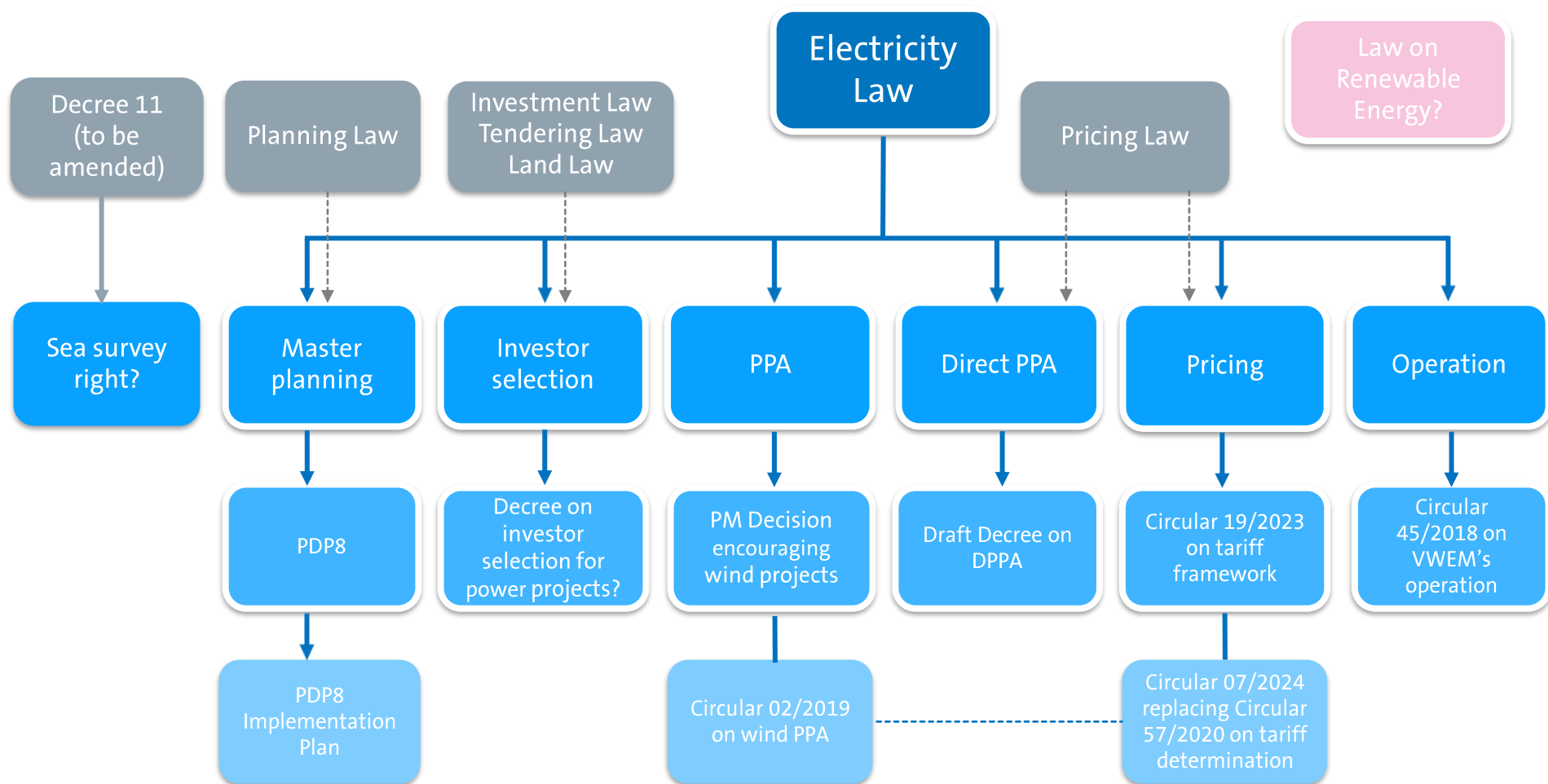


# Winds of change: Draft Amendments to Electricity Law

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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.



# Notable content for the wind power industry

New definition of offshore wind power projects

Bidding as the default investor selection method for power plant projects with limited exceptions

Restriction on transfer of interest in offshore wind power projects

MOIT's role to check PPAs on price may reflect a policy to allow more flexibility to deviate from model PPAs

Authority to approve Investment Policy Approval (ie, In-principle Approval) (*IPA*) for offshore wind power projects

Direct Power Purchase Agreement (DPPA)

# Notable contents for the wind power industry (cont'd)

## Definition of offshore wind power project (Article 4.37)

Offshore wind powers projects are defined as projects having all wind turbines constructed both:

- outside a marine territory spanning six nautical miles; and
- within areas of significant sea depth (as specifically determined by the Government).

*Essential to ensure consistent definitions across different legal instruments.*

## Bidding as default method of investor selection (Articles 16 and 17)

Bidding under the Tender Law to be conducted after issuance of project IPAs, subject to certain exceptions such as:

- national security and defence, protection of State secret;
- emergency, extension of existing projects, and self-consumption;
- cases under Articles 29.3 and 29.4 of Law on Investment where project and investor are concurrently approved.

*Regulations detailing the bidding process should be developed as soon as possible and address price negotiation issues.*

# Notable contents for the wind power industry (cont'd)

## Restriction on transfer of interest (Article 26)

Investors are prohibited from transferring more than 49% of the total investment capital of a project (or their capital contribution portion?).

An offshore wind power project consists of the power plant and the transmission line.

*This provision needs careful consideration. Unusual to see a restriction of this nature in a law-level instrument. Current wording is entirely unclear as to meaning. Industry should press for underlying policy clarity and consider options to address without law-level prohibition.*

## MOIT's role to check price and provide key principles for PPAs (Article 43)

The MOIT will check the price in the PPA and will provide guidance on key principles for PPA.

The draft *Submission* states that the MOIT's provision of model PPAs will cause problems for parties in agreeing other terms in accordance with Civil Code and Commercial Law. The MOIT should only provide key principles for a PPA, and parties can agree on terms providing price is within the tariff range (if applicable).

*The draft Electricity Law should make it express that parties have freedom of contract on the PPA terms subject to compliance with Vietnamese laws.*

# Notable contents for the wind power industry (cont'd)

## IPA issuance authority for offshore wind power projects

Prime Minister (PM) to issue IPA for projects located in a sea area:

- not yet defined within a specific province's administrative boundary;
- falling under the PM's authority to allocate sea area; or
- spanning multiple provinces' administrative boundaries.

Provincial People's Committees to issue IPAs for projects located in a sea area falling exclusively within their administrative boundaries.

*Application of this depends on the authority for sea area allocation TBC in the amending Decree of Decree 11 – essential to ensure consistency with such Decree.*

## Distinct rule regarding IPA issuance authority for undersea electricity cable projects

PM always has authority to issue IPAs except for special cases requiring approval from the National Assembly.

*Further consider implications and practicalities to address the case of projects involving both generation and transmission components but with different authorities issuing IPAs.*

# Notable contents for the wind power industry (cont'd)

## Providing legal bases for DPPA models (Article 47)

Recognizing two DPPA models:

- Direct-wire 'physical' DPPA; and
- Grid-connected 'virtual DPPA'.

*Ideally, the amended Electricity Law would make it express that parties have freedom to agree on (i) price in CfDs and direct wire PPAs; and (ii) CfD and PPA terms (although these points are recognised in the current draft DPPA Decree).*

# Other points to discuss



## Land use ratio

- Onshore wind: 0.35ha/01MW (no change)
- Offshore wind: ratio of sea area allocation per capacity is not available



## Power master planning

- MOIT: authority to develop national power master plans and implementation plans
- PPC: authority to develop plans to develop transmission lines in provincial master plans



## Wind power mapping

- Government will survey potential and develop wind mapping for onshore and offshore wind power



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