



# New Circular 07 on electricity generation tariffs and model PPA

May 2024

mshv 809640937v3 700.2

Hanoi branch of Allens Pte Ltd which is incorporated in Singapore with limited liability, company reg no 198803349H.  
Our associated firm Allens is an independent partnership operating in alliance with Linklaters LLP.

# Overview of electricity generation tariffs

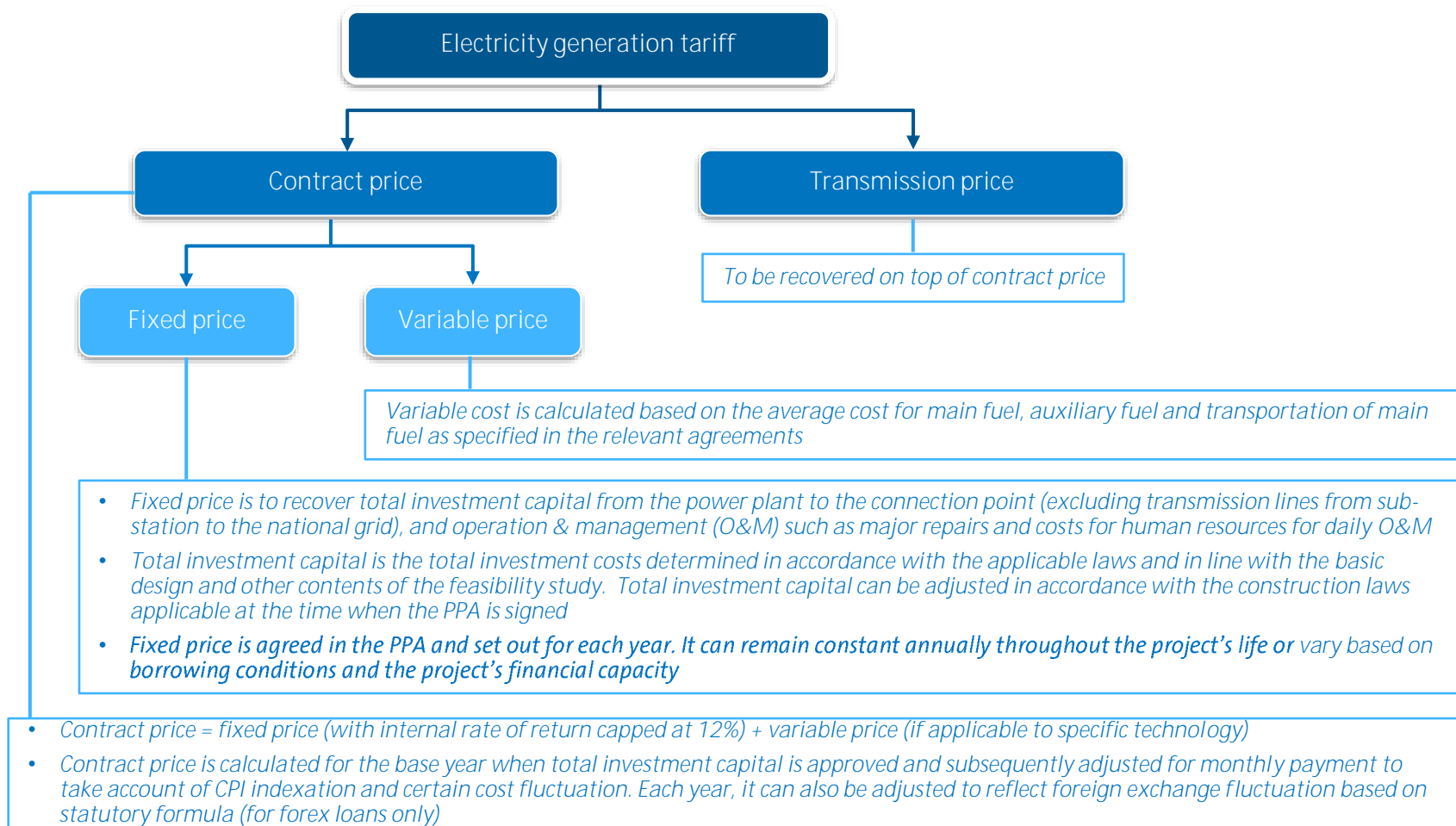
Technology	Electricity generation tariff
Hydro and thermal power projects	Electricity generation tariff is determined in accordance with Circular 07 and must be within the range <i>from 0 to the ceiling tariff</i> as determined and announced annually by the Ministry of Industry and Trade ( <b>MOIT</b> ) in accordance with applicable regulations
Wind and solar power projects	<ul style="list-style-type: none"><li>• Previously entitled to feed-in-tariffs (<b>FiTs</b>) but FiTs have expired</li><li>• Electricity generation tariffs for new projects and transitional projects (having PPAs signed but not entitled to FiTs) will be determined in accordance with Circular 07 on and from 1 June 2024</li></ul>
Biomass and waste-to-energy projects	Currently entitled to FiTs but likely these FiTs will soon be removed

*(\*) excluding multi-purpose hydro power projects, small hydro projects using avoided cost tariff (**ACT**), build-operate-transfer (**BOT**) projects, power plants providing auxiliary services, and power plants with price being subject to specific mechanisms provided in competent authorities' relevant documents*

# Overview of regulations on electricity generation tariffs

(\*) excluding multi-purpose hydro power projects, small hydro projects using ACT, BOT projects, power plants providing auxiliary services, and power plants with price being subject to specific mechanisms provided in competent authorities' relevant documents

General tariff ranges		Tariff for each specific plant
Hydro and thermal power	<ul style="list-style-type: none"><li>Circular 57/2014/TT-BCT stipulating the method, sequence of formulation and issuance of the electricity generation tariff ranges (as amended)</li></ul>	<p>Circular 07/2024/TT-BCT dated 12 April 2024 (<b>Circular 07</b>) replacing Circular 57/2020-TT-BCT regulating the method for determining electricity generation tariff of power plants and promulgating model power purchase agreement (<b>PPA</b>) (<b>Circular 57</b>)</p> <p>See <a href="#">here</a> for the details of how generation tariffs are calculated for specific projects under Circular 57.</p>
Solar and wind power	<ul style="list-style-type: none"><li>Circular 15/2022/TT-BCT on the method for formulating electricity tariff ranges for <i>transitional</i> solar and wind power plants (see <a href="#">here</a> for our summary of this circular)</li><li>Circular 19/2023/TT-BCT stipulating the method, sequence of formulation and issuance of electricity tariff ranges applicable to solar and wind power projects (see <a href="#">here</a> for our summary of this circular)</li></ul>	
Biomass and waste-to-energy	Draft Circular stipulating the method, sequence of formulation and issuance of electricity tariff ranges applicable to biomass and waste-to-energy projects. See <a href="#">here</a> for our summary of this draft.	



# Key changes under Circular 07 – Scope

## Scope

- Circular 07 applies to power plants operating in the territory of Vietnam and connected to the national grid.
- The method for determining electricity generation tariffs under Circular 07 applies to solar and wind power, biomass and waste-to-energy. This means no more FiTs for renewable energy.

*Note:*

- *Scope is broadened with an intention to cover all types of technologies except for certain exclusions.*
- *Unclear if model PPA under Circular 07 applies to biomass and waste-to-energy.*

## Exclusions

- The method for determining electricity generation tariffs under Circular 07 does not apply to multi-purpose hydro power projects, small hydro projects using ACT, BOT projects, power plants providing auxiliary services, and power plants with price being subject to specific mechanisms set out at law.
- The model PPA under Circular 07 does not apply to the above power plants, as well as to solar and wind power projects unless such solar and wind projects participate in the wholesale electricity market (**VWEM**).

*Note: The current draft circular amending Circular 45/2018/TT-BCT on operational rules of the VWEM provides that a renewable energy project (excluding hydro power) above 10MW can voluntarily choose to participate in the VWEM.*

# Key changes under Circular 07 – Definitions

## Connection point

*No longer defined in detail.*

It only means the point as agreed in the connection agreement between the project owner and the transmission line management unit in accordance with applicable laws.

## Total investment capital

*No longer contains a list of specific predetermined components.*

It only means total costs for investment and construction of the project as determined in accordance with applicable laws and in line with the basic design and other contents of the feasibility study.

## Adjusted total investment capital

*No longer contains the list of predetermined circumstances in which the adjustment can be made.*

It only states that the total investment capital is adjusted in accordance with the laws on construction applicable at the time of negotiation of the electricity generation tariff.

## Specific transmission cost

(recoverable on top of contract price)

*No longer includes the cost for construction of the transmission line and substation from the switch-yard to the connection point if agreed by the seller and the buyer.*

The cost is only recoverable if a competent State authority assigns investment in construction of such transmission line and substation to the seller.

# Key changes under Circular 07 – Pricing (1)

## Costs must be valid

Circular 07 adds that the total investment costs recoverable from the electricity generation tariff must be valid, not just reasonable.

## Cap on contract price of the base year

Circular 07 clarifies that (i) the contract price of the base year (ie, **year in which the project's total** (adjusted) investment capital is approved) must not exceed the tariff range of the relevant technology applicable to such year, and (ii) if there is no such tariff range, the contract price will be calculated based on the component structure of and capped at the ceiling price of the tariff range applicable to the most recent year.

## Investment costs to calculate fixed price

The investment costs for the purpose of calculating the fixed price in the PPA can be determined based on either the adjusted total investment capital or the finalised investment capital applicable at the time of negotiation of electricity generation tariff, not just the total investment capital as stipulated in previous Circular 57.

*Note: The finalised investment capital will only be applied to renegotiate and recalculate the fixed price for certain eligible power plants.*

# Key changes under Circular 07 – Pricing (1)

## Interest rates

In case the total loan amount as per financing documents is lower than that used in the financial model for calculating the electricity generation tariff, Circular 07 provides the seller and the buyer can agree on treatment of the residual with reference to the following principles:

- repayment period: minimum 10 years;
- foreign currency loan: interest rate is equal to the average of 180-Day SOFR of 36 previous months from the latest month (March, June, September or December) of the negotiation year as announced by the Fed +3%; and
- VND loan: interest rate is equal to the average 12-month VND deposit rate of five previous years preceding the date of issuance of the tariff range applicable to individuals offered by Vietcombank, Vietinbank, BIDV and Agribank + 3% .

## Adjustment due to foreign exchange rate

Circular 07 removes the requirement that the seller and the buyer must submit their agreed tariff adjustment caused by foreign exchange rate fluctuation required for repayment of foreign currency loan to the Electricity Regulatory Authority of Vietnam (**ERAV**) for determination.

Each year, the seller and the buyer, based on a statutory formula and certain agreed variables, can calculate such adjustment.

## Commissioning costs

Circular 07 clarifies that the costs for commissioning prior to commercial operation date (**COD**) will be paid as agreed by the parties but such cost will not be part of the approved total investment capital of the project.

Circular 07 does not regulate commissioning costs after COD.



# Key changes under Circular 07 – Pricing (3)

## Dredging and infrastructure costs

Circular 07 moves costs for dredging channels to the port (if applicable) from a component of the variable price to a part of the O&M cost making up part of the fixed price.

In addition to dredging costs, Circular 07 also adds port infrastructure costs to the O&M cost to calculate the fixed price.

## Temporary price

In case seller and the buyer are unable to agree on the contract price to sign PPA, Circular 07 provides that the parties agree on a temporary price to apply until the official contract price is agreed and submit such proposed temporary price to the MOIT for determination.

*Note: It seems that this is an option rather than an obligation though the wording is not clear. There is no requirement for a minimum temporary price.*

## Transitional projects

For transitional wind and solar power projects (having signed PPAs but not entitled to FiT), the parties will negotiate the tariff based on the formula under Circular 07.

The base year for calculation of the contract tariff is the year when the power plant achieves COD.

# Key changes under Circular 07 – Model PPA (1)

## Scope and exclusions

- The model PPA attached to Circular 07 only applies to hydro and thermal power plants (except for those excluded from scope of Circular 07).
- It is made express that such model PPA will not apply to solar and wind power, unless these projects participating in the wholesale electricity market.

*Note: In the last draft of Circular 07 prior to issuance, it was stated that solar and wind power plants would use the same model PPAs as previously applicable to power plants entitled to FiTs (ie, Circular 18 for solar and Circular 02 for wind). However, this was not included in the final Circular 07 and references to previous model PPAs have been removed. This either suggests that those previous model PPAs would remain to apply (as these circulars remain in force) or Circular 18 and Circular 02 would be amended soon. Nonetheless, we expect that the model PPAs for solar and wind are likely to remain the same or similar to those previous model PPAs.*

## More relaxed freedom of contract

- Circular 07 explicitly provides that (i) the model PPA under Circular 07 serves as the basis for PPA negotiation and (ii) the seller and the buyer can negotiate and agree to supplement terms specified in the PPA in accordance with Vietnamese laws.

### Notes:

- *This seems to reflect the policy of recognising the freedom the contract to agree PPA terms as explained in the draft Submission accompanying the draft Electricity Law and, to a certain extent (albeit not as clear as in the draft Submission), in the draft Electricity Law itself.*
- *Though the wording in the main body of Circular 07 is limited to ‘supplementing’, **at the end of each provision under the model PPA attached to Circular 07**, there is a note that the parties will have the right to negotiate to amend and supplement terms in accordance with Vietnamese laws (except for certain provisions such as Vietnamese governing law and language of PPA).*

# Key changes under Circular 07 – Model PPA (2)

## Simplifying ERAV's verification of PPA signing

Under Circular 57, ERAV had to review and verify the final draft of the PPA after the seller and the buyer complete the negotiation process and before signing. Circular 07 now only requires the seller and the buyer to report to ERAV for verification of the PPA after they have completed the negotiation process and initialled the PPA.

***Note:** Though the process and the scope of ERAV's verification under Circular 07 is unclear, this change seems to reflect the policy stated in the draft Submission accompanying the draft Electricity Law that the MOIT should only provide key principles for a PPA and the parties can agree on terms providing that the price is within the tariff range. The wording in the last draft of Circular 07 was that ERAV would only verify the tariff.*

## Change in policy and change in law

Circular 07 adds one more important case in which the seller and the buyer will renegotiate and agree the electricity generation tariff and the PPA. That is when there is a conclusion from a State competent authority (inspection/audit body) regarding electricity generation tariff or PPA.

*Note: In practice, there have been cases where inspection bodies have held that certain power plants did not comply with applicable laws and hence should not have been entitled to FiT. This change seems aimed at addressing such situations for future projects.*

# Key changes under Circular 07 – Model PPA (3)

## Dispute resolution under model PPA

Circular 07 removes ERAV as the default dispute resolution body and leave it blank for the parties to agree.

## Language under model PPA

Circular 07 retains that Vietnamese is the language of the PPA. However, it adds that the seller and the buyer can agree to supplement English as another language.

## Modification and additions to PPA

Circular 07 removes the wording that all modifications and additions to the PPA must be reported to ERAV. Circular 07 only retains that the parties will need to negotiate and agree in writing.

# Contact



Giles Cooper

Partner

T +84 24 3936 0990

Giles.Cooper@allens.com.au



Huyen Nguyen

Senior Associate

T +84 24 3936 0990

Huyen.Nguyen@allens.com.au



Huong Tran

Senior Associate

T +84 24 3936 0990

Huong.Tran@allens.com.au

Allens > <  
Linklaters | 200