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Legal Requirements for Wind Farm Projects



**Meitheal na Gaoithe
Annual Workshop
2 May 2008**

Overview

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- Legal structure of a wind farm project
- Lender Issues
- Developer Issues
- Statutory and Regulatory Requirements
- Gate 3

Legal Structure

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Project Finance

- The means by which a project is financed on a stand-alone basis where cash flow from the asset is the primary source of repayment:
 - Limited recourse to equity participants/sponsors
 - Often separate legal structure for project
 - Credit appraisal and lending decision is based on the inherent economics of the project – not the credit standing or balance sheet of any sponsor

Legal Structure

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Project Finance

- Ultimate goal: Highly leveraged project with little or no impact on balance sheet or credit standing of the sponsor
- That is attainable but lenders may insist on some recourse to project sponsors or indirect credit supports in the form of guarantees and warranties to mitigate specific payment risks
- Nature and extent of any credit support can vary greatly based on lender's risk assessment
- Sponsor's objective is to de-risk the project as much as possible so as to achieve the ultimate goal

Legal Structure

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Participants

- Project sponsors
- Utility
- Construction contractor
- Turbine Supplier
- Warranty and maintenance provider (typically the turbine supplier)
- Lenders
- Additional participants – independent engineers and consultants

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Project Contracts

- Construction Contract - options
 - EPC (Turnkey)
 - Owners Engineer
- Warranty and Maintenance Agreement
 - Performance Warranty
 - Mechanical Warranty
 - Availability Warranty

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- Electrical Warranty
- Environmental Warranty
- Routine and Major Maintenance
- Power Purchase Agreement
 - REFIT
 - With a licensed supplier
 - 15 year

Legal Structure

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Statutory and Regulatory Requirements

- Preliminary Feasibility
- Grid Connection Agreement
- Planning Permission
- Authorisation to Construct
- Licence to Generate

Lender Issues

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Project Risks

- Revenue Risk
- Completion Risk
- Operating Risk

Address each of these categories of risk in one or more of the project's legal documents

Lender Issues

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Loan and Security Agreements

- Loan Agreement
 - Basic terms including maturity, interest rate and fees
 - Borrower covenants designed to protect the lenders
- Security – over all project assets
 - Mortgage on project facilities and site
 - Assignment of operating revenues
 - Liens on personal property

Lender Issues

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Loan and Security Agreements

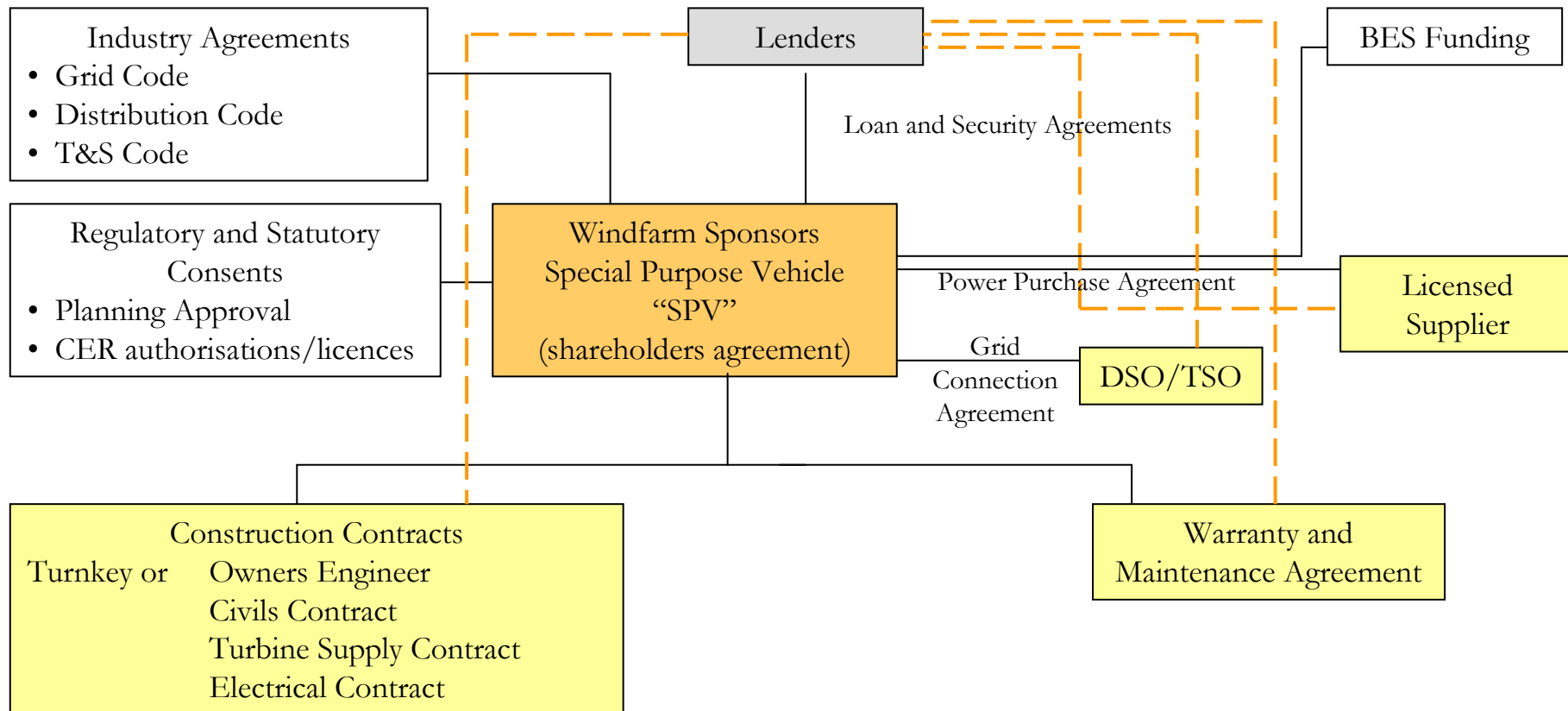
- Assignment on all project agreements and project permits including any letters of credit or performance bonds to which the borrower is a beneficiary
- Direct agreements with key project counterparties (construction contractor, turbine supplier, the power purchaser, TSO/DSO etc.)

Developer Issues

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Developer Issues

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- Obtaining Grid Connection in the Gate process
- Obtaining planning permission
- Securing a PPA
- Securing turbine supplier – turbine availability, higher turbine prices
- Securing BES funding for interim costs pre-financial close
- Securing financial close for the project finance – meeting the conditions precedent

Developer Issues

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- Conditions Precedent to financial close will include:
 - Planning permission and all necessary consents obtained
 - Landowner consents obtained
- Co-ordinating all of the above!
- Timing is crucial
- Delay in obtaining a project consent or securing a project agreement has consequences

Developer Issues

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Key areas outside developers control likely to give rise to increased project costs and delay

- Securing landowners consents for electricity lines
- Completion of the grid connection – TSO and DSO connection agreements give neither fixed costs nor fixed dates/programmes to developers. Increases risk of cost overruns, project delay, planning permission expiring before getting connected and it reduces the potential revenue stream available under PPA
- Solutions?

Developer Issues

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Solutions?

- A code of practice between wind farm developers and farmers akin to NRA/IFA Agreement?
- Better grid connection terms – greater certainty on time and costs
- The Minister introducing contestability of 38kv, 20kv and 10kv assets
- Good construction management

Statutory and Regulatory Requirements

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- Preliminary Feasibility
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Preliminary Feasibility

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- County Development Plan
- Designated Sites
- Wind Resource Study
- Soil and Ground Conditions
- Environmental Impact Assessment (“EIA”)
- Grid Access Assessment

Grid Connection Agreement

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- Grid Application
 - Generator Capacity > 20 MW; application to TSO
 - Generator Capacity < 20 MW; application to DSO
- Group Processing
 - Gate 2 closed
 - Gate 3 criteria awaited
 - Exemption
- Grid Connection Offer

Planning Permission

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- 20kV overhead line
 - PP exemption for overhead line not exceeding 20kV
- 38kV overhead line
 - PP required
 - Application to Local Planning Authority

Planning Permission

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- 110kV overhead line
 - Strategic Infrastructure Development
 - Permission determined by An Bord Pleanála
- Underground cable
 - Generally exempted
 - Road opening permit required from Local Authority

Planning Permission

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Information to support planning application

- EIS
- Wind study
- Ground conditions e.g. landslide/slope stability
- Proximity to power lines, roads and railways
- Interference with communication systems
- Interference with aviation
- Shadow flicker
- Wind take

Authorisation to Construct

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- Authorisation must be obtained before commencing work (otherwise may be liable to a fine)
- Apply to CER
- Separate application required for each generating station
- Environmental issues – compliance with PP generally suffices
- CER may require additional information – specified timeframe within which to respond

Authorisation to Construct

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- If application refused
 - Notice in writing
 - May appeal!
- Valid for 5 years OR until completion of construction
- Terms and Conditions set out in Grant of Authorisation
 - May be modified or amended
 - If fail to comply, CER may revoke Authorisation

Licence to Generate

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- Only one Licence to Generate per applicant
- Licence must be obtained prior to generating (otherwise you may be liable to a fine or to imprisonment or to both)
- Apply to CER when you
 - Have a completed generating station OR
 - Have an Authorisation to Construct OR
 - Submit application for Authorisation
- If application refused
 - Notified in writing
 - May appeal!

Licence to Generate

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- Factors considered in processing application include
 - Availability of sufficient appropriate financial, managerial and technical resources to ensure compliance with terms and conditions governing the Licence
- Licence valid for 15 years
 - At any time after that, CER can provide 15 years termination notice in writing
- Since GO LIVE (1.11.2007)
 - Modifications made to licence to facilitate Single Electricity Market (“SEM”)
 - Example: Mod to Condition 14 of Generic Licence means that generators can sell physical power to Intermediaries rather than through the pool

Gate 3

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- CER Consultation Paper CER/07/223 (17.12.2007)
- CER Workshop (22.01.2008)
- Non-exhaustive options
 - Date order
 - Date order and system optimisation (similar to Gate 2 criteria)
 - Grid Development Strategy
- Proposed Direction (05/06.2008)
 - Followed by industry consultation
 - Final Direction (likely to apply for 15 years)

Thank you!

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