

# LEGAL BRIEFING

*Our monthly publication is dedicated to provide a roundup of key regulatory updates that impact investment and business activities in Vietnam. Visit our Resource Center for the latest legal updates and firm news.*

## Physical DPPAs in Vietnam: Top 10 Legal Points

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The legal framework for Direct Power Purchase Agreement (DPPA) has been introduced in Vietnam very recently. Implementation of the regulation, Decree 57/2025, has just been tested by only a handful of DPPA projects. So, there is limited precedent and high uncertainty.

Having had the privilege of working in DPPA from its earliest days, we would like to share our **top 10 legal points**, with a focus on the physical model.

### 1. Critical milestones should be clear and tied to protective remedies

The precise milestones vary from project to project, depending on factors such as the transaction structure, the stage of construction or grid connection at the relevant site, the permitting timeline, and any project-specific financing, interconnection arrangements, or equipment availability. The most critical milestones include:

- Long Stop Date for satisfaction of the Conditions Precedent (CPs);
- issuance of the Notice to Proceed (NTP), marking the point at which construction and installation work may commence; and
- achievement of Commercial Operation Date (COD)

Each milestone, reflecting its significance, should be tied to clear verification mechanisms and protective remedies in case of non-achievement, such as compensation/ indemnification, termination rights, or agreed extension procedures.

### 2. Risk transfer point should be identified properly with both technical perspectives and legal perspective

In a physical DPPA, the generator typically bears grid and transmission risks up to an agreed hand-over point, making the allocation of responsibilities relatively clearer than in a virtual DPPA,

where the involvement of a third party such as EVN and wholesale market mechanisms adds complexity.

That said, identifying the **risk-transfer point** is critical to delineate the respective risks and obligations of the generator and the consumer. This point is often linked to the **energy delivery point**. Additionally, the chosen location, whether at the generator's facility or at the consumer's premises, can materially affect which party bears responsibility for losses, outages, and O&M obligations along the transmission system.

So, it is essential to assess the proposed delivery and risk-transfer points from both legal and technical perspectives. In some cases, a location that appears preferable legally (e.g., for liability allocation) may not be feasible technically, and vice versa. Efficient coordination between legal, technical, and commercial teams is key to achieving this.

### **3. Performance guarantees should help**

Varying from deal to deal, performance guarantees may be required from either or both parties. For example, consumers may be asked to guarantee minimum consumption commitments, while generators may need to guarantee minimum generation volumes and power quality standards.

Whether a performance guarantee is necessary depends, among other factors, on the specific context of the transaction and the level of risk exposure of the parties involved.

Performance guarantees may take various forms, including backed guarantee and non-backed one. In a non-backed guarantee, the parties typically agree on indemnification procedures if the guaranteed performance is not met. In a backed guarantee, an additional bank or third-party guarantee may be required to provide further assurance.

### **4. Pricing restrictions require anticipation, flexibility, and details**

For compliance with Vietnamese law, a DPPA must be denominated in VND. Additionally, tariffs may also be subject to a statutory ceiling rate as stipulated by law from time to time. If not properly addressed in the DPPA, these pricing restrictions can hinder the parties' commercial objectives – particularly in a long-term contract such as a DPPA – where a degree of flexibility is needed to ensure stability and performance over the contract term.

Separately, it is also important to clarify which cost components are included in the price (e.g., transmission losses, O&M fees, and other administrative charges related to servicing the system).

### **5. Exits has to be managed specifically for a long-term contract**

A long-term contract like a DPPA requires termination provisions that are both flexible and specific. On the one hand, they should be broad enough to accommodate a wide range of potential scenarios over the long duration of the contract. On the other hand, they must also be drafted with sufficient precision to mitigate the risk of one seeking to exit the contract in bad faith.

Additionally, specific contractual remedies, such as termination payments, should be defined clearly to ensure enforceability.

## **6. Permits and licenses should be most comprehensive**

In the physical DPPA model, the generator bears the main burden of obtaining the necessary licenses and permits for project development and operation. The consumer's obligations are usually limited to making the required DPPA notifications.

Given the novelty of the DPPA framework in Vietnam, the list of permits and approvals the generator must obtain should be the most comprehensive. This helps ensure alignment of expectations and responsibilities between the parties and mitigates the risk of delays or disputes.

## **7. Change in laws should be fairly managed to help enhance contract performance**

This is quite challenging especially in the context of Vietnamese law. A change in law or a regulatory impossibility (e.g., the inability to obtain a prerequisite permit through no fault of either party) may not always qualify as a force majeure event under Vietnamese law.

Given the novelty and fast-changing nature of Vietnam's power sector regulations, contract language should carefully address to what extent change in law and regulatory impossibility are accepted as grounds for excusing performance. This requires striking a balance between providing flexibility for genuine unforeseen circumstances and avoiding excessive reliance on these provisions as a means to escape contractual obligations.

## **8. Minimum Consumption Commitment and Guaranteed Energy Output can help ensure the commercial viability**

Minimum consumption commitment (MCC) is often included to ensure the commercial viability of the project. MCC obliges the consumer to consume, or if not, pay for, a minimum contracted volume of electricity. If the actual consumption falls below the committed level, the consumer typically makes a shortfall payment to bridge the revenue gap, although some agreements allow the generator to sell the unused energy to other off-takers and offset any proceeds against such shortfall.

Conversely, a guaranteed energy output (GEO) is the generator's commitment to deliver a minimum quantity and quality of power.

The interaction between MCC and GEO should be carefully coordinated to avoid overlap or double-penalties, with clear drafting on how each obligation is calculated and compensated if not met.

## **9. Suspension of facility should be highly anticipatory, specific and clear**

Given the long-term nature of a DPPA, there may be circumstances where the facility must be suspended, such as in cases of critical health, safety, security, and environment (HSSE) risks, major maintenance or other operational needs.

A DPPA should set out clearly the suspension procedure, including notice protocols, duration limits, and mitigation obligations. It should also specify to what extent performance guarantees like MCC and GEO may be excused during valid suspension events, balancing operational safety and the commercial protections.

## 10. Dispute resolution should involve multi-tiered mechanism

Dispute resolution of DPPA should not default directly to court or arbitration. A multi-tiered mechanism is advisable, starting with good-faith discussions between senior representatives, followed by mediation or expert determination (especially for technical issues), and only escalating to arbitration or court if necessary. In addition to preserving the long-term commercial relationship, this staged approach helps resolve disputes more efficiently especially in the context of a contract with highly technicality like the DPPA.

### The 11<sup>th</sup> point...

No transactions are the same, each is like one's fingerprint (and lawyers keep thinking for each new project). And the top ten points may vary from project to project. These are the top ten legal points commonly important we have so far accumulated from our DPPA practice, to share with you.

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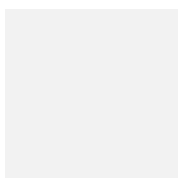
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