Implementation Agreements for Power PPPs

Full Description

Implementation agreements provide for direct contractual obligations and undertakings between the Government and the supplier or project company: the government is not usually a party to the power purchase agreement.

The installation of a power plant often requires inputs from the government in the form of assistance in obtaining required consents, undertaking to ensure that the utility performs its obligations (sometimes in the form of a guarantee) where there is a concern on the part of the supplier that the utility might not or may not have the financial standing to fulfill its obligations. The implementation will also typically include undertakings from the government on export and import duties and taxation of the supplier.

The implementation agreement will typically also include undertakings by the supplier to the government regarding, for example, compliance with environmental laws, dumping of fuel in the domestic fuel markets, etc.

Examples:

Global

Implementation Agreement (Example 1) - Relatively short-form Implementation Agreement prepared as a suite of documents with a PPA and Land Lease Agreement by an international law firm as a model form document to be used for rural power projects for a country in South East Asia.

Implementation Agreement (Example 2) - Implementation Agreement prepared as a suite of documents with a PPA for a power plant by an international law firm for a proposed project in Middle East.

Implementation Agreement (Example 3) - Implementation Agreement prepared as a suite of documents with a short-term PPA for a mobile plant by an international law firm for a power project in a country in Africa.

Implementation Agreement (Example 4) - Standard Implementation Agreement prepared by international law firm as part of a suite of documents for the Pakistan Private Power and Infrastructure Board, together with a PPA and pricing schedule.

Implementation Agreement (Example 5) – a “Build, Own and Operate” project agreement between the state government of South Australia and a private contractor (Tesla), for the construction and operation of a battery facility which will be used to store power from a nearby wind farm and provide various services to maintain system stability in South Australian’s electricity network.

Australia

In Australia, PPPs for conventional generation projects are less common as they are often privately financed. Rather, PPPs are more likely to be used for infrastructure projects of systemic importance (such as provisions of system stability services). The agreement provides a good illustration of a “light government touch” PPP project where the government assumes relatively little project (including regulatory) risk, which is reflective of Australia’s more market based energy sector:

- the state government is responsible for obtaining the main development approval required for the project;

- the private contractor is responsible for obtaining all other regulatory approvals required for the project (including registration to participate in the electricity market);

- the private contractor is responsible for site selection and land acquisition; and

- the state government may terminate the agreement in an event of default by the private contractor, but has no step in rights.

Philippines

Concession Contract (transmission assets, the Philippines) – from March 2003 to January 2009, the Philippine transmission system was operated by the National Transmission Corporation ("TransCo"), a government agency created under the Electric Power Industry Reform Act of 2001 ("EPIRA").

Following open competitive bidding conducted by the Power Sector Assets and Liabilities Management Corporation ("PSALM"), a government-owned and controlled corporation, a concession was awarded to the National Grid Corporation of the Philippines ("NGCP"), a privately-owned corporation.

In January 2009, the responsibility to construct, operate and maintain the transmission system passed from TransCo to NGCP. Ownership of the transmission assets remains with TransCo. This Concession Agreement between PSALM, TransCo and NGCP provides an example of how PPPs may be used to privatize existing critical infrastructure (as opposed to development of new assets). For the key features of the Concession Contract, read more...

Vietnam

Sample BOT Contract used in a public tender process by the Vietnamese government for the design, construction and operation of a large scale coal-fired power plant. The agreement is to be entered into between international project sponsors, the project company and the Ministry of Industry and Trade of Vietnam ("MOIT").

The contract forms part of a suite of project documents which also includes a separate Power Purchase Agreement entered into between Vietnam Electricity (a utility company owned by the Vietnamese government and the operator of the Vietnamese national power system) and the project company.

The term of the contract is for the construction and commissioning of the power plant, then an operational term of 25 years from start of commercial operation and a further term of 2 years to wind up and handover the project. As Vietnam's power sector is transitioning towards a market-oriented model, the BOT Contract expressly contemplates the renegotiation of itself and the linked Power Purchase Agreement, in the event the Vietnamese government reforms the sector to establish a competitive electricity market. For the key features of the Sample BOT Contract, read more..

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