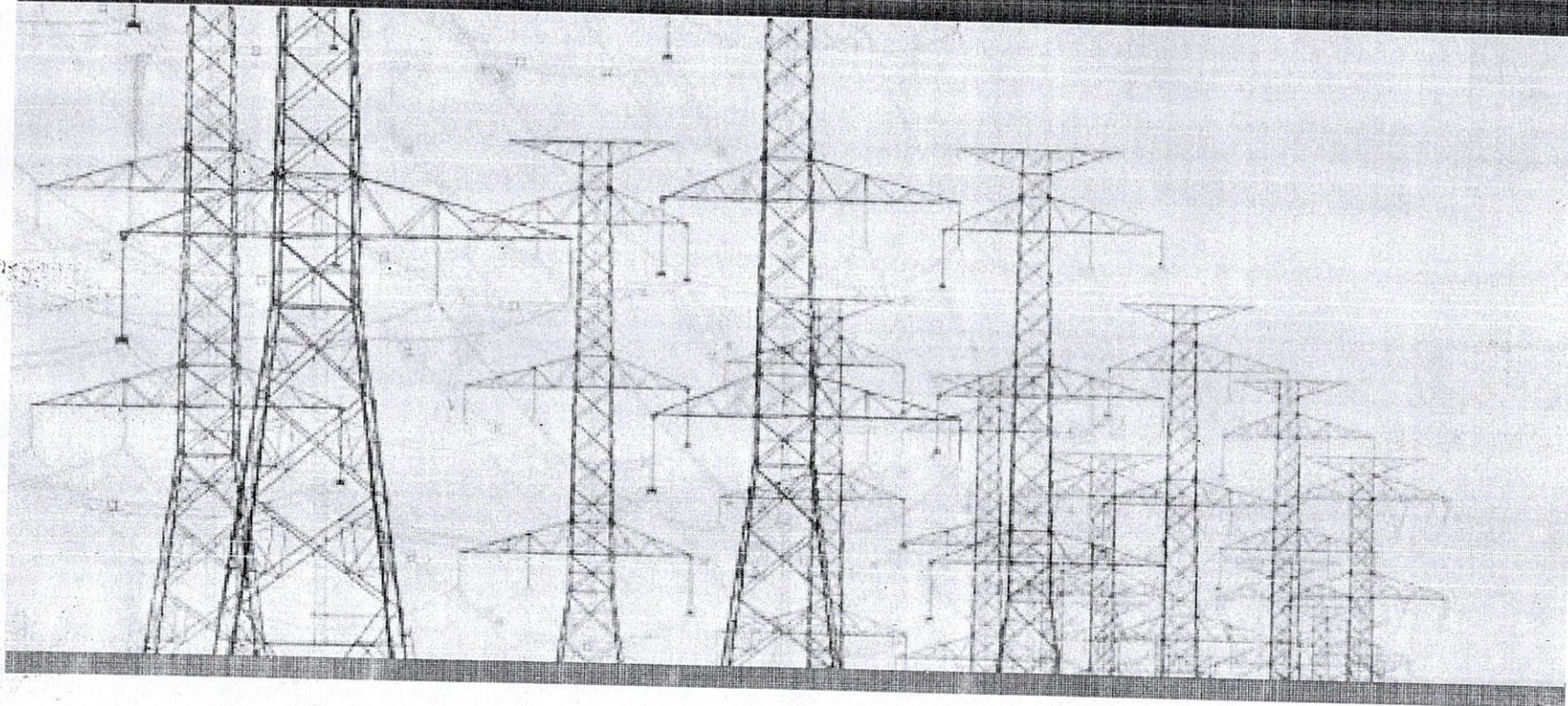


WHITE & CASE



## Power Purchase Agreements – An Introduction

ESQ LEGAL – POWER / PROJECT FINANCE WORKSHOP

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# Types of Power Purchase Agreements

— Main source of revenues to the project  
Revenues must meet debts

## ▪ Genco – Utility

Generating capacity sells to a utility, - to consumers

## ▪ Genco – Single Industrial Offtaker e.g. Captive Mine

- Dedicated Transmission Line or Onsite

Prevalent in South America

## ▪ Genco Trader

UK Market transitioning into. Here your market has to be liquid.  
Spot Market in Nigeria? Maybe in 20 yrs.

- Pure Trading on Balancing Market
- Merchant Plant

## ▪ Genco – Toller/Energy Conversion

Some company supplying fuel generates power. Middle East

# Elements of a Power Purchase Agreement (1)

- **Term** (10-20) *↳ Lenders more interested in Long term PPA. More appropriate in Nigeria*
  - Long Term or Short Term? *↳ £ £10*

- Extension of Term

- Connection Failure
- Offtaker Failure
- Force Majeure
- Change in Law
- Option of a Party?

*Must not be to the point where revenues are affected.*

- **Conditions Precedent**

- Site, Consents, Associated Agreements and Financial Close
- Long Stop Date
- Liability for failure to achieve Effective Date

*Generation Licenses  
Permits & Authorizations  
Grid agreements  
Ancillary services agreement  
Fuel supply*

*Point where conditions precedent must be satisfied.*

*Agreement will be terminated  
its important mark-up & realize  
point where CPs would be satisfied.  
Lenders prefer earlier however.  
Should it change as a result of force  
Majeure?*

## Elements of a Power Purchase Agreement (2)

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- **Sale and Purchase of Capacity and Energy**

- Ancillary Services? – *Is this a requirement for receiving a license?*

*Green Certificates? Makes a good project better but cannot make a bad project good.*

- **Construction, Grid Connection and Testing**

- Seller Responsibilities? *Impact of delays, relief must be evaluated.*
- Offtaker Responsibilities?
- Co-ordination and Testing – Link in with EPC requirements
- Deemed Commissioning if Offtaker failure?
- Phased Commissioning – multiple units?

## Elements of a Power Purchase Agreement (3)

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### ▪ Dispatch Instructions

- Method of Communication
- Compatibility with Grid Code
- Compatibility with Technical Restrictions
- Compensation for low level dispatch?

*Clarity.*

*Backup communication mechanism is necessary.*

### ▪ Maintenance

- Scheduled Outage
- Forced Outage
- Link in with O&M Agreement

*Link and consistency with O&M agreement.  
Off take on grid*

# Elements of a Power Purchase Agreement (4)

## ▪ Tariff

*Cost Effective: must cover: (oper, Oper, Fuel Supply, Debt Service Cost)*

- Negotiated/Competitive Bid
- Key Elements
  - Capacity Charge – Fixed Costs
  - Variable Charge – Variable Costs
  - Indexation? *RPI? CPI? Reference point!*
  - Commissioning Phase
  - Currency?

*Typically, off takers are not willing to pay full costs due to instabilities in production.*

## ▪ Payment Security

*Liquidity? Restrictions on currency movement!*

- Credit Rating of Offtaker
- Sovereign/Government Guarantee

*Negative v Collection Rate*  
*Here, there is the issue that the bulk trader does not have a track record. Lenders may seek for govt guarantee. Robust guarantee mechanism*  
*Positive*  
*This may change over time. Lenders may become comfortable with less requirements.*

*The off taker must be a credit worthy entity.*

# Elements of a Power Purchase Agreement (5)

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- **Liquidated Damages** (4Ds)
  - Delay in Commissioning
  - Under Capacity
  - Failure to Supply Power
  - Failure to achieve Declared Levels
  - Inefficient Plant
  
- **Cap on Liability** *Change in the agreement*
  - Annual Cap? Aggregate Liability?

*Performance  
Type LDs*

# Elements of a Power Purchase Agreement (6)

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## ▪ Force Majeure

- Political Force Majeure – Change in Law? — Off take can still take if they have govt support.
- Natural Force Majeure
- Consistency of approach across all Documentation?

## ▪ Consequences of Force Majeure

- Deemed Availability?
- Tariff Adjustment?
- Extension of Term? 3-9 months in most cases.
- Prolonged Force Majeure – Right to Terminate?



## Elements of a Power Purchase Agreement (7)

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- **Termination**
- **Types of Events of Default**
- **Termination Payment**
  - Buy Out Amount?
  - How Calculated? Include Equity Return?
  - Senior Debt Repayment? *handlers respect this payment!*
- **Governing Law**
- **Dispute Resolution**
  - Arbitration v Court Proceedings
  - Conform Dispute Resolution Proceedings
  - Joinder of Actions?
- **Assignment**
  - Assignment by way of Security

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