Default and Termination

Project made possible through funding by:

In Partnership with:

Institutional Partners:

Why Default and Termination matters

- Parties have strong incentives to cooperate
- Why do these clauses matter?
  - Establish protective measures
  - Create an “investable” and “bankable” environment

What we will cover:

1. Default principles
2. A useful cure regime
3. Termination pinch points

1. DEFAULT PRINCIPLES

Inter-relationship between:	
Offtaker Default	Non-payment
Project Company Default	Insolvency
PRINCIPLE: DEFAULT CAUSED BY OTHER PARTY ≠ EOD	

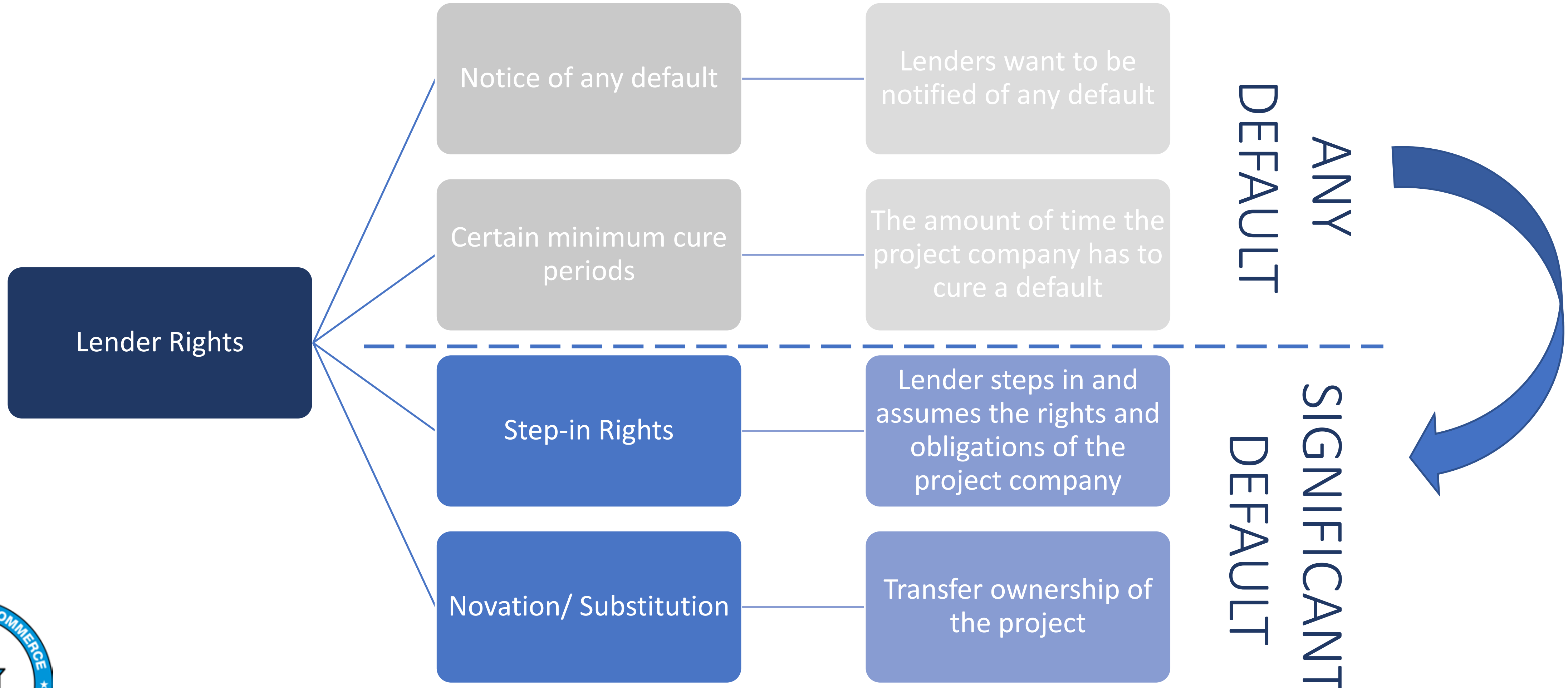
Inter-relationship between:	
Project Company Default:	Failure to build on time
Force Majeure:	Hurricane
PRINCIPLE: DEFAULT CAUSED BY OTHER PARTY ≠ EOD	

**** BUT: Failure to pay is always an EOD****

2. A USEFUL CURE REGIME

- Serious Events of Default:
  - Insolvency → Appointment of liquidator
  - Breach → Material Breach
- Cure periods should be long in the PPA

LENDER RIGHTS



3. TERMINATION PINCHPOINTS

Step 1:
The right to Terminate

Step 2:
The right to buy or sell the plant

KEY TERMS

Termination Compensation:

A pre-defined formula used to calculate the payment the offtaker or host government will make to the project company in exchange for the purchase of all of the assets of the project company

Put-Call Option

Put Option

An option held by the **Project Company** to require the offtaker or the host government to purchase the assets or the shares of the project company

Call Option

An option held by the **offtaker or the host government** to purchase the assets or shares of the project company from the project company

Pinch points:

A debt repayment schedule built into the termination regime

- Legitimate expectation of offtaker/government that exposure to debt component of termination payment <u>decreases</u> over time.
- Attempt to control it by tying termination payment obligation to the repayment schedule at financial close.
  - But what if the offtaker is not paying seller and so can't pay down the debt?
  - What if change in law requires increase in debt to fund capex/opex?
  - What if plant is renewable and resource drops?
- If adopted, the approach needs to allow for these scenarios.

Pinch points:

The seller default put right

- Talk of a shift in the market → possibly overstated/unhelpful
- Confusion between STEP 1 (right to terminate) and STEP 2 (right to put). Not a right for seller to terminate for own breach.
- Factors to consider where it might be possible:
    - During construction with a solid EPC contract
    - During operations:
        - Is it a simple plant without fixed delivery obligations?
        - Will the tariff stand the test of time?
        - Are the seller events of default water-tight?
        - Track record of IPPs and PPAs complied with?
        - Is there a long cure period?