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BRIEFING

Vietnam – new electricity law

Summary

Vietnam's new Electricity Law, which comes into effect on 1 July 2005, is the first law to govern activity in the country's electricity sector. The Electricity Law was passed in accordance with Vietnam's Strategy for Electricity Development, which set ambitious targets for electricity output up to the year 2020. The Law aims to stimulate development and diversify forms of investment in the electricity sector, encourage economical use of electricity, protect the country's electricity infrastructure and develop a competitive electricity market.

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Background

The availability and quality of infrastructure, including electricity infrastructure, has long been one of the major concerns for foreign investors when considering investing in Vietnam. The output target of 44bn kWh by 2005, set out in the five year plan passed by the Party's National Congress IX in April 2001, was met on 10 December 2004, over a year ahead of schedule (according to Vneconomy, published on the website of the Ministry of Industry on 14 December 2004). Yet, much work remains to be done to meet the new and more ambitious targets of 53bn kWh by the end of 2005, 88-93 bn kWh by 2010 and 201-250bn kWh by 2020 as laid down in the Strategy for Electricity Development set out in Decision 176 of the Prime Minister dated 5 October 2004.

The Strategy set forth several measures to meet these goals, including creating a competitive electricity market and diversifying forms of investment in the electricity sector. In accordance with the Strategy, the National Assembly passed the first law governing activity in the electricity sector, the Electricity Law, on 10 November 2004. The Electricity Law governs all entities involved in electricity activities, which include planning and investment in electricity development, generation,

transmission, distribution, wholesale and retail electricity sales, and the monitoring and regulation of the electricity market.

Several issues still need to be addressed in the implementing texts, particularly regarding new concepts not clearly explained in the Electricity Law. These include spot trading, the electricity market transactions regulator, the Electricity Regulator, and the conditions and procedures for licensing each electricity activity.

Planning for electricity development

Planning for electricity development is the first issue addressed in the Electricity Law. Planning will occur at both national and provincial levels. National master plans will be prepared by the Ministry of Industry and approved by the Prime Minister. The national master plan will contemplate the nationwide development of electricity for the ensuing 10 year period. The various provincial People's Committees will also prepare five year plans for electricity development in their region in accordance with the national master plan. These five year provincial development plans must be approved by the provincial People's Councils before being submitted to the Minister of Industry.

Investment in the electricity sector must comply with the approved electricity master plans, and licences for electricity generation, transmission and distribution must be issued in compliance with these plans. For investment projects not within the scope of the approved master plans, consent from either the Prime Minister or

the Minister of Industry must be obtained, depending upon the type and location of the project.

Electricity market

A competitive electricity market is a new concept in Vietnam. The Electricity Law reflects the Strategy's aim of gradually establishing such a market.

Market operation principles

The Vietnamese electricity market will operate in accordance with the following principles:

- ensuring access to information, equality, healthy competition and non-discrimination between participants in the electricity market;
- respecting the right of participants in the sale and purchase of electricity on the electricity market to choose with whom to conduct transactions and what form those transactions should take, provided these choices are in line with the relevant regulations for each phase of market development; and
- regulation by the state to ensure development of a sustainable electricity system and a safe, stable and efficient electricity supply.

Market development

The state will maintain its monopoly over electricity transmission, regulation of the national electricity system, and the construction and operation of large power plants considered significant for socioeconomic or national defence and security reasons.

In all other sectors, electricity markets will be established and developed in stages. The rights and obligations of the electricity entities, in particular the choice of contractual partner and trading method, will be in line with the stage of market development as follows.

- Competitive electricity generation market – at this stage, electricity generators will have the right to sell electricity under a definite-term contract or to offer to sell electricity on a spot basis. Electricity wholesalers and major end users (ie entities that consume a relatively high quantity of electricity) will have the right to buy electricity from electricity generators under a definite-term contract or by spot trading.
- Competitive electricity wholesale market – electricity wholesalers will be able to sell electricity to retailers

at any price, provided it is within the tariff range set for wholesale transactions.

- Competitive electricity retail market – electricity retailers will have the right to determine the price at which to sell electricity to end users, provided the price is within the approved tariffs. End users will have the right to choose from which electricity retailer to purchase electricity.

This development will be carried out under the schedule and conditions to be prescribed by the Prime Minister. How these markets will emerge is unspecified and we will have to wait for further guidance from the head of the government.

Trading methods

Electricity trading will be carried out through definite-term contracts or spot trading.

Definite-term contracts

The Electricity Law addresses several issues regarding definite-term contract trading, including the contents of the contract, terms of payment, and breaches and disputes. The price of electricity under a definite-term contract must comply with the tariffs already approved by the competent authority. Although the Electricity Law provides that electricity generation, transmission and distribution entities must assure the quality and reliability of electricity, in a definite-term contract the seller will always be held responsible for compensating the buyer in accordance with the law on contracts for any damages caused by a failure to provide the stipulated quality or amount of electricity.

Spot trading

Spot trading will be conducted through the electricity market transactions regulator. This method will be used in certain electricity markets (eg electricity generation). The price of electricity traded under this method will be offered by the seller, set at the moment of trading and announced by the electricity market transactions regulator. Although the electricity market transactions regulator is a new concept in Vietnam, the Electricity Law does not delineate its duties or obligations and we will have to wait for the implementing texts to flesh out the relevant details.

Electricity price

Consistent with the Strategy, the Electricity Law sets forth the following policy aims on electricity pricing:

- to encourage all economic sectors to invest in electricity development at a reasonable profit, to economise on energy resources, to use new environmentally friendly forms of energy and recycled energy and to contribute to socioeconomic development, especially in rural, mountainous and offshore island regions;
- to encourage the economical and efficient use of electricity;
- to implement and then gradually reduce and eliminate a reasonable price cross-subsidy regime between different groups of customers; and
- to ensure the right of entities purchasing and selling electricity on the electricity market to make their own decisions on the price of purchase and sale of electricity within the electricity tariff stipulated in the state regulations.

The establishment of and adjustments to the electricity tariff will be based on various factors: the pricing policy mentioned above, the country's socioeconomic conditions and the people's income in each period, the relation between electricity supply and demand, the cost of electricity production and trading, the right of electricity entities to a reasonable profit and the level of development of the electricity market.

The electricity retail tariffs will be prepared by the Minister of Industry with the assistance of the Electricity Regulator (see Regulatory authorities below) and approved by the Prime Minister. Electricity generation and wholesale tariffs, fees for electricity transmission and distribution, and auxiliary services will be proposed by the entities involved in the relevant electricity activity and will be evaluated by the Electricity Regulator and approved by the Minister of Industry.

Electricity licences

The Electricity Law addresses the application, issuance and amendment of electricity licences for electricity activities.

The Ministry of Industry will issue licences for electricity wholesalers and retailers and for entities involved in

electricity generation, transmission and distribution activities connected to the national electricity network.

The provincial People's Committees will issue licences for organisations and entities operating electricity activities on a smaller scale within the provinces, in accordance with guidance from the Ministry of Industry.

The issuance of an electricity licence will be subject to the following conditions:

- the feasibility of the project or planned electricity activities;
- the submission of a complete application file; and
- professional management capability appropriate to the electricity activities.

The specific requirements and procedures for the issuance of a licence for each electricity activity will be detailed by the government in further regulations.

The requirement of licences for electricity activities was previously set forth in Decree 45 of the Government dated 2 August 2001 on electricity activities and electricity use. However, foreign-invested enterprises were arguably exempt from this requirement under Decree 24 of the Government dated 31 July 2000, as amended on 19 March 2003, which implemented the Law on Foreign Investment in Vietnam. Decree 24 states that: 'With respect to sectors and business lines for which a business licence is required as stipulated by law, enterprises with foreign-owned capital and business co-operation parties shall only be required to register with the authorised State body for the purpose of carrying out business activities in accordance with the investment licence, without applying for a business licence.' However, since foreign-invested enterprises are not included in the list of exempt entities under the Electricity Law and the Electricity Law is of greater legal weight than Decree 24, it is not clear whether foreign-invested enterprises would still be able to claim an exemption from these licensing procedures.

Regulatory authorities

Under the Electricity Law, the Ministry of Industry will be responsible for administering electricity activities and use, and the People's Committees will manage electricity activities and use within their jurisdiction.

The Electricity Law establishes a new authority in the electricity sector, the Electricity Regulator. This body will assist the Minister of Industry in the following regulatory activities:

- preparing rules and guidance on the operation of competitive electricity markets;
- suggesting measures to adjust and maintain the balance between electricity supply and demand;
- issuing, amending and revoking electricity licences;
- issuing guidance on the conditions and procedures for electricity outages and on the reduction of electricity consumption;
- issuing guidance on the conditions and procedures for interconnection to the national electricity system;
- preparing electricity retail tariffs;
- providing for the tariffs for electricity generation and wholesale, and the fees for transmission and distribution;
- observing the implementation of plans and projects of investment in the development of electricity sources, electricity transmission and distribution grids for compliance with the master plans;
- determining the ratio in capacity and electricity power between electricity trading through definite contracts and electricity traded on a spot basis in each electricity market;
- observing the implementation of the approved electricity tariff; and
- settling complaints and disputes in the electricity market.

The Prime Minister will provide for the organisation, powers and tasks of the Electricity Regulator in further regulations.

A competitive electricity market cannot happen overnight and the government concedes that it may take up to 30 years to achieve a competitive retail market in Vietnam. The Electricity Law sets out the framework for further development and regulation of the electricity sector and is an important first step in establishing the future direction of this sector. However, we will have to wait to see how the implementing rules and regulations put these principles into practice.

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