

Template contract for financing renewable energy projects

Renewable Energy Coordination Group

Vienna, 10 November 2016



European Bank
for Reconstruction and Development

Main Elements of a Fit for Purpose PPA



European Bank
for Reconstruction and Development

- Clear regulatory framework - this will affect what is possible and/or necessary in a PPA
- The better the PPA/legislation, the more leverage a project can hope for from financiers (subject to other issues), the better the return on equity, with reduced upward pressure on tariffs
- Direct Agreement with Government – necessary if PPA and/or legislation (not just renewable framework) do not cover financing imperatives
- Off-taker risk: must be strong and any transfer should have clear qualification criteria
- Balancing risk: If to be taken by Seller, should be reasonable, based on actual local capacity for prediction
- Governing Law: local
- Off-shore Dispute resolution and arbitration

Main Elements of a Fit for Purpose PPA, cont'd



European Bank
for Reconstruction and Development

- Clear provision for qualification and interconnection
- Clear formulas for every technical aspect and eventuality
 - Effectiveness and Term (CPs and deadline)
 - Construction obligations – Applicable requirements, Commissioning (cooperation), Deemed Commissioning if Force Majeure
 - Operational procedures – Applicable requirements, Scheduling, Insurance
 - Dispatching rights, Curtailment and Deemed generation
 - Metering, Equipment, Testing, Reading
 - Invoicing – Timing and procedures, FX Risk?
 - Deemed delivered

- Force Majeure
 - Political:
 - War, rebellion, strike,
 - Change in law, expropriation, refusal of permits, system operator breach, any act or failure to act by Government that impairs performance
 - Natural force majeure: includes fire, flood, explosion, civil commotion, adverse weather or disease
- FM Mitigation: Affected party relieved of obligations under PPA
 - If political, deemed generation
 - Commissioning Date delay

- Change in law
 - the coming into force of any new Law, including by way of amendment to an existing Law or adoption of secondary legislation under an existing Law; or
 - the adoption of a new interpretation or application of any Law,
 - in each case after the date of the Agreement
- Specific Change in Law - specific to the project that affect economics or risk
 - the Buyer shall make such payments to restore the economic return (taking into account any additional risks) of the Project, the Seller and the Shareholders to the level it would have been but for that Specific Change of Law.
 - payments either on a one-off or a recurring basis dependent on the nature of the Specific Change of Law so that the Seller shall not be subject to any funding shortfall.

More usual in developed countries

- Default and Termination
 - Seller event of default
 - Buyer event of default
 - Political Force Majeure (e.g. 180 days)
 - Buyer EOD or Prolonged FM: Buyout of facility by Buyer - Termination payment
 - Termination payment
 - all amounts outstanding to the Lenders, including breakage costs, fees, penalties, hedging termination sums and expenses;
 - all amounts invested in the Seller by its direct Shareholders together with a return on such sums equal to an annual rate from the date of investment to the date of payment of [15%]; less any dividends, etc.
 - Calculated in the currency in which they were paid to or by the Seller and converted into [Local Currency] at the exchange rate between LC and the relevant currency generally available on the date on which the Termination Payment is made

- Ability to take security
- Transferability
- Timing
- Step-in rights: Direct Agreement in which the Buyer:
 - consents to, and acknowledges, the granting and enforcement of the Security;
 - agrees that it will not terminate this Agreement without first allowing the Lenders, or a person acting on their behalf, a reasonable period to cure any Seller Event of Default;
 - agrees that the Lenders, or a person acting on their behalf, may transfer the Facility, the Site, the Seller's rights and obligations under this Agreement and the Connection Agreement and/or the Seller's share capital to a person reasonably satisfactory to the Buyer; and
 - undertakes to procure that the System Operator will also consent to the transfer contemplated in subparagraph (iii) above.



Louis Borgo
Associate Director - Senior Banker
Power and Energy Utilities
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
Telephone: +44 (0) 20 7338-6547
Mobile: +44 (0) 7802 510 637
e-mail: BorgoL@ebrd.com