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ON THE HORIZON — RENEWABLE ENERGY IN ASIA

A PRACTICAL GUIDE

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On The Horizon – Renewable Energy in Asia

A Practical Guide

Prepared by Meritas Lawyers in Asia

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About this Book

On The Horizon — Renewable Energy in Asia was prepared by lawyers in Asian Meritas firms. It offers practical insights targeting foreign investors and business people who are interested in pursuing opportunities throughout Asia. The twelve chapters provide general information, not legal advice. Do not rely upon the materials without prior consultation with legal advisors familiar with the specifics of your particular areas of interest.

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IDR	Indonesian Rupiah	THB	Thai Baht
JPY	Japanese Yen	USD	United States Dollar
KRW	Korean Won	VND	Vietnamese Dông
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ON THE HORIZON — RENEWABLE ENERGY IN ASIA

As this book goes to press, the global economy is still struggling to climb out of its worst downturn since the Great Depression. At the same time, Japan faces its most significant crisis since 1945 as it deals with the impact of the tsunami and damaged nuclear reactors at Fukushima. While some countries such as China, Singapore, and India have successfully rebounded, most nations are facing dual threats of exceptionally slow economic growth combined with chronic levels of high unemployment. Unlike past recessions, this one has hit developed economies just as hard as less developed countries, which have traditionally borne the brunt of economic downturns.

No matter how the world economy performs over the next few years, two factors stand out that will strongly influence global economic prospects over the next decade. One factor is population growth. Most experts predict that the world's population will grow from 6.9 billion today[1] to 8 billion by 2025 and will add another billion by 2050. This projected increase is as many people who currently live in China and India. Continual population growth places high demands on the world's resources, as more people are demanding more goods and services. Equally significant, the large and rapidly growing economic powerhouses like China and India are accelerating their demand for energy and the goods and services it provides. Between just these two countries, over 3.5 billion people will be pushing their governments to promote rapid industrialization in order to meet the demands of their burgeoning middle classes. These are pressures that neither China nor India, nor any government for that matter, can resist for political reasons.

Economics aside, the combination of these two factors is also putting a heavy strain our world's delicate environmental balance. The problem is that the energy resources supplied today to meet a growing population's increasing needs for goods and services are mainly derived from carbon-based sources that have significant long-term impacts on the environment. Coal is the dominant fuel in Asia and accounts for 54 percent of energy used today. While this share will go down over time (to an estimated 44 percent share in 2030), the use of coal in developing Asia is expected to increase by nearly 40 percent by 2030.[2]

[1] U.S. Census Bureau estimate at www.census.gov/main/www/popclock.html

[2] Estimates from USAID ECO-Asia Clean Development and Climate Program, based on data from International Energy Agency, Asian Development Bank, and Asia-Pacific Energy Research Center

For example, the Peoples Republic of China in 2011 is over 70 percent dependent on coal for its total energy needs, and it is the fastest growing economy in the world. As energy needs increase, so does the degradation of the environment. Adding another 2.5 billion people over the next 40 years will magnify the imbalance even more.

Another consideration involves the political climate where carbon-based energy is extracted and consumed. For example, much of the global oil supply is located in geographic areas that regularly experience bouts of political instability. Think about Venezuela, Nigeria, Libya, and points throughout the Middle East. As we have seen time and time again since the oil crisis of the 1970s, any even minor disruption in the assured supply of oil, gas, or other energy sources can and will have a significant impact on global prices.

And the trends of oil import dependency are going in the wrong direction. Over the past decade, oil imports to Asia have increased by 140 percent, and in 2010 the Asia region imported 60 percent of its oil.[3] China's dependence on foreign oil is expected to keep rising, reaching 65 percent by 2015 and 80 percent by 2030.[4]

For all of these reasons, the current global energy mix, which is primarily carbon-based, is untenable over the long run. China, India, and other nations need to find alternate ways to fulfill their energy demands. The only real answer — and our best chance to bring balance back to the environment — is to turn toward alternative sources of energy, which can at least in part replace existing coal and oil sources.

The most cost-effective way of weaning ourselves from fossil fuels is through energy efficiency, and this can be done by taking actions to make homes, buildings, factories, and our transport systems more efficient.[5] But at the same

[3] National Association of State Energy Officials, "What's Hot in Trade and Imports," available at: http://www.naseo.org/committees/energyproduction/oil/Trade_Hot.htm#What's%20Hot:%20The%20Asian%20Magnet

[4] Estimates for China's oil import dependency in 2030 range from 75%-82% based on these references: The World Bank, "Winds of Change: East Asia's Sustainable Energy Future," available at: http://www.recoalition.com/re2010/userfiles/files/Winds%20of%20Change%20(Full%20Text).pdf and Japan Times, "What is Beijing willing to do to secure oil and gas supplies?" (stating US Dept. of Defense predicts oil imports will amount to four-fifths of oil consumption by 2030), available at: http://search.japantimes.co.jp/cgi-bin/eo20101227mr.html

[5] Based on estimates in International Energy Agency (IEA), World Energy Outlook 2010

time, it is also important to aggressively develop the most feasible alternatives for supplying sustainable fuel and power directly – through renewable energy. Some examples of renewable energy with real potential are solar, wind, hydro, biomass, biogas, and tidal. While some of these technologies have been commercialized and entered the market, none of them has yet reached anywhere near their full economic and market potential.

Such renewable energy sources cannot become commercially viable without long-term financial incentives and comprehensive pricing policies backed by national governments around the world. Just the sheer size of the capital investments required in order to develop and exploit renewable energy demands that governments underwrite part of those costs, at least initially. This includes government-backed targeted incentives and grants for research and development of these emerging technologies, funding renewable energy demonstration projects, and adopting tax regimes for renewable energy that will attract private investors over the long run. Without the right policies and regulatory incentives, renewable energy sources are unlikely to succeed in Asia or elsewhere.

Globally, investments in clean energy have quadrupled over the past five to six years, from USD46 billion in 2004 to USD173 billion in 2008, and then falling slightly to USD162 billion in 2009.[6] And the upward trend is expected to continue, as technological developments, in combination with the policies and incentives mentioned above, boost the market for clean energy. The total expected investment in clean energy, for just the G-20 countries alone, is expected to be USD2.3 trillion over the next 10 years.

The real growth in global energy demand will occur in developing Asia — most notably China and India — which will demand access to greater and greater levels of energy over the next several decades. The overall demand for energy in the developing Asia region is expected to increase by 65 percent in the next 20 years, and electricity consumption is expected to increase by 114 percent.

Given these strong trends, we wanted to find out where key countries in Asia stand now on renewable energy as a workable alternative and what we can expect in the future.

[6] UNEP, 2010, Global Trends in Sustainable Energy Investment 2010. Sustainable Energy Initiative (SEFI), in cooperation with Bloomberg New Energy Finance

In order to find the answers, we approached 12 of the leading Asian law firms and asked each to comment on 10 basic questions about renewable energy policies and the regulatory framework in their individual countries:

1. *What are the driving factors for increasing renewable energy production?*
2. *Which renewable energy sources are viewed as the best opportunity for your country and why?*
3. *What role does your government play in regulating the energy industry? Describe the regulating environment and trends in deregulation in your country.*
4. *What agencies or bodies of government oversee the energy sector? What goals or mandates has your government set for electricity generation or fuels production from renewable sources?*
5. *What are the opportunities for private ownership (vs. public ownership) in clean energy development and technologies?*
6. *What is the level of government investment or what incentives are in place to support these goals and targets?*
7. *What kind of emphasis is placed on researching and developing renewable energy technologies versus looking to outside energy resources?*
8. *Is your country on track to be a clean energy importer or exporter from the standpoint of power production supply and manufacturing?*
9. *How developed is your country's workforce to support innovation, development and the production of renewable energy?*
10. *What are the key barriers to increasing renewable energy as a part of your country's energy mix?*

Each chapter of this book is devoted to insights on a specific country in Asia. Our hope is that this book will spark the beginning of an ongoing dialogue among government officials and planners, venture capitalists, individual entrepreneurs, researchers, multinational corporations in the energy sector, and NGOs as they focus their attention on how best to accelerate the deployment of renewable energy resources in Asia and elsewhere. The stakes are high for all of us. We cannot afford to step back from the challenges and ignore the great opportunities renewable energy technologies offer.

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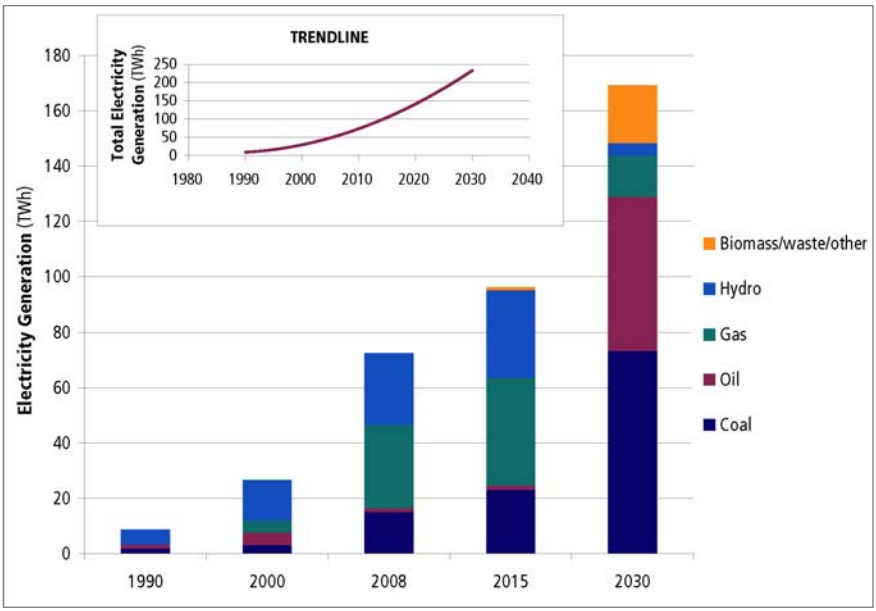
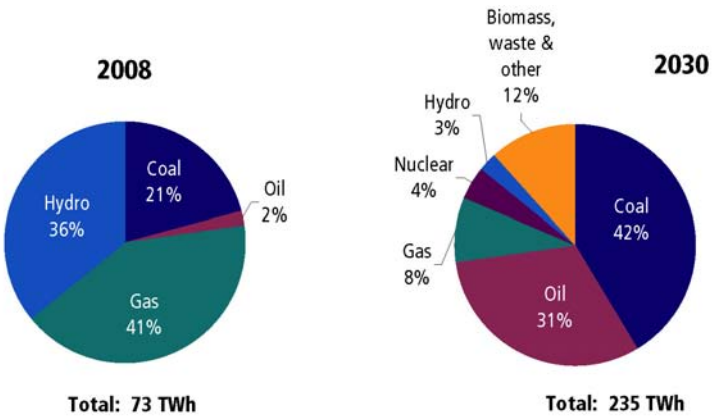
USAID's ECO-Asia CDCP program uses policy and market interventions to promote the scale up of investment and implementation in clean energy in developing Asian economies. The program is active in China, India, Indonesia, the Philippines, Thailand, and Vietnam. ECO-Asia CDCP partnered with Meritas in the development of this guide as part of its Asia Clean Energy Policy and Regulatory Dialogue, which is aimed at building capacity in the region to design and implement effective policy, regulatory, and legal frameworks for energy efficiency and renewable energy.

Electricity Generation by Fuel Type: Vietnam





Source: Asian Development Bank, International Energy Agency, Asia-Pacific Energy Research Center, and The World Bank

1. What are the driving factors for increasing renewable energy production in Vietnam?

As with many other countries, an important factor in Vietnam driving the increased use of renewable energy is a heightened sense of environmental issues. Another important factor is the steady power-demand growth rate over the years, especially during the dry season when power generation capacity is not enough to supply demand. Economics, too, is important. While Vietnam is a net exporter of crude oil, it is a net importer of petroleum products. Vietnam has current supplies of offshore gas, but Vietnamese fields are limited. The balance between exporting crude and importing refined product will begin to change in the next few years, so Vietnam will become a net oil importer. Coal as a fuel is a major source of pollution, and its use is widespread. While at the moment Vietnam is a net exporter of coal, it is forecasted that Vietnam will be a coal importer from 2015 onward.

Underlying all of this is the fact that there is limited government financing available for construction of traditional power generation plants. The power monopoly, Electricity of Vietnam (EVN) (a state owed enterprise), is on the way to being un-bundled with a new separate structure of generation, transmission, and distribution functions. The Electricity Regulatory Authority under the Ministry of Industry and Trade (MOIT) exercises control over electric power pricing. The current power price regulation is still low so that only hydropower generation is viable. Potential foreign power generators who are interested in investing in wind energy or solar energy still need to wait for a possible feed-in tariff to be accepted by Vietnam's government.

The hope is that many new forms of renewable energy, including wind, biomass, and hydro power, can be developed more freely outside of the EVN monopoly and by using sources of private financing. However, even if these new forms of energy were developed, power pricing would remain a major barrier, especially due to high production costs related to harvesting renewable energy sources.

Nuclear power, owing to its unlimited nature and because it is a clear source of energy, is expected to begin to replace traditional sources. Although nuclear energy is not officially considered to be renewable energy, the government nevertheless encourages private financing of nuclear energy development.

2. Which renewable energy sources are viewed as the best opportunity for Vietnam and why?

Solar

In Vietnam, sun power is abundant year-round, but the current production capacity is limited. There is no commercial development to produce solar electricity for the power grid.

Wind

This holds significant promise because Vietnam has a huge coastline with high average wind speeds. In one particular area, Binh Thuan Province, winds will permit power generation at commercial levels, but it is still subject to a government-accepted feed-in tariff so that EVN can take up.

Hydro

Vietnam already generates 40 percent of its electric power from hydro. While this energy feeds into the national power grid, it is often generated from medium and big, but rather inefficient, plants. Private investors have also been taking up mini-hydropower generation quite intensively in recent years.

Biofuel

Biofuel has only recently become available in Vietnam, and the use of biodiesel has recently gained some traction with a new joint venture formed by PV Oil, an affiliate of PetroVietnam Corporation, a state-owned enterprise.

Nuclear

In November 2009, the National Assembly approved, in principle, a nuclear electricity investment in Ninh Thuan Province. Construction of the first plant within this project is expected to begin in 2014 and would enter into operation in 2020.

3. What role does your government play in regulating the energy industry? Describe the regulating environment and trends in deregulation in your country.

The Vietnamese government has created a master plan for a national strategy of energy development. The master plan focuses on setting development objectives and direction for national energy policy, establishing policies and directives, such as directives on investment, financial structures, human resources, and restructuring the energy sector to improve the efficiency of energy development.

Deregulation seems unlikely. In fact, the government tends to strengthen its regulatory system in the belief that regulation will ensure the sustainable development of energy. In that connection, in June 2010, the National Assembly promulgated the Law on Economical and Efficient Use of Energy. While laws and regulations tend to loosen the monopoly of the public sector, there has been no rush of the private sector into energy production. However, the government created a schedule for the private sector to participate, step by step, in distribution of electricity and development of electricity sources. In accordance with this schedule, by 2014, Vietnam will have a competitive market.

Pricing is critical. The government subsidizes the use of electricity and controls the prices charged to different classes of customers. Prices to consumers are segmented in various ways, such as section of the country, residential or commercial purposes, time of day, etc. The price that the government is willing to pay for electricity from private power producers has been the single largest deterrent to the growth of private investment in power. However, in March 2011, the government raised electricity prices an average of 15 percent across the board. The projected future demand for power is enormous, and government financing is limited. It is therefore inevitable that Vietnam will see an increase in private investment and more market-oriented pricing.

4. What agencies or bodies of government oversee the energy sector? What goals or mandates has your government set for electricity generation or fuels production from renewable sources?

The MOIT is the key authority supervising the energy sector and EVN oversees the generation and transmission of electric power. Other authorities, such as the Ministry of Natural Resources, Ministry of Science and Technology, Ministry of Finance, Ministry of Planning and Investment, other Ministries, and local authorities are also involved.

The development of new and renewable energy has become a new priority on the government's agenda on national energy. In Decision 1855/QD-TTg of the Prime Minister (27 December 2007), the government plans that the proportion of new and renewable energy would account for five percent of primarily commercial energy by 2020. The target rises to 11 percent by 2050. Such modest targets may be attributable to the current underdevelopment of new and renewable energy in Vietnam and the current assessment of the modest amount of available capital. The government, of course, encourages the development of electricity from renewable energy.

5. What are the opportunities for private ownership (vs. public ownership) in clean energy development and technologies?

The most promising opportunity still lies in market demand for electric power, especially in the dry season.

In general, the government undertakes to create a level playing field for the private sector in the development of new and renewable energy. Together with the promise to create a competitive market for electricity-generating sources as mentioned above, the government also plans for a competitive market for distribution of electricity by 2022. However, many changes are needed to ensure the feasibility of achieving this schedule.

Private investors will want to assess whether the recent increase in the price of electricity to consumers will be reflected in the price the government is willing to pay for electricity.

6. What is the level of government investment or what incentives are in place to support these goals and targets?

Investment projects that construct establishments that use solar energy, wind energy, biogas, geothermic, and tidal energy are entitled to special investment incentives. These investment projects are entitled to incentives with regard to corporate income tax, import/export tax, land fee, land rental, and other incentives provided by the law. According to the Prime Minister's Decision 177/2007/QD-TTg (20 November 2007), materials and equipment used for research and to develop technology for the production of biofuel are entitled to an exemption from import tax. This Decision also grants enterprises that produce biofuel the greatest incentives in connection with land leases, allowing them to lease land for up to 20 years.

7. What kind of emphasis is placed on researching and developing renewable energy technologies versus looking to outside energy resources?

The government subsidizes energy and many petroleum products at the retail level. The subsidy was recently significantly reduced when the retail price of petroleum products increased by an average of 25 percent in February 2011. However, it is unlikely that the government will expend significant public funds on the research and development of alternative and clean energies. The government is more likely to rely on progress that occurs in other countries and to adopt these newer, imported technologies via foreign and domestic investment.

8. Is Vietnam on track to be a clean energy importer or exporter from the standpoint of power production supply and manufacturing?

At the moment, Vietnam is a net exporter of energy. However, given that the demand for electricity is increasing at an annual rate of 15 to 20 percent, Vietnam will soon become a net energy importer. The government tries to implement a workable strategy on using energy economically and efficiently. The prospect of becoming a net energy importer could spur the energy price regulations even further.

9. How developed is Vietnam's workforce to support innovation, development and the production of renewable energy?

Hanoi Water Resource University and University of Electricity have their own Hydro Power and Renewable Energy programs for undergraduate education. A few other research institutes, e.g., Institute for Hydro Power and Renewable Energy and Hanoi University of Technology's Renewable Energy Centre, also have training courses for post-graduate students.

To the extent that special engineering and technical skills are required to develop renewable energy (solar, nuclear, etc.), special courses for further exposure and training or education to understand renewable technologies and to develop required equipment manufacturing will be required. To the extent that existing skill sets can be directed to new technologies, Vietnam probably can cope. However, the country currently lacks programs to augment or reshape skills that involve current technologies. At this point, Vietnam relies on on-the-job training or retraining that is linked to specific projects.

10. What are the key barriers to increasing renewable energy as a part of Vietnam's energy mix?

There is certainly a political will in Vietnam to adopt new energy technologies. For example, Vietnam has a long-term master plan for the development of nuclear energy. However, most plans depend on outside financial assistance from multilateral or bilateral financial institutions or financing from the private sector. There is a minimal amount of state funding available to purchase new technologies. There is, however, a keen awareness among government officials of environmental issues and a willingness to take steps to prevent environmental degradation.

To date, a key barrier to the rapid scale-up of renewable energy is excessive regulation and lack of financing. New pricing policies, however, are certainly a positive development.

To some extent, the lack of financing provides opportunities for foreign private investment. The creation of a new legal framework for public-private partnerships (PPP), where the government is a contractual counterparty only (not an equity holder), holds considerable promise.

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