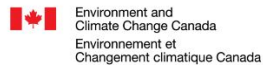




ENERGY
TRANSITION
PARTNERSHIP

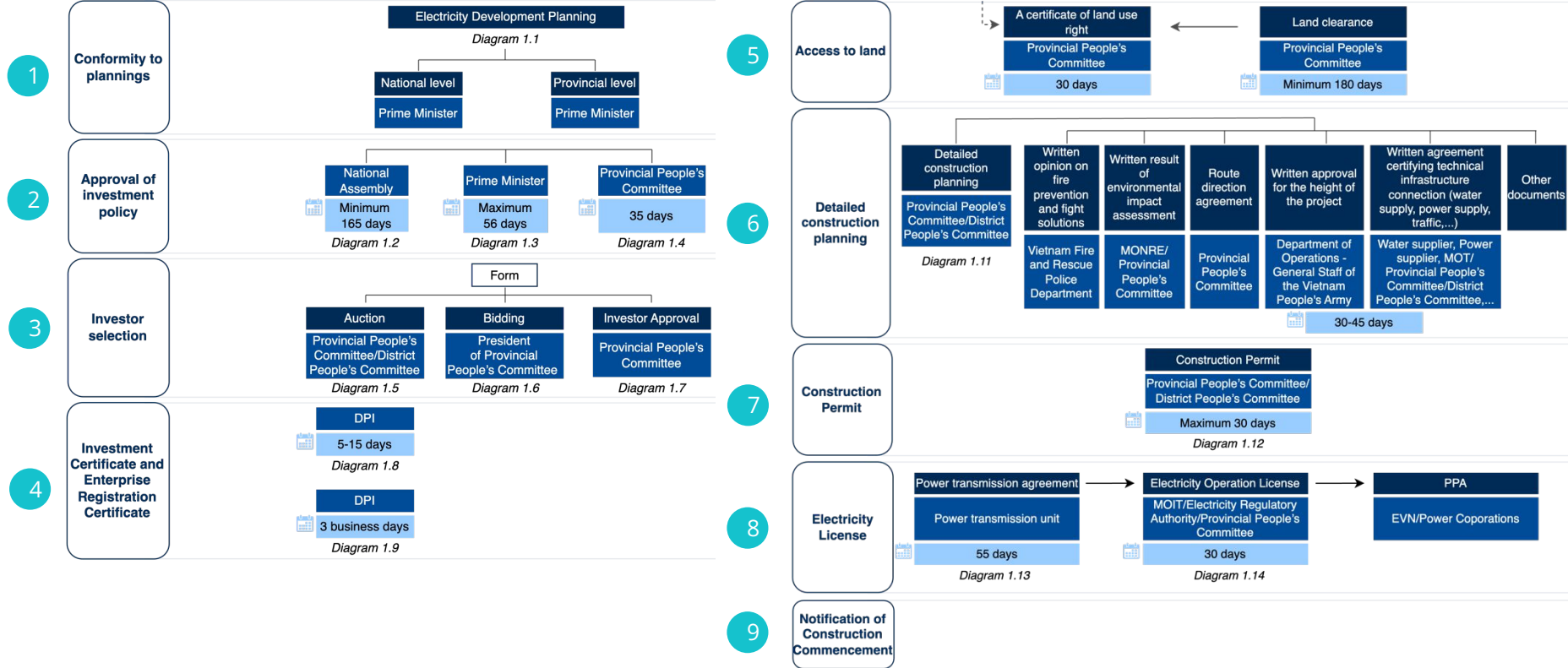
Report on Viet Nam's legal system review and summary of difficulties in investment of power generation, power transmission projects



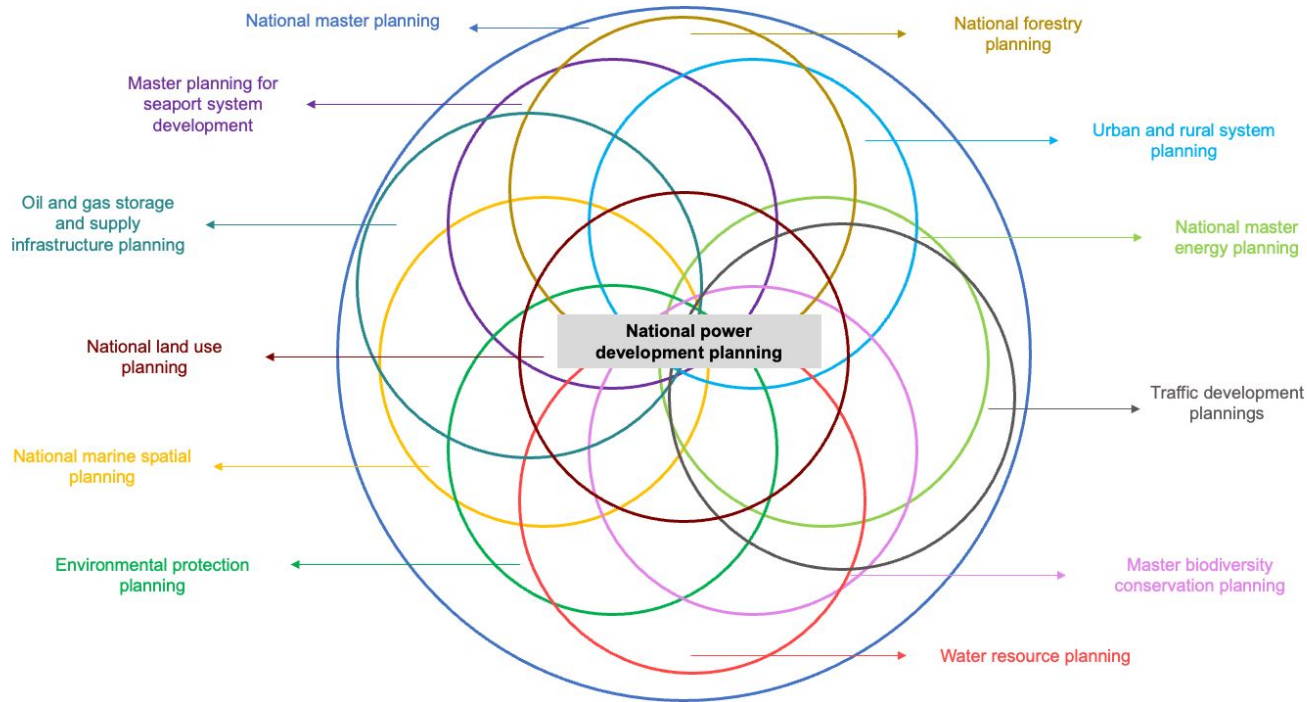
Research 1:
**Review of Viet Nam's legal
framework in investment
activities of power generation,
power transmission projects**



Procedure for formulation of a power generation and power transmission project



Relationship between national power development planning and other national plans



Power development planning

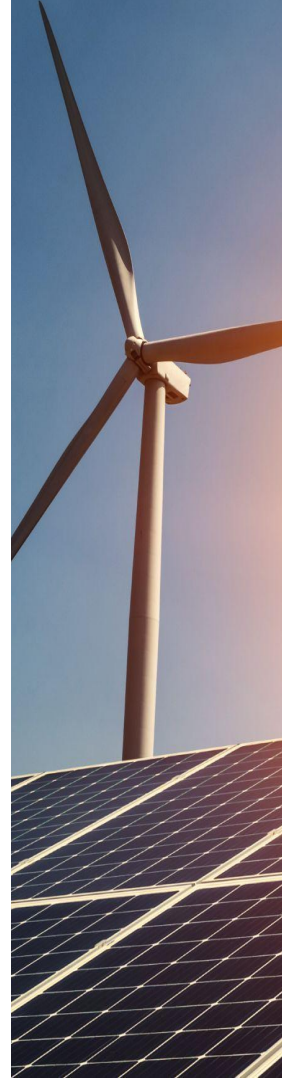
- Power generation or power transmission projects must be **compatible with other specialized plannings that directly affect the project implementation**, such as land use planning, marine spatial planning, construction planning, etc.
- The recently promulgated **Power Development Planning VIII**
 - ✓ Being expected to create favorable conditions for the sustainable development of power sources, transitioning to a low-carbon economy towards net zero emission of Viet Nam;
 - ✓ Setting out 02 (two) mechanisms of **auction and bidding for investor selection with electricity price**, but does not set any criteria for the application of each mechanism;
 - ✓ For power generation projects, Power Development Planning VIII requires the investors:
 - having modern technology;
 - setting reasonable electricity prices;
 - synchronizing and diversifying types of power sources with reasonable structure, promoting power sources from renewable energy;
 - developing a balanced power generation structure by region and geographical area, aiming to balance local supply and demand.



The Law on Investments relative to the formation of power generation, power transmission projects

Current legal regulations

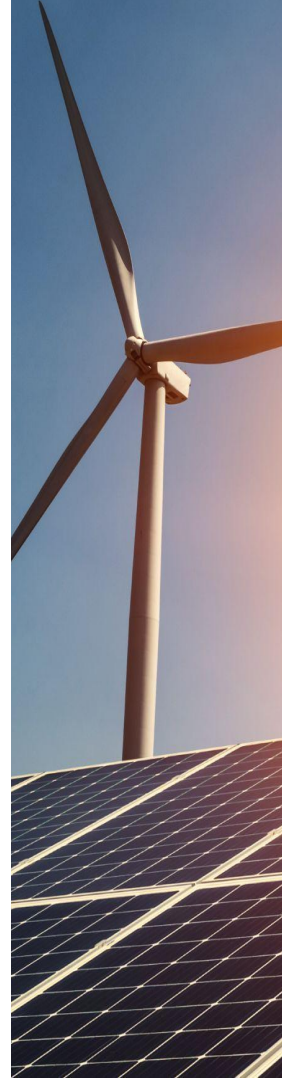
- Encompassing **various specialized legal fields**, such as the Law on Investment, Law on Land, Law on Bidding, Law on Property Auction, Law on Marine and Island Environmental Resources, etc.
- **Not specifying** separately the procedure to select investors for power generation and power transmission projects through auction or bidding methods.
- To carry out the procedure of investor selection for power generation and power transmission projects through auction or bidding, a project must undergo the procedure for investment policy approval.
- Law on Land **does not specify** the case of bidding for investor selection in projects involving land use.
- The procedure for selecting an investor with a specific investment location can be done in the form of an auction of land use rights.



The Law on Investments relative to the formation of power generation, power transmission projects

Current legal regulations

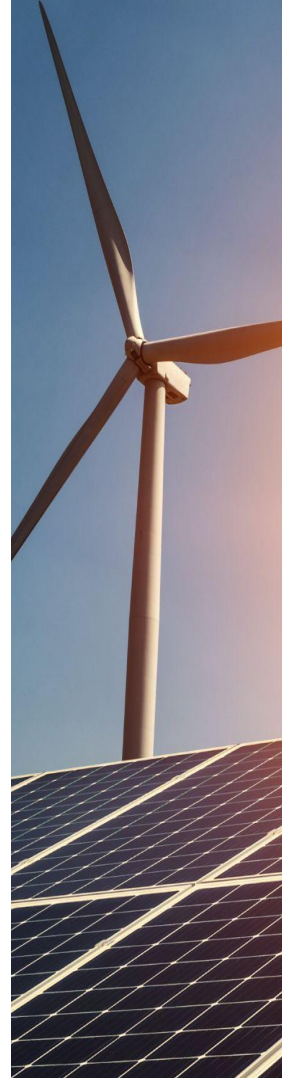
- For power generation and power transmission projects implemented under the **laws on PPP**, the procedures for selecting PPP project's investors can be applied in 4 following forms:
 - ✓ Competitive bidding;
 - ✓ Competitive negotiation;
 - ✓ Appointment of contractors;
 - ✓ Selection of investors in special cases.
- For **offshore wind power projects**: The “measurement, observation, investigation, survey and assessment of marine resources” are facing difficulties as the National Marine Spatial Planning and the Master plan on exploitation and sustainable use of coastal resources have not been issued for the basis to permit such work.
- **Standards and technical regulations** for power generation and power transmission projects: There are systems of standards and technical regulations, but they are inadequate, especially for offshore wind power.
- The laws on investment and land still have **many problems** in project recovery, land recovery for investment projects in some cases of violation of the laws on investment and land.



The Law on Investments relative to the formation of power generation, power transmission projects

Drafts of relevant legal documents

- **The draft Law on Land:** undergoing significant changes regarding the mechanism for selecting investors in projects involving land use and providing clearer regulations on the procedures for land use right auction and bidding for investor selection in projects involving land use.
- **The draft Law on Bidding**
 - ✓ Not have any specific provisions on bidding for investor selection in power generation and power transmission projects.
 - ✓ Stipulating that investor selection activities are conducted in one of two circumstances:
 - Investment projects involving land use that require bidding according to regulations of laws on land;
 - Investment projects that require bidding for investor selection according to dedicated regulations of particular sector or area.
 - ✓ Specifying the bidding process for investor selection.



Legal provisions on electricity

- For **connection agreement**
 - ✓ After completing the administrative procedures for investment and other procedures, the investor must submit a request for connection with EVN. EVN is the unit that will decide to accept or refuse the connection.
 - ✓ The connection procedure may require changes to suit the investor selection procedure through bidding and auction methods.
 - ✓ This procedure is not applied for power generation projects that produce electricity for their own consumption or power generation projects that directly sell electricity without connection to the national power system.
- For **electricity licensing activities**: being carried out after an investor has been selected to implement a project and completed the work for construction of the power generation plant and transmission system.



Legal provisions on electricity

- For the **electricity purchase price**
 - ✓ The PPA between the investors and EVN will be negotiated and signed after the investors have obtained all permits required by laws for proceeding construction of the power plant project.
 - ✓ If the investors participate in bidding or auction, it is necessary to have a mechanism and plan to determine prices as a basis for proposals:
 - Auction: the investors' price proposal is decisive to be selected and is not negotiated when concluding the agreement.
 - Bidding: the price element is also one of the factors to be considered along with other technical factors. Contract negotiation should be limited to ensure transparency and fairness for bidding activities.
- For **the role of EVN (as electricity buyer) in the investor selection process and procedures**: the applicable law has not governed.



Electricity market

The Law on Electricity and Decision 63/2013/QD-TTg have provided principled regulations for building a **competitive electricity market**. Currently, the competitive electricity market has been operating at **level 2**.

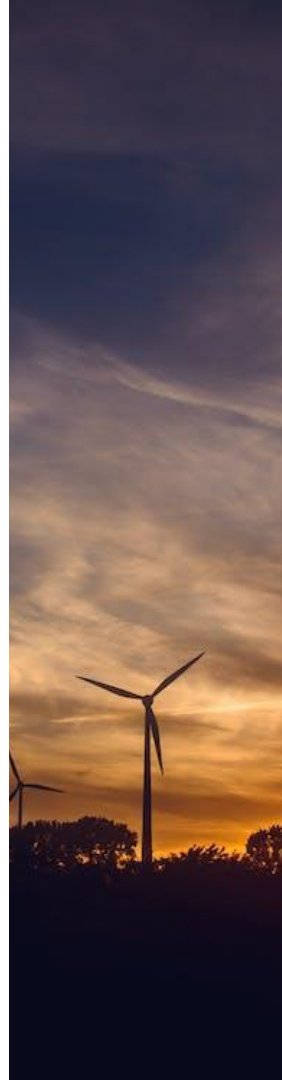
Electricity purchase price

- There are **5 methods** to determine the electricity purchase price corresponding to 05 forms of electricity purchase, including:
 - ✓ Method of determining the price of PPA under Circular 57/2020/TT-BCT;
 - ✓ FIT price method;
 - ✓ Method of determining the price according to the avoidable cost tariff;
 - ✓ Method of determining the price for power plants invested in the form of BOT contracts;
 - ✓ Method of determining the price for the portion of electricity output of projects participating in the competitive electricity generation market
- **FIT price:**
 - ✓ For wind and solar power projects: FIT price **has expired and been replaced** by the power generation price bracket applied to transitional solar power plants and wind power in Decision 21/QD-BCT. There is currently **no electricity price mechanism** applicable to new renewable energy plants that are not subject to the governance of Decision 21/QD-BCT and renewable energy plants to be built and operated in the future.
 - ✓ Biomass power projects: FIT price is applied according to Decision 08/2020/QD-TTg
- Electricity purchase prices of current power generation projects **do not include power transmission prices**.



International treaties investment in power generation and power transmission projects

- According to the trade agreements that Viet Nam has signed, Viet Nam **does not commit or reserve the right to allow foreign investors to invest in the development of power projects in Viet Nam** under Vietnamese laws. Vietnamese laws regulate restrictions on foreign investors in investing and developing power generation projects in Viet Nam, especially for hydropower projects, offshore wind power, nuclear power, electricity transmission;
 - The market **opening for power projects is clearly stipulated in the Law on Investment Decree 31/2021/ND-CP**. Hydropower projects, offshore wind power and nuclear energy are the business lines subject to conditions for foreign investors to access the market;
 - In the international free trade agreements or investment protection agreements related to public procurement, only **EVFTA** has provisions related to the organization of bidding, auction to select investors in power generation and electricity transmission projects;
 - Viet Nam's commitments on environmental protection and fighting climate change in international treaties on trade, investment or environmental protection show that currently Viet Nam has **given priority to clean power project development** to achieve zero emissions (0) by 2050.
- Viet Nam needs to adopt appropriate mechanisms in place to open the market to attract foreign investment and new technologies for power projects.



Research 2:
**Practical problems and difficulties
in investment and development of
power generation, power
transmission projects**



Practical problems and difficulties

- The Power Development Plan VIII requires more **specific guidelines for implementation in terms of criteria to determine projects in conformity with relevant plannings, roles and authority of state agencies** involved in the process of selecting investors, the capacity to allocate power generation volume from renewable energy sources to localities and zones to ensure balance and alignment with the authority of the agencies.
- Other plannings **should also be completed**, such as provincial planning, national marine spatial planning and master planning for coastal exploitation in the period of 2021-2030, etc.
- The current mechanism of bidding and auction to select investors involves the selection of investors for a specific investment location but **there has been no regulation related to investor selection based on technology, technical solutions, electricity purchase prices**, etc. and without association with any investment location. In the case of selecting investors for power generation or transmission projects according to the plan of organizing bidding or auction by "region", it is necessary to have law-level regulations for governance.
- **Electricity purchase price:** To enable the organization of investor selection along with electricity purchase prices, there should be an appropriate electricity generation and transmission price bracket, harmonizing the interests of both the State and investors in order to encourage and promote energy transition activities and clean energy development in Viet Nam.

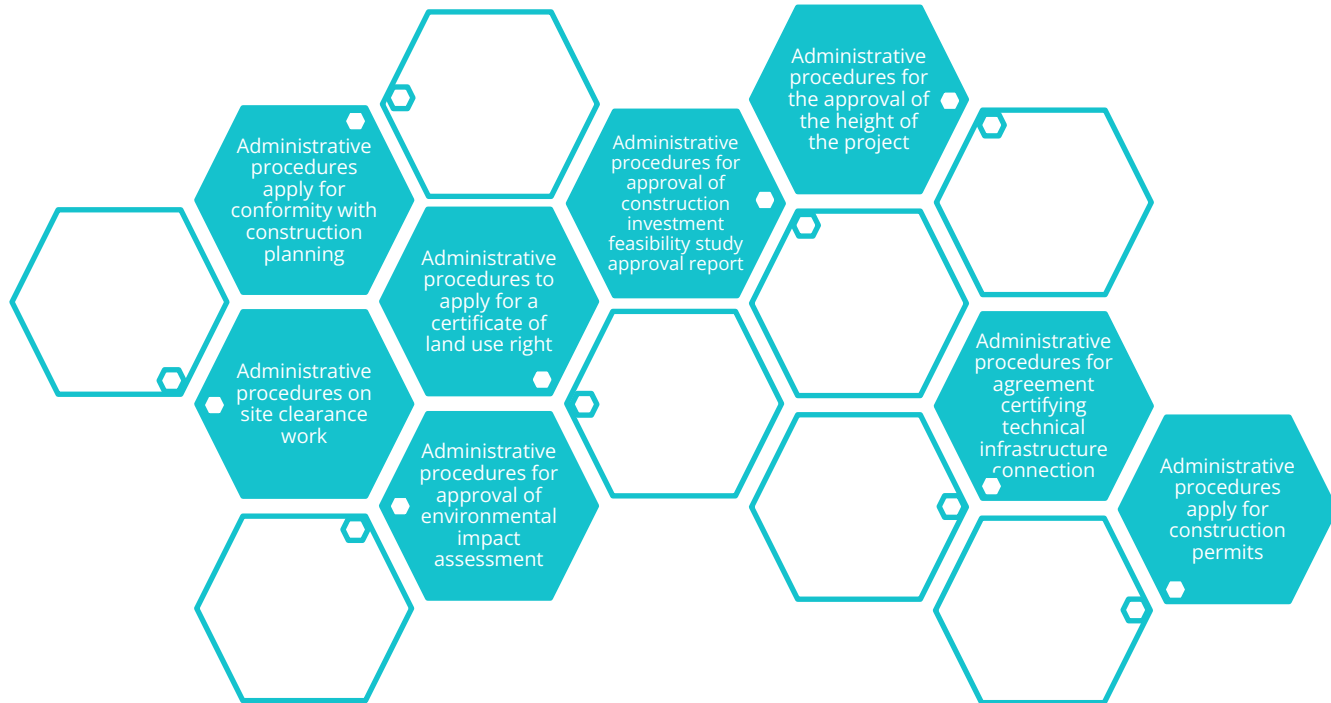


Practical problems and difficulties

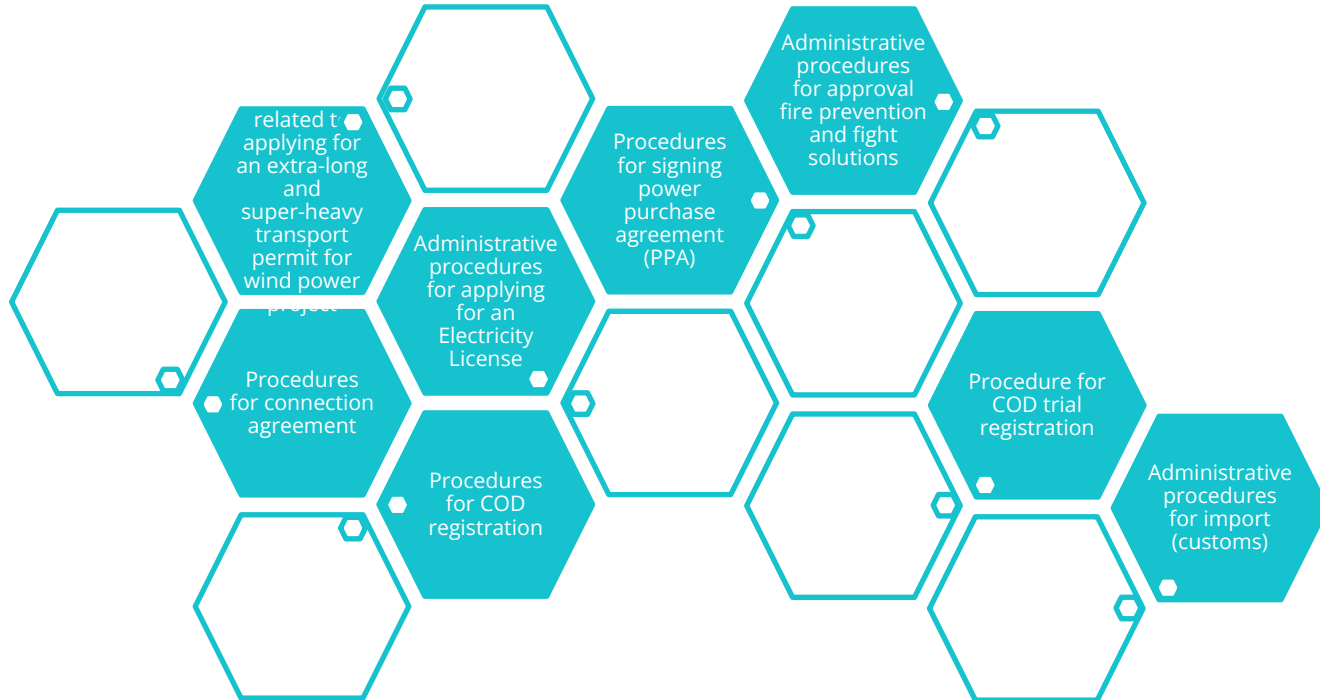
- **The system of standards and technical regulations related to solar power plants, onshore and offshore wind power plants** should be further completed to support the mechanism of bidding and auction to select investors for power generation and power transmission projects.
- **The bidding mechanism for offshore wind power projects:** the Law on Bidding, the Law on Electricity and other legal documents have not provided any regulation on bidding for investor selection for power generation and power transmission projects without land use.
- There have been **numerous regulations** related to the formation of power generation and power transmission projects, including Law on Investment, Law on Electricity, Law on Land, Law on the Sea of Viet Nam, Law on Marine and Island Environmental Resources, Law on Planning, Law on Investment in form of public-private partnership, Law on Prices, Law on Property Auction, Law on Bidding, Law on Construction... These legal documents are often accompanied by relevant conditions, administrative procedures and licenses; therefore, the procedure for a power generation and power transmission project to be put into operation and commercial exploitation is quite **complicated and time-costly**.



Some administrative procedures related to locations when implementing investment projects



Administrative and technical procedures upon construction permit of power generation projects until connection to power grid



Research 3: Recommendations



Recommendations

1. There should be a **legal normative document guiding the Law on Bidding (amended)** to provide instructions on bidding to select investors for power generation and transmission projects which should instruct the following issues:

- The scope of the investor selection form;
- Bidding method to select investors in organizing open bidding to select investors;
- The contents related to the bidding mechanism to select investors based on the needs of regional development, the regional balance, and the power distribution mechanism;
- The regulations on authority, processes related to bidding, and authority to investment policy approval for power source and transmission projects;
- The regulations on measures of bid security and the performance security of business investment project contracts;
- Specific regulations on business investment project contracts for power source and transmission projects;
- Regulations related to the PPA template and the PPA negotiation mechanism;
- The specific regulations on choosing investors for self-consumption power generation projects of enterprises, cooperatives, and households;
- Regulations on the authorities and responsibilities of State agencies and other units and organizations (such as EVN, PVN) related to the power generation and transmission projects which are installed onshore or offshore.



Recommendations

2. To solve legal issues in supporting the development of power generation and transmission projects before and after organizing the bidding for investor selection, it is necessary to **amend and supplement several laws such as the Law on Electricity, the Law on Natural Resources and Environment of Sea and Islands, and possibly develop a Law on Renewable Energy.**



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