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SUMMARY OF IMPLEMENTATION ISSUES WITH RENEWABLE PROJECTS IN VIETNAM

With the issuance of the Plan for the Implementation of PDP8, it is expected that more guiding documents will soon be released for the development of new renewable projects. In this context, we revisit specific legal issues highlighted by relevant governmental authorities regarding the implementation of past projects. Our aim is to assist investors in avoiding similar issues in the future. It's important to note that this list is not exhaustive, and the significance of certain issues may be influenced by upcoming regulations.

I. GRID-CONNECTED RENEWABLE PROJECTS

The following list summarizes notable issues raised by the Government Inspectorate of Vietnam regarding the implementation of renewable projects in Vietnam under Notice No. 3116/TB-TTCP (the “**Inspection Results**”).

NO.	ISSUES	DESCRIPTION	RELEVANT LEGAL BASES
Investment registration and approval			
1.	Security deposit for implementation of investment projects	In Vietnam, investors undertaking projects on land leased, allocated, or repurposed by the State must provide a security deposit to ensure project implementation timeline. Inspection Results identified certain projects that proceeded without making this required deposit.	Article 43 of the Investment Law 2020 Article 26.2(c), Decree No. 31/2021/ND-CP Article 26.5 of Decree No. 31/2021/ND-CP
2.	Insufficient capital contribution from project investor	Certain wind and solar power projects are subject to a minimum investor capital contribution ratio. Specifically, investors in these projects must contribute at least 20% of the project's total investment capital. The Inspection Results identified that Investment Registration Certificates were issued for certain solar power projects where the approved investor capital contribution fell below the 20% threshold.	Article 10.3, Circular No. 16/2017/TT-BCT of the MOIT

Land			
3.	Non-compliance land area auctioning and handover process	To accommodate certain power projects, the Vietnam Administration of Forestry instructed local Departments of Natural Resources and Environment (DONREs) to initiate land auction procedures for specific land parcels. However, these auctions proceeded without the Prime Minister's in-principle approval for converting the land use purpose from forestry land to energy construction land, rendering the auction process inappropriate.	Article 117.2 of the Land Law 2013 Article 6.2.(b), Circular No. 14/2015/TTLT-BTNMT-BTP
4.	Project land area exceeding the maximum allowed area for power projects	Wind and solar power projects have a maximum land-use area limitation. Specifically, a solar power project's land area cannot exceed 1.2 hectares per 1 megawatt (MW). The Inspection Results identified that the Ministry of Industry and Trade (MOIT) approved technical designs for certain projects exceeding the 1.2ha/MW maximum threshold. This resulted in the Provincial People's Committee leasing and handing over inappropriate land areas to those power projects.	Article 10.4, Circular No. 16/2017/TT-BCT of the MOIT
5.	Construction implementation prior to land lease/handover from State authorities	Certain project companies violated the law by commencing construction before officially leasing and being handed over the land from State authorities.	Article 12.1 of the Land Law.
6.	Project located within an industrial park without proper registered function for power generation	If a power project is located within an industrial park, that industrial park must have registered power generation as one of its operational objectives/functions. However, there were certain cases where Provincial People's Committees approved power projects to be implemented within industrial parks that had not yet properly registered for power generation. This objective was later supplemented to industrial parks to accommodate the power projects without proper reporting and inspection from the MOIT and submission for consideration by the Prime Minister.	Article 6 and Article 37 of Decree No. 82/2018/ND-CP.

7.	Project located within the national mineral reservation areas	<p>During development for certain projects, a Decree governing the management of minerals in reservation areas was not yet in effect. However, the Ministry of Natural Resources and Environment (MONRE) instructed certain Provincial People's Committees to proceed with project construction within these areas. Additionally, MONRE consulted the Prime Minister to adjust relevant master plans to accommodate project implementation, supposedly "in accordance with the Decree on management of minerals at reservation areas" (which wasn't even issued). This approach contradicts the Law on Promulgation of Legal Documents. The above issue resulted in multiple projects being located within reservation areas for:</p> <ul style="list-style-type: none"> • national minerals, and • exploration, exploitation, processing, and utilization of titanium ores. 	<p>Article 156.1, Law on Promulgation of Legal documents 2015 Article 35.8, Article 152.1 of the Land Law 2013 Article 13.1 of Decree No. 02/2019/TT-BCT Article 3.3 of Decision No. 645/QĐ-TTg Decision No. 1546/QĐ-TTg</p>
8.	Improper adjustments of land-use master plan and conversion of land-use purpose	Several Provincial People's Committees adjusted land-use master plans and purposes in specific areas to accommodate power project construction, bypassing proper consultation with relevant Ministries.	Article 117.2 of the Land Law 2013.
		Several projects were constructed on forestry land without converting the land use purpose to energy land. According to the Inspection Results, certain projects had not completed the conversion by the time of the Government Inspectorate's inspection due to various reasons, including delays in administrative procedures by State authorities.	
9.	Land-related financial obligations	Certain project companies were late in fulfilling land-related tax obligations.	Article 12.7 and Article 170.3 of the Land Law.
Construction			
10.	Unfulfilled conditions for project construction commencement	<p>Certain project companies started construction without meeting legally mandated conditions, such as:</p> <ul style="list-style-type: none"> • Proper handover of land areas from State authorities (please refer to item 5 above); 	Article 107.1(a) and 107.1(c) of the Construction Law 2014.

		<ul style="list-style-type: none"> Approval of construction drawings and designs; or Issuance of a construction permit. 	
11.	Approval on construction inspection results prior to operation and COD recognition.	<p>According to the regulations on construction quality management, power projects are required to:</p> <ul style="list-style-type: none"> (i) Request the National Load Dispatch Center (NLDC) or the Department of Industry and Trade (DOIT) to conduct an on-site inspection upon completion of construction procedures; and (ii) Obtain written approval from the NLDC or DOIT regarding the project's construction inspection results. <p>However, for various reasons, multiple projects failed to meet this requirement before the Commercial Operation Date (COD).</p>	<p>Article 31.4, 32.1 of Decree No. 46/2015/ND-CP</p> <p>Article 123.4 of the Construction Law 2014.</p> <p>Article 3.3 of Decree No. 16/2017/TT-BCT</p> <p>Article 51.1(d) of Circular No. 39/2015/TT-BCT</p> <p>Article 7.2 and 14.1(a) of Decision No. 11/2017/QD-TTg</p> <p>Article 6.2 of Decision No. 13/2020/QD-TTg</p>
Other issues			
12.	Lack of firefighting and prevention documentation	<p>Vietnamese firefighting and prevention regulations mandate that project companies obtain the following approvals before operating a power plant:</p> <ul style="list-style-type: none"> Approval on firefighting and prevention design of the project: This must be applied for and obtained before construction begins; Minutes of acceptance for firefighting and prevention: This must be applied for and obtained after construction is completed but before starting operation; and Acceptance of inspection results on firefighting and prevention: This is issued after an on-site inspection and the issuance of the Minutes of Acceptance. <p>The Inspection Results identified that certain project companies failed to obtain all of these documents before commissioning the project.</p>	<p>Article 31.2(c), Decree No. 46/2015/ND-CP</p>

13.	Environmental Impact Assessment Report	The Inspection Results identified that investment approvals (including IPD and IRC) were issued for certain projects even though they lacked approval for their Environmental Impact Assessment Report (EIAR). Additionally, environmental protection regulations require that the EIAR be updated and re-approved for projects with any significant changes to their environmental impact, including changes to the project location. The Inspection Results found that certain projects failed to update their EIAR upon relocating.	Article 20.1(b), 25.2(dd), Law on Environmental Protection 2014
14.	Non-compliance in adjustment of project's capacity	The Electricity and Renewable Energy Authority (EREA) submitted proposals for increased capacity for multiple projects to the Ministry of Industry and Trade (MOIT) without conducting prior inspections. Additionally, MOIT approved certain projects with capacities exceeding the original proposals submitted by Provincial People's Committees.	Article 20, 25.1(e), Circular No. 43/2013/TT-BCT.

II. ROOFTOP SOLAR POWER (RTS) PROJECTS

The following list summarizes notable issues raised by certain provincial authorities regarding the implementation of RTS projects in their respective provinces. These issues were compiled from various official letters issued by the provincial authorities in recent years.

NO.	ISSUES	DESCRIPTION	RELEVANT LEGAL BASES
Firefighting and prevention			
1.	Lack of approval for firefighting and prevention design	Various RTS projects have begun operation despite lacking essential fire safety documentation, including approval for firefighting and prevention design and acceptance of the design implementation. This issue can be attributed to unclear guidelines and regulations prevailing during the development phase of these projects.	Article 31.2(c), Decree No. 46/2015/ND-CP
2.	Lack of acceptance documents on firefighting and prevention system		

Construction			
3.	Lack of construction permit for the building in where the RTS is installed	<p>Various RTS projects commenced installation and entered operation without a construction permit (either for the building in which they are installed or for the installation itself).</p> <p>The requirement of a construction permit for RTS projects remains controversial due to inconsistent practices by local authorities and unclear guidelines from central authorities. In terms of practice, most local authorities opine that a construction permit is a strict requirement for RTS installation unless such installation meets the criteria for construction permit exemption under the Construction Law.</p> <p>Regardless, it is still unclear whether the regulations on construction permits are applicable to RTS projects in the first place, given that RTS installation does not exactly meet the definition of a construction work as prescribed by the Construction Law. In light of this matter, construction authorities in certain provinces have suspended any implementation of local guidelines regarding construction permits for RTS projects. The clarification of this matter is still pending instructions from the MOIT and/or the MOC.</p>	Article 89 of the Construction Law 2014.
4.	Lack of construction permit for the installation of RTS		
Environmental protection			
5.	Lack of environmental protection documentation	<p>The new requirements on Environmental License and Environmental Registration under the Law on Environmental Protection 2020 are applied to RTS projects regardless of the time of installation/construction. Accordingly, various RTS projects have not obtained and supplemented relevant environmental protection documentation pursuant to the new law.</p> <p>In terms of local guidelines, certain provincial authorities opine that RTS projects (given their 1MWp capacity) would only be subject to Environmental Registration requirements. However, in practice, it is necessary to specifically assess the environmental impact of an RTS project on a case-by-case basis (e.g., discharge amount of wastewater, dust, gas, hazardous waste) to determine the applicable</p>	Article 39, Article 41, Law on Environmental Protection 2020



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		environmental protection requirement pursuant to the Law on Environmental Protection 2020 and relevant guiding documents.	
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Please feel free to contact us if you are interested in discussing any issues related to the development of renewable energy projects in Vietnam.

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