# Lawyer's view on the Jordanian PPA

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# Agenda

- What is the Jordanian PPA?
  - Renewable Energy and Energy Efficiency Law
  - Development of the Jordanian PPA
- PPA Main Components – Developed Markets
- Three Important Terms:
  - Proper Risk Allocation
  - Project Finance
  - Bankability
- Walk through the Jordanian PPA
- Our view on the Jordanian PPA

***Note: this presentation only covers PPAs to be signed with NEPCO***

# What is the Jordanian PPA

- Renewable Energy & Energy Efficiency Law 13/2012 (REEL)
  - Regulates the development of Renewable Energy Projects in Jordan
  - Interrelates with the General Electricity Law – provides the licensing and regulatory regime (generators, transmission and distribution)
  - REEL - Power Purchase Agreement (PPA) is part of the Project Agreements which will be signed once the project is approved.
  - REEL does not define a PPA nor does it stipulate any minimum requirements that must be covered in a PPA
- PPA under Jordanian Law is a contractual relationship that regulates the sale and purchase of electrical power.
- Jordanian Law recognizes "Freedom of Contract" subject at all times to Public Order and Mandatory Legal Requirements

# What is the Jordanian PPA – Cont.

- Development of the Jordanian PPA

  - IPP 1 Conventional Generation (Gas, Diesel, HFO)
  - IPP 2 Conventional Generation
  - CGECO Privatization – PPAs for existing plants – Conventional Generation
  - Bidding process relating to Al-Kamsha Wind Farm – PPA was based on IPPs (Conventional Generation)
  - Bidding process relating to Al-Fujeij Wind Farm – PPA was based on negotiated Kamsha PPA
  - IPP 3 - Conventional Generation
  - IPP 4 – Peaking Units of Existing Plants
  - Tafila Wind Farm PPA
  - Solar Projects PPAs – Round 1 of Direct Proposals

# PPA Main Components – Developed Markets

- Developed Markets define the PPA as a contract to buy the electricity generated by the power plant and refers to the purchaser of the electrical power as the “Off-taker”
- PPA main components are:
  - Duration (typically ranging from 15 to 25 years)
  - Construction / Commissioning / Interconnection
  - Sale & Purchase of Electrical Power
  - Curtailment (by Project Developer / by Off-taker)
  - Proper Risk Allocation (Project Developer’s Risks and Off-takers Risks)
  - Insurance
  - Default and remedies
  - Environmental Attributes / Credits

# Three Important Terms

- Development/Promotion of Power Generation Projects entails understanding and comprehending the following Three Important Terms:
  - **Proper Risk Allocation:** Risk Matrix Process (Risk Identification, Assessment, and Allocation)
    - Who is the party that will deal with the consequences of each risk?
    - Risk to be assumed by the party that is best placed to manage such risk.
    - Construction and operation of facility is typically developer's risk
    - Legal Risks (such as changes in law) and political risk is Government's risk
    - Insurable risk is assumed by the party that is able to insure it.

# Three Important Terms – Cont.

- **Project Finance**
  - Project's feasibility is liked to ability to attract equity and debt
  - Debt usually ranges from 70% to 90%
  - Equity portion is important to ensure developer's commitment
  - Project Finance is defined as "long term financing with non-recourse or limited recourse where debt and equity used to finance the project are paid back from the project's cash flow".
  - Project's cash flow is the principle source of security to lenders.
  - Lenders and developers are looking at clarity as to the project's cash flow
  - Risks affecting the project's cash flow must be managed properly in order to ensure ability to attract equity and debt

# Three Important Terms – Cont.

- **Bankability:**
  - Continuously used term
  - No set definition
  - No list of requirements to achieve Bankability
  - A project is considered Bankable if lenders are ready to finance the project on Project Finance basis (limited or non-recourse basis)

A couple of banks in Jordan have Project Finance experience. Other banks are working on developing such practices.

Active players include IFC, EIB, EBRD ….. etc

# Walk through the Jordanian PPA

- The Jordanian PPA – Boiler Plates
  - Long Term Agreement (20 Years after COD)
  - NEPCO's payment obligations are guaranteed by the Government of Jordan.
  - Signing up to Financial Close
    - Mainly developer to work on procuring the generation license, the environmental approvals (EIA Report) and the financing needed for the Project's debt (PPA Direct Agreement and Guarantee Direct Agreement).
  - Financial Close up to COD
    - Construction of Facility and Interconnection Facilities
    - Construction of Substation
    - Commissioning (Independent Engineer, Tests, Sale of Power during tests, delay in commissioning and deemed commissioning)

# Walk through the Jordanian PPA – Cont.

- COD onwards, developer to operate and maintain the facility pursuant to:
  - Laws of Jordan;
  - Transmission system Grid Code
  - Generation License and other authorizations
  - Prudent Utility Practice
  - Operating Protocol and Access Protocol
- Sale and Purchase of Power
- Curtailment of Delivery
- Major Maintenance activities and maintenance in Emergency situations.

# Walk through the Jordanian PPA – Cont.

- Metering, disputes on metering and un-availability of meters' reading
- Invoicing, late payments and disputed payments
- Emission Reduction Credits
- Insurance
- Force Majeure (Government FM Events and Other FM Events)
- Prolonged FM Events (No termination for Prolonged Government FM Events)
- Total / Partial Loss – Restoration
- Change in Law Protection – (one time vs. ongoing)
- Default, Termination and Consequences of Termination

# Walk through the Jordanian PPA – Cont.

- Relationship with lenders (Direct Agreements, Notices, Step-in Rights, Assignment…. etc).
- Dispute resolution: Expert (certain technical issues) and Arbitration per ICC Rules in London.
- Applicable Law is Jordanian Law

- Restrictions on transfer of shares in Project Company (no-rationale)
- Decommissioning (no-rationale on private lands)

# Walk through the Jordanian PPA – Cont.

- Jordanian Law Issues
  - FM Events under Jordanian Law – Jordanian Civil Code
  - Liquidated Damages and Agreed Compensation vs. Actual Damages
  - Ability to charge Default Interest  on Late Payments
  - PPA Not Tested: No Precedents on application of Jordanian Law on Disputes

# Our view on the Jordanian PPA

- Fairly developed given MEMR's/NEPCO's experience in IPPs
- Covers the main components identified in Developed Markets PPAs
- Needs refinement in certain areas such as:
  - Risk to lenders relating to Total Debt Outstanding if PPA is terminated for reasons other than NEPCO Event of Default (Single Buyer Model in Jordan)
  - No termination for prolonged Government FM Events
  - No recovery of additional costs incurred by Project Company when operating under Government FM Events
  - Other FM Events – must distinguish between those affecting NEPCO and those affecting Project Company as those affecting NEPCO cannot be insured by Project Company.
  - Land related risks for projects located within identified areas (Maan Development Area and Mafraq Development Area)
  - Compensation for NEPCO EoD to provide return on Equity

# Questions & Answers

Thank you

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