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Power Purchase Agreement from Commercial and Legal Perspective

INTRODUCTION

- The Power Purchase Agreement (PPA) is complex component of an energy project and can be used to purchase any type of energy including both renewal and non-renewable. Negotiating a bankable PPA is essential if a project is to take off.
- A PPA must take into account present regulatory environment must also include provisions that will lock in price and quantity and manage risk factors as the agreement is normally for a 20-30 year period. Participant in this course will be given a road map of how to navigate through a PPA and have an in-depth knowledge of the essential clauses.
- This PPA training seminar will draw on a wide range of PPAs and case studies to elaborate on contractual, commercial and risk management issues that will invariably need to be addressed in a PPA. The success of an energy project will depend largely on how well a PPA is negotiated and executed. This seminar aims to give participants the tools to achieve this.
- The participants will experience an interactive seminar involving discussion of several case studies from around the world, reading of model PPA agreements and participating in a mock negotiation of a PPA.

This training seminar will highlight:

- The different project structures and models for a PPA
- The roles and responsibilities of the Seller and Buyer under a PPA
- The essential contractual clauses necessary
- Risk management strategies
- Guarantees and warranties
- Pricing, Tariffs and Take or Pay obligations
- Contract compliance and penalties
- Avoiding common errors and mistakes in negotiating a PPA agreement
- Adopting risk management strategies and the allocation and limitation of liability between Seller and Buyers of energy

OBJECTIVES

- UNDERSTAND the essential elements of a PPA and the underlying laws and regulations
- MITIGATE the common risks in a PPA through careful considerations of the commercial and legal aspects of an energy project
- STRATEGIZE all stages of the PPA namely the negotiation, execution and implementation
- DEVELOP effective negotiation skills to obtain the best advantage in a PPA
- LEARN the key issues faced during project lifecycle and how to tackle these through enforceable contractual clauses
- BE AWARE of critical issues which could affect the critical aspects of the power generation project
- MANAGE the stakeholder relationships
- PARTICIPATE effectively in the resolution of claims and disputes

At the end of this training seminar, you will learn to

- Analyze the structure of the PPA document and the terms of a power purchase agreement
- Understand the commercial and legal issues relating to the negotiation and execution of a PPA
- Know the different types of PPAs used for implementing power projects
- Apply effective strategies negotiation, execution and implementation of a PPA
- Understand the various considerations in adopting risk management measures and the allocation and limitation of liability between Sellers and Buyers of energy
- How to negotiate an effective PPA encompassing all the critical issues faced upon instances of delayed scheduled, cost overruns, substandard quality, pricing volatility, and many more real-life problem scenarios

TRAINING METHODOLOGY

- Participants to this training course will receive a thorough training on the subjects covered by the course outline with the trainer using a variety of proven adult learning teaching and facilitation techniques. Course methodology includes both a lecture format and a handbook, case studies and practical problem solving sessions and interactive discussions.
- Participants will receive materials that provides the participants with a useful reference resource. The instructor also encourages questions and discussions from participants during the topical presentations.

ORGANISATIONAL IMPACT

The organisation will benefit by:

- Expanding the expertise of personnel involved in PPA negotiations and execution
- Will allow project and general management teams to be more effective in dealing with commercial and legal aspects of a PPA
- Learning how to allocate and manage risk and reduce the possibility of disputes and claims
- Reducing project failure, costly changes, and cost overruns caused by poor understanding and management of risk in a PPA
- Implementing better risk management which will improve the chance of project success
- Developing an appreciation of the true effect of contractual indemnities and limitation of liability which will minimize exposure of the company to project risks

PERSONAL IMPACT

By the attending this training course, participants will be able to:

- Understand the essential elements of a PPA
- Familiar with best contracting strategies for a PPA
- Assess operational, commercial, legal and financial risks in energy projects
- Appreciate the essential elements of the implementation and execution of a PPA
- Negotiate an effective PPA
- Effectively manage and resolve claims and disputes

WHO SHOULD ATTEND?

This training course is suitable to a wide range of professionals but will greatly benefit:

- Business Analysts
- Business Development and Marketing Managers
- Commercial Managers
- Consultants
- Contract Managers
- Corporate and Project Financing Personnel
- Economists
- Accountants
- Engineers
- External Legal Counsel
- In-house Legal Counsel

Course Outline

Power Purchase Agreement – Introduction & Main Features

- Introduction to Energy Industry and the role of the PPA
- Profile of the Project - Parties
- Different Project Structures & Business Models – Lease, License, Concession, BOT, BOO, BOOT
- Special Purchase Vehicle (SPV) Purpose and Role
- Generator Covenants
- Assignments Rights
- Licences
- Metering, Measurement and Verification
- Indemnifications
- Purchaser Covenants
- Price and Payment
- Avoided Peak Demand Payments
- Liquidated Damages

Essential Clauses in a PPA

- Term and Extension
- Performance Guarantees
- SPV's Construction & Development Obligations
- Contracted Capacity & Energy
- Representations & Warranties
- Insurances Required
- Maintenance and Scheduled Outages
- Commissioning and Commercial Operations Commencement
- Early Termination Rights & Events of Default
- Off-taker Step-in Rights
- Force Majeure Provisions
- Disclaimers and Limitations of Liability & Indemnification
- Subsidies
- Change in Law
- Transfer of Ownership Rights, Assignments, Novations
- Law & Jurisdiction

Risk Assessment in a PPA

- Liquidated Damages – Delay and Performance
- Performance Bonds
- Retentions
- Variation Orders and Cost Overruns
- Dealing with Political Risk
- Dealing with Currency Exposures
- Minimum & Maximum Delivery Obligations
- Buyer Default
- Seller Default
- Sovereign Risk
- Change in Tax Law

Commercial Aspects of a PPA

- Price, Volume & Tariffs
- Metering
- Take or Pay Obligations
- Shape or Profile Risk
- Balancing Risk
- Credit Risk
- Tenor Risk
- Managing Lender Expectations

Negotiation of a PPA & Dispute Resolutions in PPA

- Negotiate the Best PPA
- Prepare a Term Sheet
- Set Framework for Negotiations
- Balance Buyer's and Seller's Needs
- Know your BATNA
- Focus on Interests not Positions
- Reach Sustainable Agreement
- Negotiation Exercise
- Negotiate on Key Milestones to be Achieved & Penalties for Failures
- Negotiate Performance Guarantees
- Dispute Resolution
- Different Types of Dispute Resolution
- Litigation
- Mediation
- Arbitration
- Expert Determination

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