be covered under the Allocated Quota of the relevant province or municipality. The same also applies to Residential Consumers whose RTS systems have a capacity of below 100kW.

Projects with a capacity of at least 100kW will need to be covered under the Allocated Quota if they intend to sell surplus electricity.

Exemption from Electricity Operating License

Consumers of RTS systems are exempted from electricity operating license, save for the consumers of Grid-Connected RTS systems having a capacity of 1,000kW or more and selling surplus electricity to EVN.

Notification Requirement

Off-Grid RTS projects shall notify the competent Department of Industry and Trade (**DOIT**) their capacity and location, local electricity unit, local construction administration office, and fire prevention and firefighting offices prior to installation.

Consumers implementing Grid-Connected Model and having RTS systems with capacity of less than 1,000 kW shall need to make notification to the competent DOIT, local electricity unit, local construction administration office, and fire prevention and firefighting office.

Registration Requirement

Consumers using Grid-Connected Model, having RTS systems with capacity of 1,000kW or more and selling surplus electricity to EVN are subject to registration with the local DOIT to obtain a Development Registration Certificate, which could be revoked in several scenario, among which is the case where the relevant consumer fails to install the RTS system within 60 days as from the installation completion date specified therein.

Investment Incentives

Decree 135 introduces various incentives for the development of RTS projects, including:

(i) Consumers are not required to convert the land usage purpose for the area where the RTS system is located;

(ii) Consumers are entitled to tax and fee-related incentives in accordance with the tax regulations; and

(iii) Consumers of RTS systems developed for households and private residential properties are not required to obtain or amend their relevant business licences.

Overall Observations

Decree 135 has marked a milestone in the development of RTS projects in Vietnam, offering a transparent framework and an encouraging path for sustainable energy initiatives. Together with the recently adopted Decree No. 80/2024/ND-CP on direct sale of electricity between power developers and large consumers, it is clear that the Vietnam's legal framework is evolving in the right direction in order to achieve the country's energy sustainability goals.

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