



Federal Ministry
for Economic Affairs
and Energy



MITTELSTAND
GLOBAL
ENERGY SOLUTIONS
MADE IN GERMANY

Webinar: "Regulatory Framework for C&I Projects"

| Cambodia & Vietnam |

19.08.2020

Facilitator

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

The German Energy Solutions Initiative

- Facilitates business partnerships in the field of renewables, energy efficiency technologies, smart grids and storage technologies
- Based on a **parliament decision** 2002 with the aims
 - to support SMEs
 - to distribute smart and sustainable energy solutions
 - to contribute to international climate protection
- Coordinated and financed by the **German Federal Ministry for Economic Affairs and Energy**

We offer

- **Information** about German energy solutions
- **Networking and business opportunities** with German companies both in your country and in Germany
- **Know-how exchange**
- Showcases of **flagship projects** through, among others, early stage project development (PDP)

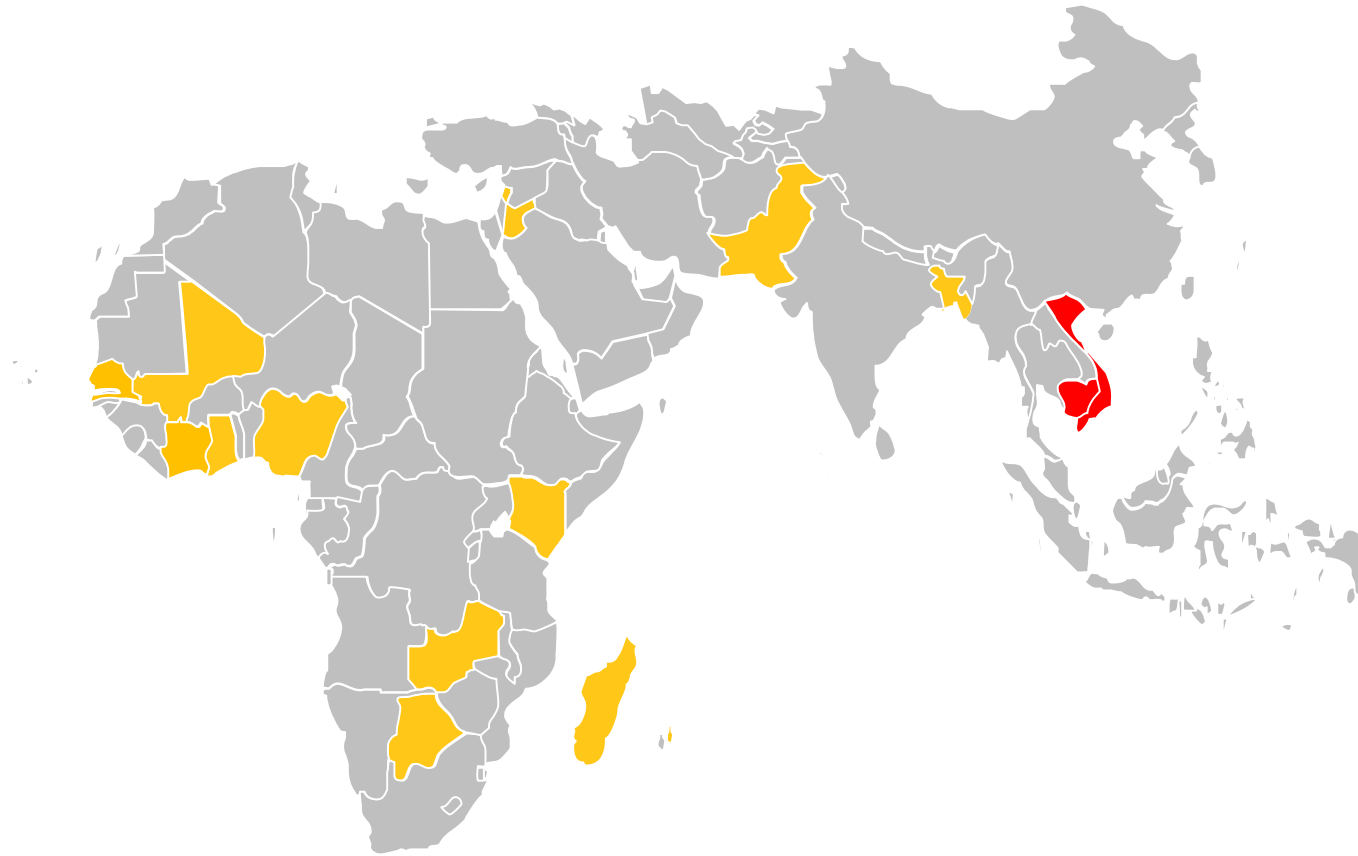
Information

- **Online database:** Profiles and contact information of German companies
- **Latest information** about German energy solutions
- **Upcoming events** of the initiative
- **Newsletter**
- www.german-energy-solutions.de/en



The Project Development Programme (PDP)

As part of the German Energy Solutions Initiative (BMW i) PDP supports German small and medium-sized enterprises (SME) of the renewable energy sector to access emerging markets.



Geographic Scope

- **Sub-Saharan Africa**
 - Kenya
 - Ghana
 - Nigeria
 - Mali
 - *Senegal*
 - *Côte d'Ivoire*
 - Botswana
 - Zambia
 - Mauritius
 - Madagascar
- **Middle-East**
 - Lebanon
 - Jordan
- **Asia**
 - Pakistan
 - Bangladesh
 - **Vietnam**
 - **Cambodia**

PDP activities

Business Development

- **Market information on target countries (incl. public tenders)**
- Professional accompaniment of AHK business trips
- Delegation trips to Germany
- marketing support "made in Germany"

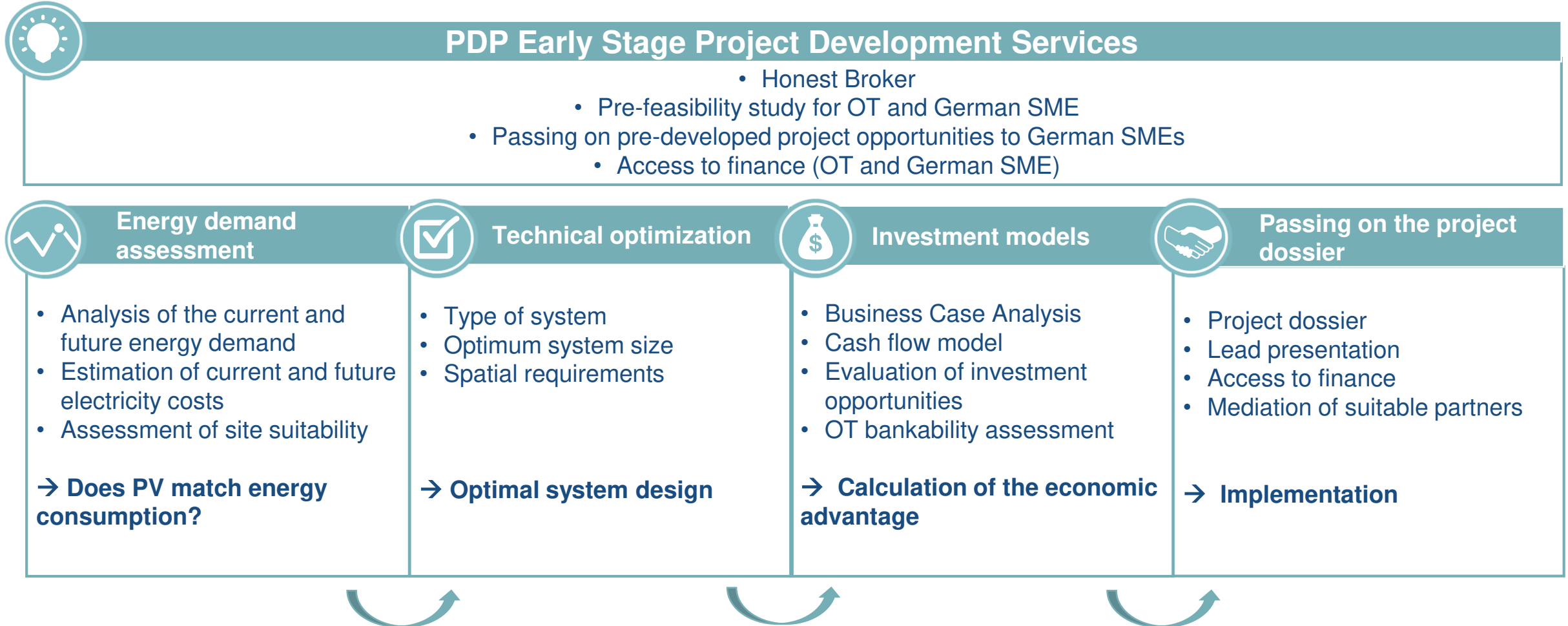
Project Pre-development

- Identification of commercially viable and scalable projects – **focus on C&I Segment**
- Evaluation of economic, political and technical risks
- Lead of project opportunities forwarded to German SME

Market Development

- Competence development on site by German Training Week
- Political advice on framework conditions
- Cooperation with associations
- Conference formats and trade fair participations

PDP accompanies successful project implementation



Upcoming in Cambodia and Vietnam (PDP)

VIETNAM

AHK Digital Business trip
14.-18.09.20

VIETNAM

German
Training Week
30.11-04.12.20

CAMBODIA

German
Training Week
01.-05.02.21

ASIAN

Report on Investment
opportunities in rooftop
PV in Asian textile
sector
05.2021

VIETNAM

Study Vietnam solar
market update
05.2021

Pre-development of embedded PV C&I projects

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Studies on the Regulatory Framework for C&I Projects

Scope:

Assessment of legal aspects of third-party ownership models (via PPA and leasing models) in the C&I space with involvement of foreign project developers/investors:

- Energy Regulatory Framework for C&I projects
- Legality of PPA/Leasing contracts
- Tax and duty incentives and impact of accounting standards on PPA/Leasing contracts
- Possible legal vehicles and requirements (e.g. local content regulation or min. capitalisation)
- Possible contract currencies, permissible escalation rates
- Ability of transferring and taxation of funds to foreign investors (focus on transfer to German investors)

Countries:

Africa: Côte d'Ivoire, Senegal, Ghana, Nigeria

Southeast Asia: Cambodia and Vietnam

Contractor:

BBH Group as Lead Consultant with experienced law firms in the target countries as sub-contractors

Webinar Agenda and Housekeeping Rules

Agenda	Timing
Introductions	09:30 – 09:40
Overview of regulatory framework – Cambodia	09:40 – 10:30
Introduction to template contracts – Cambodia	10:30 – 10:45
Questions and answers –Cambodia	10:45 – 11:05
Overview of regulatory framework - Vietnam	11:05 – 11:55
Introduction to template contracts – Vietnam	11:55 – 12:10
Questions and answers - Vietnam	12:10 – 12:30

- 1) Questions will be addressed during Q/A session
 - a) please raise your hand and state the question via your microphone (you can unmute yourself – please mute after again)
 - b) or write the message in the chat window
 - c) or share your question via carsten.jung@giz.de (will be raised anonymously)

2) Presentations will be shared with all participants subsequent to the webinar

BBH-Group: One-Stop-Shop for international energy projects



BBH Lawyers

BBH Consulting

BBH Auditors

**EREF -
European
Renewable
Energy
Federation**

**IKEM -
Institut für
Klimaschutz,
Energie und
Mobilität**

- ▶ Accredited professionals: ca. 250;
total staff: ca. 600
- ▶ Offices in Berlin, Munich, Cologne, Hamburg,
Stuttgart, Erfurt and Brussels

**Project Expertise
in:**

- Europe
- North and Sub-Saharan Africa
- Asia-Pacific
- Latin America

**BBH- Substantial
Global Network of
i.a. :**

- Law Firms
- Organisations
- Institutions

Contact persons

Do not hesitate to contact us ! We are looking forward to your e-mail or call.



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Regulatory framework for embedded generation in Cambodia



Mayor Stakeholders

Ministry Industry, Mines and Energy
(MIME)

Electricity Authority of Cambodia (EAC)

Electricity du Cambodge (EdC)

Rural Electricity Enterprises
(REE)

Independant Power
Producer (IPP)

Formal Regulatory Structure

Electricity Law

Regulations

Procedures

Regulations on General Conditions for connecting Solar PV Generation sources to the Electricity Supply System of National Grid or to the Electrical System of a Consumer connected to the Electricity Supply System of National Grid (Solar Regulation 2018)

General Regulatory Approach

No activity in the Cambodian electricity market (generation, transmission, distribution or sale) without a licence!



The licence procedures focus on large players supporting the Cambodian electricity market on a regional or national basis.



Not designed for the concept of *embedded production*.



Exception: Self consumption (in certain cases!).

The Exception: Generation for Self-Consumption (but in limits!) *bbh*

Off-Grid

Systems **not synchronised** with the grid

Any consumer with **unlimited generation capacity**

On-Grid

Systems **synchronised** with the grid

Only for *Big and Bulk Consumers* and with capacity restriction

The Exception: Generation for Self-Consumption (but in limits!) *bbh*

Big Customer: Medium Voltage Grid Level (22-35 kV)

Bulk Customer: Medium Voltage Grid Level (115 kV, 230 kV and 500 kV)

Companies connected to the Low Voltage Level might apply to be considered as ***Big Customer*** in the process.

PV-Plant capacity only up to 50% of the capacity supplied by EDC.

No feed-in of excess power to the grid allowed.

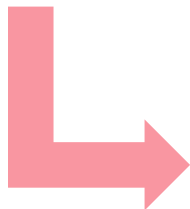
Change of tariff plan with EDC mandatory (presently no off-peak Tariff).

Possible Business Models for Embedded Generation

PPA is not possible as the sale of energy is licenced and EDC acts as single buyer.



As only self-consumption is allowed a *Lease* is the only contractual option.



Operational Leases are common practise in Cambodia to address the idea of *embedded generation*

Differences between *Operational Leases* and *Financial Lease* have to be observed.

Characteristics Operational and Financial Lease

bbh

Financial Lease

Defined in the Law on Financial Leasing (20th of June 2019)

Financial Licence of the National Bank of Cambodia required.

The lessee specifies the movable property and selects the supplier without relying primarily on the skill and judgment of the lessor.

Operational Lease

No legal definition – the Civil Code applies.

No Licence required

The lessor specifies the movable property and selects the supplier

The Approval Process for PV-Systems for Self Consumption (i)

bbh

STEP 0: Define the allowed Plant Size

- Usually no contractual documentation indicating the agreed grid capacity is available.
- Installed transformers are no reference as they are mainly oversized.
- Dedicated load measurements for a certain period as alternative.

STEP 1: Application Process with EDC for grid connection

- No standardised form/template is available.
- Covering letter with detailed technical specification of the intended PV-system.
- EDC might ask for additional information.
- If approved a permission will be granted for 1 year.

The Approval Process for PV-Systems for Self Consumption (ii)

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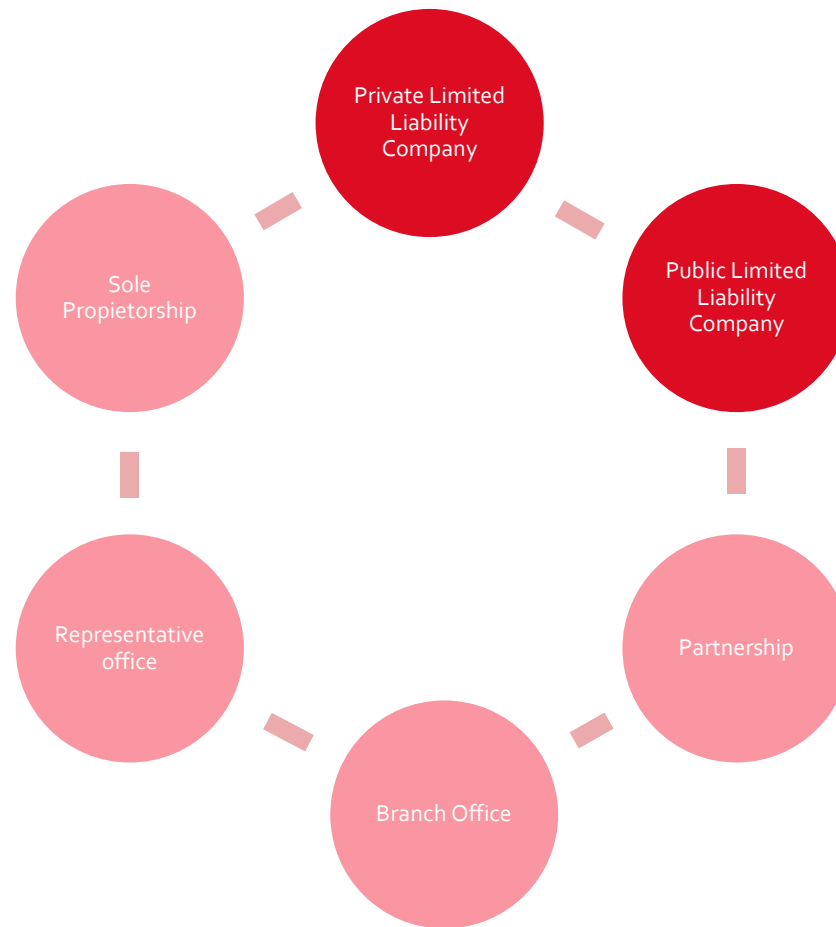
STEP 2: Further permits and completion of the PV-System

- Environmental Impact Analysis (EIA): Not required for power plants below 5 MW.
- Construction Permit: Generally required for construction sites of more than 3.000 sqm.
- Implementation in accordance to the permission and considering the technical security requirements set by the *Solar Regulation*.

STEP 3: Grid connection and tariff change

- Technical inspection by EDC Team upon completion of PV-System.
- EDC to issue confirmation letter allowing the connection.
- Change of tariff status to *National Grid connected Solar PV Project Big/Bulk Consumer*.

Possible legal forms in Cambodia



Incorporation & Financing of SPV

Remuneration of Shareholders



- Recommended legal form : Company Limited by Shares
 - Registration with the Ministry of Commerce in a two-stage process
 - Rental and maintenance activities as part of the operate lease should be included in the corporate purpose of the SPV
- Accounting standards: IFRS. New Leasing standard IFRS 16: all leases shall be reflected in the balance sheet.
- Recommended financing of the SPV : cash contribution and shareholder loan agreements.
- Taxation: no special regulation for energy sector
- No Double Taxation Convention: taxation in Cambodia and in Germany for SPV's German shareholder

Recommended legal form: Private Limited Liability Company

- ▶ **Characteristics and requirements:**
- ▶ Liability limited to contributed equity
- ▶ Well established legal framework for private limited liability companies
- ▶ No minimum capital required
- ▶ No specific regulations for operating in the energy sector



Regulatory bodies and registration

Department	Purpose
Ministry of Labor and Vocational Training (MLVT)	<ul style="list-style-type: none">▪ Registration of the company▪ Working permits▪ Immigration quota▪ Residence permits
National Social Security Fund (NSSF)	<ul style="list-style-type: none">▪ Social security contribution
Cambodian Accounting Standard Board of the National Accounting Council	<ul style="list-style-type: none">▪ Accounting standards and regulations▪ Adoption of IFRS

Introduction to the Cambodian Tax System

Cambodian Tax System	<ul style="list-style-type: none"> Based on the Law on Taxation and the <i>Prakas</i> related to income tax
Energy Industry	<ul style="list-style-type: none"> No special regulation
Management Fees	<ul style="list-style-type: none"> Management Fees paid by the SPV to the German Holding as contractual option for tax optimisation purpose Stronger control of transfer pricing in Cambodia Since 2018 obligatory documentation requirement for transfer pricing Administrative effort including related tax consultant fees might not be covered by the possible tax gains
Assessment Period	<ul style="list-style-type: none"> Calendar Year
Corporate tax	<ul style="list-style-type: none"> Generally the corporate tax is 20 %
Tax Losses	<ul style="list-style-type: none"> Tax losses can be carried forward for up to 5 years

Overview of taxes

Withholding Tax	<u>Examples:</u> <ul style="list-style-type: none"> • For services, licence fees for intangible goods: 15 % • Payment of interest fees to tax paying entities not being banks or savings banks : 15 % • Payment of lease/rental fees for movable and in movable goods: 10 %
VAT	<ul style="list-style-type: none"> • All bodies carrying out taxable activities are obliged to register for VAT
Social Security Contribution	<ul style="list-style-type: none"> • Employer: at least 10 % of the employees basic salary • Employee 5 % of basic salary • In addition: Employers have to pay 1 % of their total monthly wage bill or the amount stipulated by the National Social Security Fund to the Employee Compensation Fund
Duties	<ul style="list-style-type: none"> • Customs Department will refer to the Customs and Excise Management Act (CEMA)
Technology Transfer	<ul style="list-style-type: none"> • Technology - Transfer Agreements including licence conditions can be recorded

Bank account and foreign currencies

▶ Currency

- The Cambodian Riel (KHR) is the only means of payment used for services
- “dollarized economy” – Dollars are used as well for transactions

▶ Foreign Exchange Account

- All persons and companies in Cambodia are allowed to keep a foreign currency account
- No specific regulations about for the disposal of a foreign currency account
- Specific transactions are being done by intermediary agencies or licensed credit institutions



Financing

- ▶ **Transfer of financial and material resources**
 - No regulations on movement of financial resources
- ▶ **Financing of the SPV's**
 - Cash deposit
 - Inter Company Loan Agreement
- ▶ **Loan agreement**
 - Loan agreements and related interest should be fixed at market rates
 - Loan agreements with third parties must be approved by the tax department, but loan agreements within a group of companies are not

Introduction to the template contracts for Cambodia



Contract templates : Lease of the Plant

- Client for a National Grid-connected PV system
 - Big or Bulk consumer
- Conditions precedent
 - Specificities regarding the local authorisation process
- Ownership of the plant securities:
 - Registration of the lease with the Secured Transactions Filing Office of the Ministry of Commerce
- Common Practise:
 - Repair and maintenance service fee can be separated or included in the service fees.
- Penalty amount should not grossly deviate from actual damages (risk: penalty may be reduced by the Court).
- Payment:
 - Khmer Riel or any other currency. Not accepting a payment in Khmer Riel is subject to a penalty. In practice many business transactions use USD.

Contract templates : Lease of the Plant



- Removal of the Plant:
 - According to the terms and conditions of the Plant Site Lease Agreement or determined in the contract
- Option to purchase the Plant:
 - at a Purchase Option Date or at Lease Expiry Date
 - Purchase price determined in accordance with a price formula.
- Additional recommendations:
 - No counterparts - all parties sign the same document.

Possible performance guarantee clauses for the Hire-purchase of RPP

- ▶ Performance of the RPP can be guaranteed by the SPV to the industrial customer.
 - No performance guarantee included in our templates as this guarantee varies so much depending on the guarantees provided by the EPC that there is no standard clause.
- ▶ Different option in case the expected performance is not met: repair or replacement obligations, reduction of the rental price, payment of the electricity that needs to be bought. Examples:

The lessor guarantees an annual minimum energy output of the RPP of Any shortfall in output below this guaranteed minimum shall be paid by the lessor to the lessee at rates charged by [national / local electricity supplier] per kWh at the time of the shortfall.

The lessor guarantees that during the Lease Term the RPP will operate within manufacturer's specifications and if it not, the lessor will repair or replace any defective part and restore RPPs performance.

Other templates

- ▶ You will find with the studies other templates to implement an embedded generation project in Cambodia such as:
 - By-laws of the recommend legal form for the SPV,
 - Shareholder Loan Agreement for the transfer of financial resources, and
 - Monitoring & Maintenance contract (// O&M) between the SPV and an O&M contractor.

Regulatory framework for embedded generation in Vietnam



Mayor Stakeholders

Ministry of Industry and Trade
(MoIT)

Electricity Regulatory Authority of
Vietnam (ERAV)

Electricity of Vietnam (EVN)

Independant Power
Producer (IPP)

The Regulation of the Vietnamese Power Sector

- ▶ The regulation of the Vietnamese power sector is based on the 2004 Energy Law.
- ▶ This law, including PV-Solar specific details, is implemented through:
 - *Decisions* by the Prime Minister
 - *Circulars* by the Ministry of Industry and Trade (MoIT)
 - *Official Letters* by Vietnamese Electricity Corporation (EVN)
- ▶ The regulation of *Embedded Generation* is therefore based on general electricity laws as well as PV-Solar specific regulations.
- ▶ However, off-grid power systems are not regulated.

Overview of the Solar PV related Regulation

Electricity Law (2004)

Decision 13

Circular 36

Circular 05

Circular 16

Official Letter 3450

Official Letter 1532

General Regulatory Environment

The *Electricity Law* provides that all activities in the Vietnamese power sector need to be covered by an Electricity Licence.

EXCEPTIONS



Companies/Persons, which use the Power Generation Systems for self-consumption only.

Companies/Persons, which use the Power Generation Systems to sell electricity to third parties, but below a capacity threshold stipulated by MoIT.

Companies, which source electricity from below the 50 KVA level and distribute it in rural and mountainous areas as well as islands.

Power Development Masterplan

- ▶ According to Vietnamese regulation every power plant of 1 MW or more must be included in the Power Development Masterplan.
- ▶ Exemptions include Solar PV Roof Projects below 1 MWp.
- ▶ It is not relevant whether the energy is self-consumed or fed into the grid.
- ▶ The application process requires a costly preparation and is time consuming.
- ▶ Applications for power plants with a capacity between 1 to 50 MW will be processed on a regional level while plants above 50 MW will be directly handled by the Prime Minister's office.

PV-Solar Specific Regulation

- ▶ Support mechanisms for the Vietnamese power sector.
- ▶ Generation License exemption for PV-Solar systems of any size which are used for self-consumption only.
- ▶ Generation License exemptions for PV-Solar systems of up to 1 MWp generating power for sale to third-party:
 - MWp refers to array capacity, not inverter capacity.
 - In case an O-T has different EVN connection points and meters it is sometimes possible to register one PV-System per connection point/meter.

Decision 13

- ▶ *Decision on the mechanism for encouragement of the development of solar power projects in Vietnam.*
- ▶ Implementation details are presently under preparation/adjustment.
- ▶ *Decision 13* ended more than 9 months of regulatory uncertainty.
- ▶ Succeeds *Decision 11*, which expired 30th of June 2019.
Decision 13:
 - extends the list of Electricity Buyers
 - offers more flexibility for the implementation of *Embedded Generation* business model.

Decision 13: Regulatory PV-Solar Market Segments

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Rooftop Solar PV Systems

- mounted on the rooftop of construction works (ground mounted systems on O-T site not possible).
- array capacity not exceeding 1 MWp.
- directly/indirectly connected to the grid at a voltage level of 35kV or less.

Grid-connected Solar Power Systems

- any grid-connected Solar Power Project except *Rooftop Solar PV systems*:

Ground mounted
Solar Power
Projects

Floating Solar
Power Projects

Feed-In-Tariffs (FiT) are linked to segment classification !

Decision 13: Sales of Electricity for Rooftop Solar PV Systems

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- ▶ Rooftop solar power systems are allowed to sell in part or in whole the energy generated to:
 - EVN (8.38 USc/kWh)
 - *other Electricity Buyers (other organizations/individuals not using the EVN grid for such purchase)*
- ▶ The introduction of *other Electricity Buyers* allows electricity sales among private entities.

Construction Permits and Environmental Impact Report

- ▶ A construction permit has to be obtained if no exemption rules apply (e.g. special industrialised areas etc.).

Application Process for a Construction Permit

Applicant	SPV
Related authority	Local construction authority
Requirements	Depending on the site location
Cost	Fees for a construction permit differ between Provinces and should be in the range of approx. 100.000 VND (ca. 4,27 USD) to 150.000 VND (ca. 6,42 USD).
Duration	30 days after receipt of the complete set of application form and supporting documents

- ▶ Certificate of Capability for Construction:
 - Required if the SPV acts as EPC; time-consuming for foreign companies.
- ▶ Environmental Impact Report:
 - Only required for ground-mounted PV-Systems exceeding 50 ha as required construction area.

EVN as Electricity Buyer for Solar Rooftop Systems



- ▶ Standard PPA not subject to negotiations.
- ▶ FiT in accordance with the applicable tariff scheme when PPA was signed, commercial operation date and meter readings achieved (Present FiT expires on the 31st of Dec 2020). The PPA including FiT is valid for 20 years.
- ▶ EVN has a standardised process for connecting PV-Systems to the grid, including new meters.
- ▶ The Seller has to send a monthly invoice to EVN for the power supplied to the grid.
- ▶ Based on this opportunity, SPVs are renting roof space from corporations and sell all power to EVN per Standard PPA.

Decision 13 and *Embedded Generation*

Decision 13's regulation for Rooftop Solar PV-Systems allows the implementation of the Embedded Generation Business Model

As the Off-Taker can act as an *Electricity Buyer* a corporate PPA can be used to sell the energy generated

The PPA can be designed freely in conformity with the current law

Excess power can be fed into the public grid on basis of EVN's standard PPA including the FiT

Whether only the SPV can sell the excess power to EVN or the O-T also is not clear

Corporate PPA

- ▶ According to Decision 13 and the conditions for Rooftop Solar PV Systems it is possible to sign a corporate PPA between the SPV and the O-T (1 MWp max).
- ▶ The PV-System will be integrated in the grid of the O-T, which itself is connected to the public grid.
- ▶ Therefore the PV-System is indirectly connected to the public grid and synchronised.
- ▶ Considering Decision 13 and within general legal framework, the corporate PPA can be freely negotiated.
- ▶ The Vietnamese Dong is the only acceptable currency – no pegging to foreign currencies is allowed.

Recommended Business Model: Corporate PPA

Based on Articles 3.2, 8.1 and 8.3 and of Decision 13

Partial self-consumption plus sale of surplus to EVN by Investor (or factory owner)

Regulations for Rooftop Solar PV Systems apply

PV-System capacity up to 1 MWp

O-T connected to voltage level of 35 KV or below

PV- System capacity below 1 MWp avoids: Electricity Generation License and Registration in the Power Development Masterplan

Further options for Embedded Generation resulting from Decision 13

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- ▶ Decision 13 would also allow a Operational Leasing Model for an Embedded Generation Scenario.
- ▶ This business approach was allowed under Decision 11, so it has been implemented in Vietnam already.
- ▶ It is important to structure the Operational Lease as clearly distinct from a Financial Lease to avoid any related complications. Example is:
 - The total leasing fee has to be lower than the value of the PV-System at the signature date of the leasing contract.

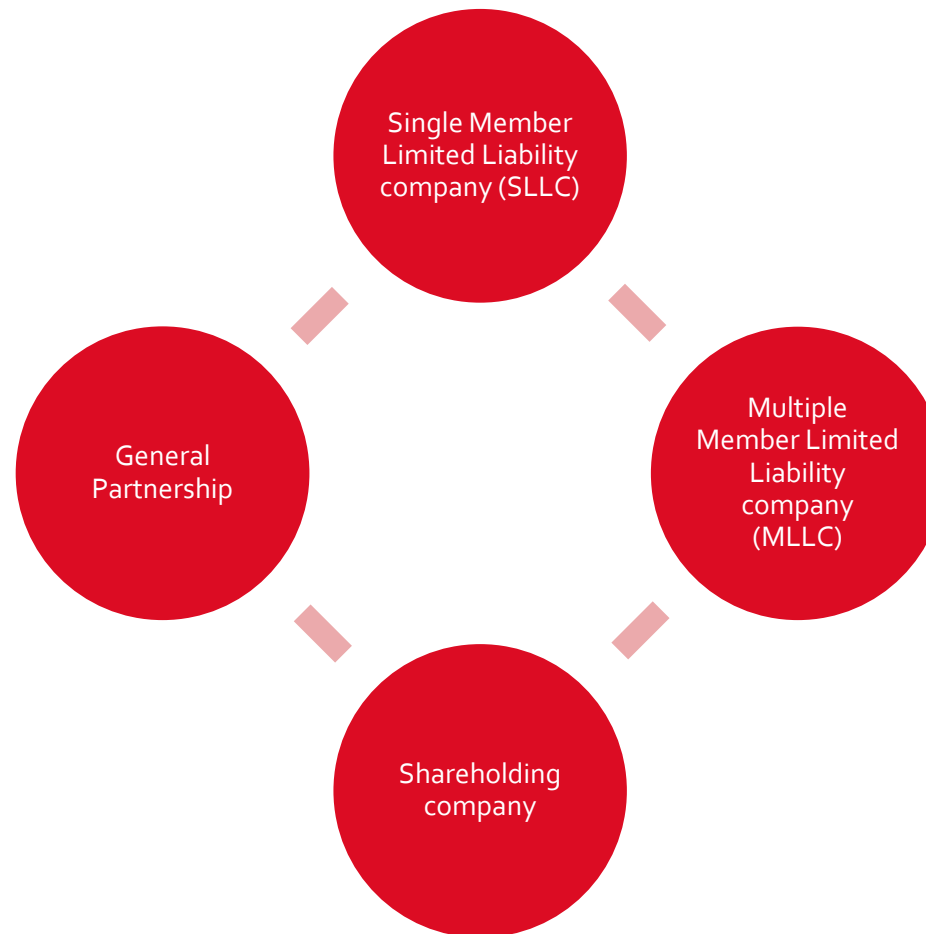
Lease Business Model

- ▶ The SPV is owner of the plant and designs as well as installs the PV-System on the roof of the O-T.
- ▶ The SPV has the right to use/access the roof (separate roof lease?) and leases the system to the O-T for 15 to 20 years.
- ▶ The O-T pays a monthly leasing fee on basis of the consumed electricity.
- ▶ The SPV maintains the system, which will be included in the lease fee or covered by a separate O&M contract.
- ▶ The O-T can sign a PPA with EVN to sell the excess power (FiT).
- ▶ At the end of the lease the ownership of the PV-System will be transferred to the O-T at a symbolic price of US\$1.

Regulatory summary

off-grid	Self-consumption	On-grid	
<ul style="list-style-type: none"> • unregulated • No license / masterplan inclusion required • PPA/Leasing option 	<ul style="list-style-type: none"> • No license required • From 1 MWp Masterplan • Leasing option 	Rooftop Solar PV Projects	Grid-connected Solar PV Projects
		<p>As per Decision 13:</p> <ul style="list-style-type: none"> • Grid level 35 KV max. • Roof mounted • 1 MWp max. • PPA/Leasing option 	<p>All other on-grid projects not covered in the Solar PV Rooftop Segment</p> <ul style="list-style-type: none"> • License and masterplan inclusion requirement

Possible legal entity forms in Vietnam



Recommended legal form: Single member limited liability company

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► Characteristics and requirements:

- Liability limited to contributed equity.
- Well established legal framework for private limited liability companies.
- No minimum capital required.
- No specific regulations for operating in the energy sector.
- Simple two step registration process.



Investment Registration Certificate

Applicant	SPV/Project Developer
Responsible Authority	Department of Planning and Investment in the Province where the O-T is located
Requirements	<p>The application should include</p> <ul style="list-style-type: none">• Company Registration No. of SPV• Name and address of the head office in Vietnam• Address of the O-T/roof• Business Activity of the SPV• Name, address and passport no. of the Head of the SPV• Name and signature of an authorised SPV-Signatory
Cost	No charges

Regulatory bodies and registration

Department	Purpose
Department for Planning and Investment	<ul style="list-style-type: none">▪ Registration of the company<ul style="list-style-type: none">– IRC registration– ERC registration– Company stamp
Ministry for Labour, Invalids, and Social Affairs	<ul style="list-style-type: none">▪ Work permits▪ Residence permits
Vietnam Association of Certified Public Accountants	<ul style="list-style-type: none">▪ Accounting standards and regulations▪ Vietnamese accounting standards

Key Taxes for foreign investors in Vietnam

Corporate Income Tax (CIT)	<ul style="list-style-type: none">• The CIT in Vietnam is 20 %
Import and Export Tax	<ul style="list-style-type: none">• Import and Export Tax is applied during the import/export scenarios.
Withholding Tax	<ul style="list-style-type: none">• Foreign companies and persons are in general subject to Foreign Contractor Withholding Tax – FCWT• consists partly of (CIT) and Value Added Tax (VAT)
Value Added Tax	<ul style="list-style-type: none">• Applicable to all goods and services• Tax rate depends on service/goods and can be either 0 %, 5 % or 10 %

Possible tax incentives for building a PV-System

- ▶ Corporate Income Tax (CIT) usually 20%
 - Renewable Energy is one of the sectors where investments are supported by tax reduction:
 - The CIT rate is reduced to 10% for 15 years (extension upon approval from the Prime Minister possible).
 - CIT tax break for the first 4 years after the first year of annual net profit and 50% reduction for the 9 years to follow.
 - It is likely to be applied by the SPV in a corporate PPA scenario but, however, might not be applicable in a leasing scenario.
- ▶ Import Tax:
 - PV-Systems are exempted from Import Tax.

Vietnamese – German Double Taxation Agreement

- ▶ The double taxation agreement has been published on the 27th of December 1996.
- ▶ The taxation of corporate profits in the Vietnamese-German context is stipulated in Article 7 of the agreement.
- ▶ If a German company has a share in a Vietnamese company the generated profits of the Vietnamese company can be taxed in Vietnam.
- ▶ Dividends to a German investing company from a Vietnamese SPV can be taxed in Germany or Vietnam. If taxed in Vietnam:
 - Minimum 70% German shareholding: tax rate of 5%
 - Minimum 25% German shareholding: tax rate of 10%

Currencies in Vietnam for payment of services

► The Vietnamese Dong (VND)

- Legal tender in Vietnam
- Not freely convertible
- Subject to regulations for payments abroad

▪ Exceptions

- Payment of dividends, profits and long-term loans and related interest payments
- In the case of the SPV, profits and loans can be converted into foreign currencies and paid out



Legal basis for financing and banking transactions

► Basics

- Foreign-owned companies are permitted to finance their business activities with domestic and foreign funds.
- IRC determines the share capital, medium to long term loan capital and the total investment capital.
- Working capital loans as short-term loans only.

► Direct investment capital account (DICA)

- Capital contributions made by foreign investors must be paid into a special capital account (DICA).
- Can also be kept in a foreign currency.
- DICA must also be used to pay out profits or repay loans.

Transfer of financial and material Resources

Financing of SPV's

- Cash deposit
- Inter-Company Loan Agreements
- Preconditions:
 - The SPV has unlimited access to its foreign currency account
 - SPV can open irrevocable letters of credit confirmed in Europe
- Profits can only be paid out once a year.
- Surplus cash deposits can be paid out through a management agreement but withholding tax of 10% will apply.

Loan agreement

- Domestic loans can be granted without restrictions
- Foreign loans can only be granted for the following purposes:
 - Implementation of a business plan or investment project where the lender invests directly in the company
 - Restructuring of other foreign loans without increasing the total loan amount of the company
- A borrower like the SPV, which is not a credit institution, is not allowed to use short-term loans for long-term capital purposes.

Introduction to the template contracts for Cambodia



Power Purchase Agreement

- ▶ Contractual agreement for the sale of electricity between Seller and Purchaser.
- ▶ Advantages
 - **Standardized** contract model is key to financial eligibility.
 - Widely used and **recognized in business** dealings.
 - Can take into **account both demand and pricing uncertainties**.
 - Can take into **account regulatory peculiarities**.
- ▶ Disadvantages
 - Only permitted for RPP with installed capacity not exceeding 1MWp and voltage not more than 35KV.
 - Sale of electricity from RPP to private customer only if EVN grid not used.

PPA: Important Contractual Components

- ▶ Duration of Contract
 - What contract duration is legally permissible and wanted?
 - Connection of pricing system and cash flow requirements.
- ▶ Termination Rights
 - Ordinary termination rights after a certain fixed period?
 - Extraordinary termination rights.
- ▶ Payments are made per unit of electricity (Net Electrical Output) delivered or consumed
 - Take or Pay
 - Payment according to Purchaser's consumption

PPA: Important Contractual Components

▶ Quantity risk

- Operation and forecast: how much electricity is generated, how much cut off?
- How to deal with technical problems (e.g. gear damage, limits for repair obligations).
- Who bears the quantity risk?

▶ Price adjustment

- Depending on the level of risk.
- Options: adaptation in special circumstances, indexing (general price increase, electricity market price etc.).

PPA: Important Contractual Components

- ▶ Guarantees (payment, delivery etc.) and Insurances.
 - Advance payment deposit, bank guarantee.
 - Property Insurance
 - Third party liability insurance
- ▶ Purchase of the system
 - Purchase at expiry of the term / early purchase option.
- ▶ Lease of the rooftop
 - Seller needs access to the rooftop and right to occupy the rooftop for the entire PPA contract duration.

More webinars and studies published in August!

Legal framework for embedded generation in Ghana and Nigeria

On 26 August 2020 from 15:00 - 18:00 (CEST) via MS-Teams

Link: <https://www.german-energy-solutions.de/GES/Redaktion/DE/Veranstaltungen/Intern/2020/Webinare/webinar-pep-ghana-nigeria.html>

The presentations and a Q/A session will be held in English

The studies will be available via: <https://www.german-energy-solutions.de/GES/Navigation/DE/Maerkte-Weltweit/Publikationen/publikationen.html>

We welcome your Feedback!

Please let us have your feedback and any questions on the studies, the contract templates as well as this webinar via carsten.jung@giz.de

Thank you for your attention

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