**LEGAL UPDATES**

**VOL 40, APRIL 2022**

**Dear Valued Clients and Partners,**

ADK Vietnam Lawyers would like to introduce to you the Legal Updates, Vol 40 of April 2022 with new legal provisions with notable contents as follows:

1. **Guidance from the Ministry of Industry and Trade to business conditions for rooftop solar power**

After the document of the Ministry of Planning and Investment responding to the recommendation of Vietnam Energy Magazine, the Electricity Regulatory Authority - Ministry of Industry and Trade has just issued document No. 489/DTDL-CP dated April 29, 2022 to guide determining business conditions for rooftop solar power of organizations, households and individuals. The document is based on the provisions of the Law on Investment and the Law on Electricity to specifically explain:

1. Legal regulations on investment: According to the provisions of Clause 2 Article 7 and Appendix IV of the Law on Investment in 2020, electricity generation fall under the list of conditional business lines. According to Article 11 of Decree 31/2021/ND-CP detailing and guiding the implementation of a number of articles of the Law on Investment:

* Investors may invest in conditional business lines specified in Appendix IV of the Law on Investment as soon as the conditions are fulfilled and fulfillment of such conditions must be maintained throughout the business operation.
* The investor that fulfill the business investment conditions are entitled to be granted the documents specified in Points a, b, c, d Clause 6 Article 7 of the Law on Investment or carry out business investment activities when the conditions specified in Point dd Clause 6 Article 7 of the Law on Investment are fulfilled, etc.

1. Legal regulations on electricity:

* According to the provisions of Clause 16 Article 1 of the Law amending and supplementing a number of articles of the Law on Electricity: Organizations, individuals are granted license for conducting one or many fields of electricity activity.
* Besides, Point b Clause 1 Article 34 of the Electricity Law stipulates that one of the cases exempted from electricity licenses is: Organizations or individuals engaged in electricity generation with the installation capacity below the level prescribed by the Ministry of Industry and Trade.
* Specifically, Clause 2 Article 3 Circular No. 21/2020/TT-BCT dated September 9, 2020 of the Minister of Industry and Trade stipulating procedures for issuance of electricity licenses, in the case “Generation of electricity with an installed capacity of not exceeding 01 MW for selling to any other entities” exempted from electricity licenses.
* In addition, the document also quoted in Clause 2 Article 34 of the Law on Electricity, which stipulates: “Organizations and individuals exempt from electricity activity licenses under the provisions of Clause 1 of this Article must comply with the procedures and regulations on operation management, regulations on electricity prices, technical conditions and safety prescribed in this Law”. The above processes and regulations have all been checked and accepted by EVN representatives before putting the rooftop solar power system into operation.

In conclusion, according to the provisions of the Law on Investment and the Law on Electricity, organizations and individuals having power generation with an installed capacity of not exceeding 01 MW in general and organizations and individuals having rooftop solar power with an installed capacity of up to 01 MW in particular must comply with the conditions for electricity generation and be exempted from electricity licenses.

1. **Draft Decision on piloting the direct trading mechanism between renewable energy generators and large electricity clients**

The Ministry of Industry and Trade is collecting comments with the draft Decision of the Prime Minister stipulating the pilot mechanism direct trading between renewable energy generators and large electricity clients. . The draft has the following notable points:

The regulation scope of this draft Decision is to pilot the direct trading mechanism between renewable energy generating units and large electricity users participating in the pilot. The total capacity of power plants participating in the pilot program of direct purchase and sale of electricity must not exceed 1,000 MW.

The Chapter II of the Draft deals with the Transactions in the pilot direct electricity trading including:

1. Bilateral contract between the Customer and the electricity Generator. The electricity Generator and the Client directly negotiate and sign a bilateral contract in the form of a forward contract. The two parties also negotiate the term of the contract, the contract price and the committed power capacity in the contract for future trading cycles as agreed by the two parties. The main terms of the forward contract are specified in Appendix III issued together with the Draft Decision.
2. Trading of electricity by the electricity generators through the spot electricity market. The electricity Generator signs a contract with the Vietnam Electricity Group according to the provisions in Appendix II issued with the draft Decision to participate in the competitive wholesale electricity market and sell all the electricity of the project electricity to the spot electricity market in the competitive wholesale electricity market.

The electricity Generator is responsible for:

* Register to participate in the competitive wholesale electricity market;
* Send the announcement of the capacity of the power plant to the electricity system and market operator.

The electricity system and market Operator is responsible for:

* Compare, contrast the forecasted capacity value from other independent forecast sources, and perform mobilization scheduling to prioritize exploiting the full capacity and power of the above power plant similar to the power source renewable energy operation;
* Calculation of revenue of the electricity Generator in the spot electricity market during the billing cycle.

1. Trading of Electricity and payment between the Client and the Electricity Corporation under the Vietnam Electricity Group. The Electricity Corporation under the Vietnam Electricity Group distributes and supplies electricity to Clients to meet the need for electricity for production activities of Clients at the registered pilot location trading electricity directly at the regulated retail price.
2. **Ho Chi Minh City: Construction works that affect traffic are not allowed**

The Department of Transport of Ho Chi Minh City has just issued a guide to connecting and assessing the traffic impact of construction works connected to the road system in the city.

Apartment projects, low-rise housing areas, commercial centers, schools, wedding restaurants... in Ho Chi Minh City before deployment must assess traffic impacts. If the evaluation fails, the project is not eligible for implementation.

In case the traffic impact assessment fails when the project is put into operation and in the future, the project will not meet the requirements for approval of the investment policy.

In case of failure when the project is put into operation and achieved in the future, it is possible to consider reducing the investment scale or diverging the project investment in stages.

In case the project meets the requirements when it is put into operation but neither does in the future, the project investment will be diverged in stages.

Impact assessment is a mandatory requirement for projects in industrial parks, ports, logistics and urban areas, other works depending on the size and area to apply. In which, for apartments or low-rise buildings; motels, hotels with a minimum floor area of 50,000m2, schools, hospitals, commercial centers, supermarkets, from 10,000m2 must be assessed. Particularly for the construction of restaurants and wedding parties, the minimum area of ​​5,000m2, office from 15,000m2 must be assessed.

In terms of scope, the project in the inner city will assess the impact within a radius of 0.5km, including the following districts: 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, Phu Nhuan, Binh Thanh , Tan Binh, Go Vap, Binh Tan, Tan Phu, City. Thu Duc. The suburban area has a radius of 0.3 km, including the following districts: Hoc Mon, Binh Chanh, Nha Be, Cu Chi and Can Gio.

This decision was made in the context of many projects being implemented but the external infrastructure is not adequate, causing congestion and pollution...

The HCMC Department of Transport is still developing specific guidelines on carrying out traffic impact assessments for construction investment projects connected to the city's road transport system.

We hope you found this brief legal update informative.

Kind regards./.

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