

Other PPA Provisions



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Common PPA Provisions

- ▶ Resolving Disputes
- ▶ Expiration of the PPA
- ▶ Local content and ownership
- ▶ Confidentiality
- ▶ Boilerplate provisions



RESOLVING DISPUTES

- ▶ Disputes can relate to a number of issues, including invoicing, power metering, or contract interpretation
- ▶ The purpose of **dispute resolution mechanisms** is to resolve any disputes quickly, so that the parties can go back to performing their duties under the PPA.
- ▶ There are **informal** resolution mechanisms (encourage communication) and **formal** resolution mechanisms (mediation, arbitration, or the use of an independent engineer to resolve technical disputes)

Ideally, the same governing law would be chosen for all project documents, so that all disputes can be heard at the same proceeding.



EXPIRATION OF THE PPA

- ▶ When the PPA expires, the power plant can:
 - ▶ Transfer to the host government
 - ▶ Be sold to a third party
 - ▶ Continue to be owned by the project company
 - ▶ Be Decommissioned
- ▶ Regardless of whether plant **ownership is transferred or continued**, the PPA should address parties' rights at contract expiration.
- ▶ If the plant is **decommissioned**, the PPA should state who carries the obligations for dismantling, removal, site cleanup and restoration.



LOCAL CONTENT AND OWNERSHIP

- ▶ Although not generally included in the PPA, **local content and ownership** provisions aim to:
 - ▶ Ensure that foreign investment benefits domestic market participants
 - ▶ Build the capability/capacity of local providers of goods & services
- ▶ Local content and ownership provisions are normally found in the RfP, project concession or implementation agreement between the host government and the project company



CONFIDENTIALITY

- ▶ Most PPAs include a **confidentiality provision** that requires parties to keep sensitive commercial or technical information confidential
- ▶ There may be exceptions for disclosures required by law, courts, or regulators
- ▶ The desire for confidentiality must be balanced with transparency and public accountability



BOILERPLATE PROVISIONS

- ▶ **Boilerplate provisions** are a little-loved but much-necessary part of the PPA that ensure the enforceability of the bargain between the offtaker and the project company under applicable law
- ▶ Boilerplate provisions include:
 - ▶ Limitation of liability and indemnification
 - ▶ Governing law
 - ▶ Amendments



