



Federal Ministry
for Economic Affairs
and Energy



MITTELSTAND
GLOBAL
ENERGY SOLUTIONS
MADE IN GERMANY

Webinar: "Regulatory Framework for C&I Projects"

| Ghana & Nigeria |

26.08.2020

Facilitator

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

The German Energy Solutions Initiative

- Facilitates business partnerships in the field of renewables, energy efficiency technologies, smart grids and storage technologies
- Based on a **parliament decision** 2002 with the aims
 - to support SMEs
 - to distribute smart and sustainable energy solutions
 - to contribute to international climate protection
- Coordinated and financed by the **German Federal Ministry for Economic Affairs and Energy**

We offer

- **Information** about German energy solutions
- **Networking and business opportunities** with German companies both in your country and in Germany
- **Know-how exchange**
- Showcases of **flagship projects** through, among others, early stage project development (PDP)

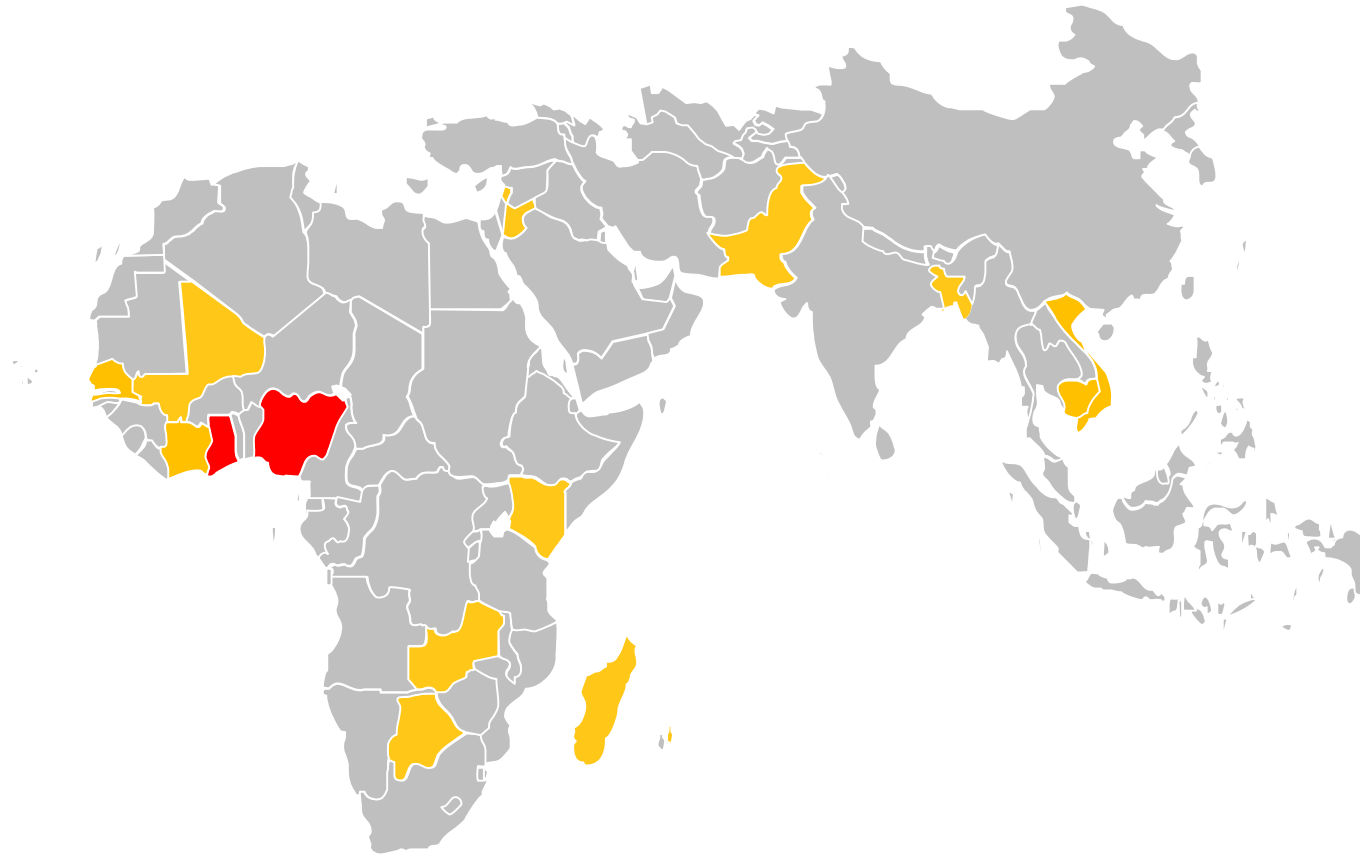
Information

- **Online database:** Profiles and contact information of German companies
- **Latest information** about German energy solutions
- **Upcoming events** of the initiative
- **Newsletter**
- www.german-energy-solutions.de/en



The Project Development Programme (PDP)

As part of the German Energy Solutions Initiative (BMW i) PDP supports German small and medium-sized enterprises (SME) of the renewable energy sector to access emerging markets.



Geographic Scope

- **Sub-Saharan Africa**
 - Kenya
 - **Ghana**
 - **Nigeria**
 - Mali
 - *Senegal*
 - *Côte d'Ivoire*
 - Botswana
 - Zambia
 - Mauritius
 - Madagascar
- **Middle-East**
 - Lebanon
 - Jordan
- **Asia**
 - Pakistan
 - Bangladesh
 - Vietnam
 - Cambodia

PDP activities

Business Development

- **Market information on target countries (incl. public tenders)**
- Professional accompaniment of AHK business trips
- Delegation trips to Germany
- marketing support "made in Germany"

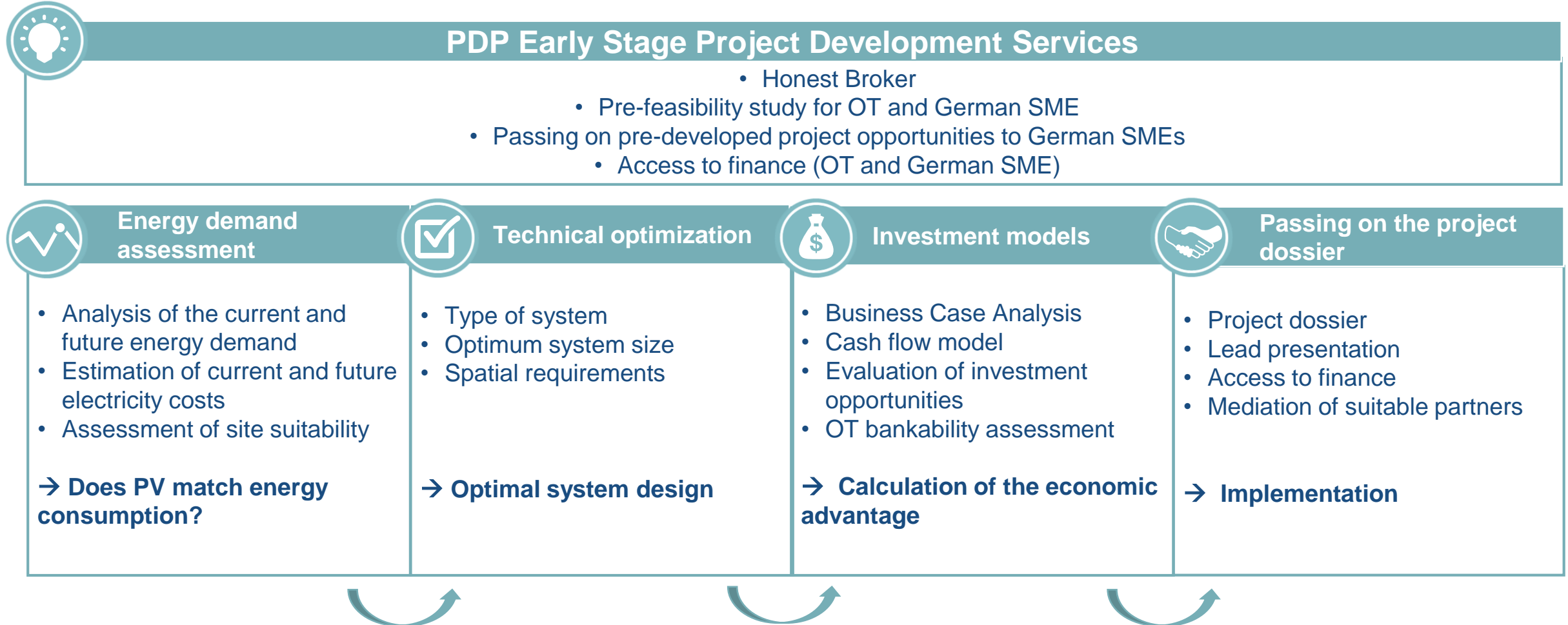
Project Pre-development

- Identification of commercially viable and scalable projects – **focus on C&I Segment**
- Evaluation of economic, political and technical risks
- Lead of project opportunities forwarded to German SME

Market Development

- Competence development on site by German Training Week
- Political advice on framework conditions
- Cooperation with associations
- Conference formats and trade fair participations

PDP accompanies successful project implementation



Upcoming in Ghana & Nigeria

Ghana & Nigeria

Regulatory Framework
Study
August 2020

Nigeria

German Training Week
31.08-25.09.2020

Ghana

German Training Week
05.-30.10.2020

Ghana/Nigeria

e-WACEE
West Africa Clean Energy and Environment
trade fair and conference
01-05.09.2020

Nigeria

Sector Study:
Captive PV potential
in the Food, Beverages
and Chemical Sectors
Dec. 2020

Ghana

Sector Study:
Captive PV potential
in Agro Industry Dec. 2020

Studies on the Regulatory Framework for C&I Projects

Scope:

Assessment of legal aspects of third-party ownership models (via PPA and leasing models) in the C&I space with involvement of foreign project developers/investors:

- Energy Regulatory Framework for C&I projects
- Legality of PPA/Leasing contracts
- Tax and duty incentives and impact of accounting standards on PPA/Leasing contracts
- Possible legal vehicles and requirements (e.g. local content regulation or min. capitalisation)
- Possible contract currencies, permissible escalation rates
- Ability of transferring and taxation of funds to foreign investors (focus on transfer to German investors)

Countries:

Africa: Côte d'Ivoire, Senegal, **Ghana, Nigeria**

Southeast Asia: Cambodia and Vietnam

Contractor:

BBH Group as Lead Consultant with experienced law firms in the target countries as sub-contractors

Webinar Agenda and Housekeeping Rules

Agenda	Timing
Introductions	15:00 – 15:10
Overview of regulatory framework – Ghana	15:10 – 16:00
Introduction to template contracts – Ghana	16:00 – 16:15
Questions and answers –Ghana	16:15 – 16:35
Overview of regulatory framework - Nigeria	16:40 – 17:30
Introduction to template contracts – Nigeria	17:30 – 17:45
Questions and answers - Nigeria	17:45 – 18:00

1) Questions will be addressed during Q/A session

a) please raise your hand and state the question via your microphone (you can unmute yourself – please mute after again)

b) or write the message in the chat window

c) or share your question via carsten.jung@giz.de (will be raised anonymously)

2) Presentations will be shared with all participants subsequent to the webinar

BBH-Group: One-Stop-Shop for international energy projects



BBH Lawyers

BBH Consulting

BBH Auditors

**EREF -
European
Renewable
Energy
Federation**

**IKEM -
Institut für
Klimaschutz,
Energie und
Mobilität**

- ▶ Accredited professionals: ca. 250;
total staff: ca. 600
- ▶ Offices in Berlin, Munich, Cologne, Hamburg,
Stuttgart, Erfurt and Brussels

Project Expertise in:

- Europe
- North and Sub Sahara Africa incl. South Africa
- Asia-Pacific
- Latin America

BBH- Substantial Global Network of i.a. :

- Law Firms
- Organisations
- Institutions

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Do not hesitate to contact us ! We are looking forward to your e-mail or call.

Regulatory framework for embedded generation in Ghana



Legal framework for embedded generation in Ghana



- a) Key institutions of the electricity market in Ghana
- b) Definition of embedded generation and regulatory framework
- c) Framework for selling excess energy to third-parties
- d) Presentation of legally possible business models and their respective characteristics
- e) Suitable legal structure to implement the business models considering (partial) foreign ownership and requirements for foreign ownership
- f) Local Content Regulations and their impact on the business models
- g) Accounting standards for the business models and impact of IFRS revision
- h) Relevant currencies for embedded generation contracts
- i) Framework for transfer of financial material resources abroad and consideration of double taxation agreements

Key institutions and players in the electricity market in Ghana

Players	Activities
Energy Commission	<ul style="list-style-type: none"> Regulation, management, development and use of energy sources in Ghana Issuing licenses for the transmission, supply, distribution and sale of electricity and natural gas, as well as the generation, storage, distribution, marketing and sale of gasoline products
Public Utilities Regulatory Commission (PURC)	<ul style="list-style-type: none"> Regulate the provision of utility services in the electricity and water sectors: provide guidelines for rates to be charged for the provision of utility services, examine and approve water and electricity rates; protect the interest of consumers and providers of utility services etc.
Volta River Authority (VRA)	<ul style="list-style-type: none"> Main generator and supplier of electricity in Ghana
Ghana Grid Company	<ul style="list-style-type: none"> National electricity transmission company
Power Distribution Services Ghana	<ul style="list-style-type: none"> Electricity distribution company (formerly Electricity Company of Ghana). The company's operation covers the Southern Distribution Zone.
Northern Electricity Distribution Company	<ul style="list-style-type: none"> Electricity distribution company that operates the Northern Distribution Zone. Together with Power Distribution Services Ghana, they supply all of Ghana's electricity demands as well as some other West African countries.
IPPs	<ul style="list-style-type: none"> Recently, IPPs have become active in Ghana. The Saudi Arabian Abu Dhabi National Energy Company (TAQA) and the Chinese Shenzhen Group operate for example power plants in Ghana.

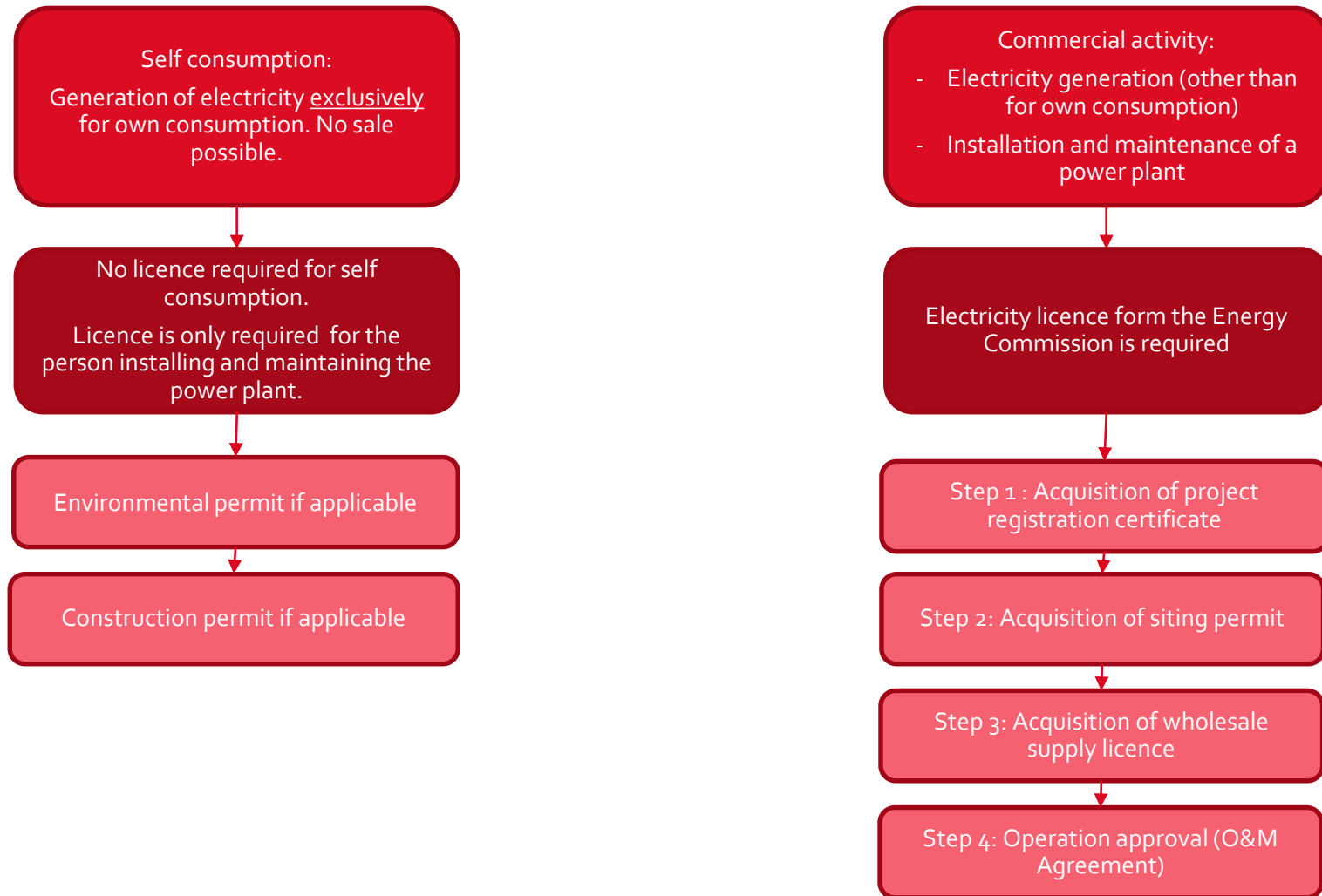
Definition of embedded generation and regulatory framework in Ghana

- ▶ What do we mean by embedded production ?
 - RPP is owned by an SPV and located on the premises of an industrial customer who is the main/sole consumer of the electricity generated by the RPP.
- ▶ How to implement embedded generation in Ghana?



* The multiplication of RPP lease agreements are viewed critically and could be forbidden in the future.

Authorisation process for embedded generation



Framework for selling excess energy to third-parties

- ▶ Not possible in the framework of self consumption: the Net-metering scheme has been halted.
 - Energy Commission advised that electricity generation should match consumption in order to avoid production of excess electricity.
- ▶ To sell the excess electricity not consumed under the PPA, the SPV could theoretically sell it to a DisCo subject to a new wholesale supply licence.
 - However the Energy Commission has halted the granting of wholesale supply licence for PPA with Discos. Due to an excess of electricity in Ghana, the Government had to renegotiate all take-or-pay contracts.

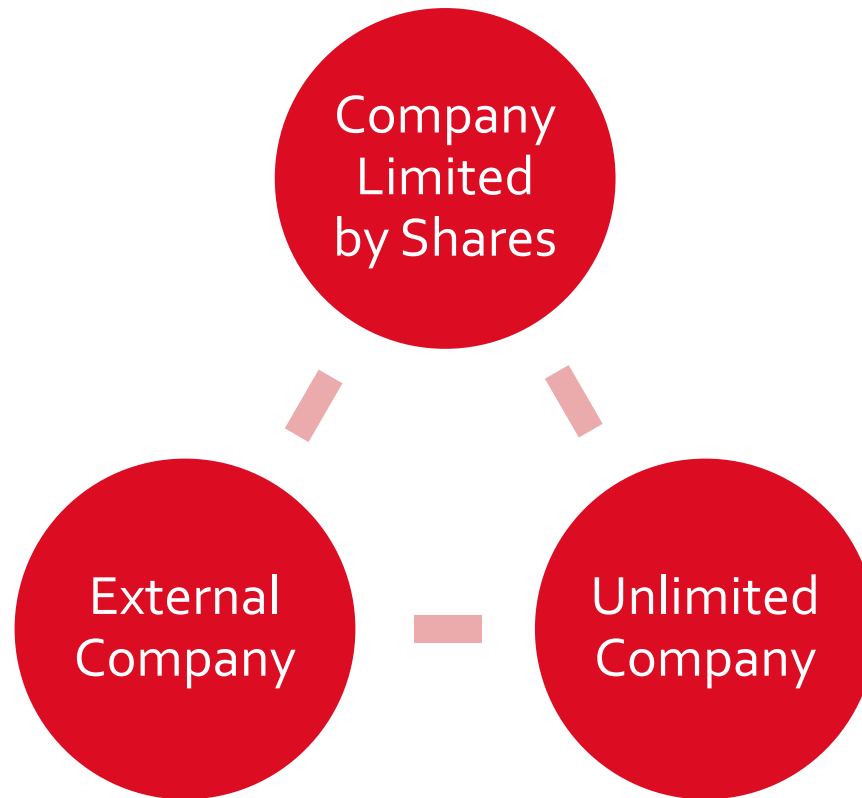
Presentation of possible business models and their respective characteristics

- ▶ Direct sale of electricity to industrial customers (IC) with a PPA is only possible if the IC is a bulk customer.
 - Bulk customer: any consumer of electricity with a maximum demand of at least 500KVA consistently for a consecutive period of 3 months or a minimum annual energy consumption of 1 million kWh.
- ▶ Alternative: leasing of the RPP to an industrial customer for its self-consumption.
 - Finance Lease, Hire Purchase or Equipment Hire Contract?
 - Finance Lease : financial transaction whereby a leasing company (financial institution) buys goods (PV system) selected by the lessee (IC) and leases it to the lessee against payment of a rent. The contract contains a unilateral promise from the leasing company to sell the goods (PV system) to the lessee.
 - Hire Purchase: agreement under which goods (PV system) are delivered on hire to the hirer (IC), and the hirer makes periodic payments to the owner (financial institution), the hirer having an option to purchase the goods (PV system).
 - Equipment Hire Contract: the lessor (SPV) leases the goods (PV system) to the lessee (IC), for which the Lessee (IC) pays a rent.

Presentation of possible business models and their respective characteristics

- ▶ The finance lease is restricted to financial institutions: specific licence and capital requirements that are not adapted to the business model of RE investor.
- ▶ Hire Purchase Agreements don't require a finance institute license anymore
 - But: no retention of title against third parties and limited access rights
- ▶ Equipment hire contract is a more flexible option with respect to the conditions relating to the parties, duration of the contract, allocation of responsibilities, etc.
 - However it is not recommended by our local partners to include an option or an obligation to purchase the PV system for the lessee in the equipment hire contract as it bears the risk that the hire-purchase regulation applies. Side agreement ?

Suitable legal structure to implement the business models considering (partial) foreign ownership?



- ▶ Most common form : Company Limited by Shares and External Company

Recommended legal form: Company Limited by Shares

- ▶ **Ghana Companies Act, 2019:**
 - Advantage of the limitation of liability
 - Electricity license can be obtained
 - Local participation regulation: minimum 15% of the equity capital in the hands of Ghanaian shareholder
 - No minimum requirement on formation capital
 - However, capital requirements by the Local Content Regulations still apply
- ▶ External Company: not recommended as a electricity license can't be obtained with this legal form



Local Content and Local Participation

Regulation for the energy sector and impacts on the business models



- ▶ Regulation for the energy sector sets min. thresholds for Ghanaian operating in the power sector:
 - Target of the regulation is 60% of local participation and 51% of local content. No information how the min. thresholds will evolve to reach the target. Guidelines shall be published soon.
 - Actual min. thresholds for RE sector:
 - 15% of equity capital
 - 60% of the management
 - 100% of the rest of the staff
 - Exemptions are possible if considered as sufficiently justified.
- ▶ Registration at the Energy Commission and submission of a local content and participation plan for the project. It shall include detailed plans on: Employment and training, Research and development, Technology transfer, Legal and Financial Services, Ancillary Services and others.

Accounting standards for the business models and impact of IFRS revision

► Accounting standards in Ghana: IFRS

	Operating Lease	Financial Lease
Definition	<ul style="list-style-type: none">• Duration: < depreciation period of the asset• Economic risk borne by the lessor• No purchase option for the lessee• Maintenance is mainly the responsibility of the lessor	<ul style="list-style-type: none">• Duration: at least depreciation period of the asset• Economic risk borne by the lessee• Purchase option for the lessee• Maintenance is mainly the responsibility of the lessee
Old standard IAS 17	Off-balance-sheet accounting for the lessee.	RPP is capitalized as an asset in lessee's balance sheet and recorded as a liability on lessee's books
New standard IFRS 16 (01.01.19)	No distinction in the balance sheet. RPP is capitalized as an asset in lessee's balance sheet and recorded as a liability on lessee's books. Except for leasing of less than 12 months or less than 5.000 EUR, off-balance-sheet accounting can be maintained.	

Relevant currencies in Ghana for payment of services

► Ghana Cedi (GH¢)

- is the only legal tender which is valid for the payment of services
- Foreign Exchange Act, 2006 states that all domestic sales and purchases of goods and services in Ghana are to be paid in local currency
- However, under the Foreign Exchange Act, 2006 (Act 723) the Bank of Ghana may grant exemption licenses to persons/organisations
- Indexing against foreign currencies is possible
- Current exchange rate:

1 EUR = 6,15 GH¢



Framework for transfer of financial/material resources abroad

- ▶ Recommended financing of the SPV : cash contribution and shareholder loan agreements instead of transfer of material resources.
 - Less administrative burden (e.g. transfer of property rights) and less costs
- ▶ Banking Transaction schemes in the electricity sector:
 - Min. of one Ghanaian Bank account
 - Min. 10% of financial transactions need to go through this account

Framework for transfer of financial/material resources abroad

▶ Loan agreement:

- All agreements have to be registered (Tax Stamp Duty Act 2005)
- Payments to foreigners under the credit agreement must be made through an authorized merchant bank in accordance with the Foreign Exchange Act 2006
- SPV should be in a position to dispose without restriction of its foreign currency account in Ghana and thus be able to open irrevocable letters of credit confirmed in Europe
- Alternatively escrow account in Germany for SPV, which would be managed by the financing German holding company

Overview of taxes and double taxation avoidance



- ▶ Tax and duty exemptions for energy facilities, machinery and equipment for the energy sector.
- ▶ VAT: 15%
- ▶ Double Taxation Avoidance Agreement (DTA) btw Germany and Ghana
 - No double taxation. Revenues of the company are taxed in the country where the company is located. German shareholders dividends can be taxed in Germany.
- ▶ Withholding tax rates:
 - 5 % for dividends (if the recipient holds at least 10 % shareholder shares)
 - 15 % for dividends (in any other case)
 - 8 % for licence fees
 - 8 % for fees for technical/management services
 - 10 % for interest

Introduction template contracts for Ghana



Recommended agreement btw the SPV and the industrial customer: RPP lease agreement

bbh

- Direct PPA only possible with bulk customers whereas RPP lease agreement can be entered with all industrial customers.
 - NB: the multiplication of RPP lease agreement in Ghana are viewed critically by the Energy Commission and could be forbidden in the future.
- The template RPP lease agreement has been established in accordance with the laws of Ghana.

Structure of the lease agreement under the laws of Ghana

- Purpose : the SPV leases to the industrial customer the RPP so that he can generate electricity for its own consumption.
 - The SPV designs, installs and maintains the RPP on the site of the industrial customer. It remains the owner of the RPP until the lease term.
 - No unilateral promise to sell or obligation to sell possible as the contract would be requalified as a Finance Lease or Hire Purchase Contract.
 - In a separate agreement the parties could provide for the conditions of purchase of the RPP.
 - The industrial customer operates the leased RPP to generate electricity for its own consumption.
 - In practice, the SPV ensures the proper operation of the RPP but the industrial customer must remain the legal operator. If this is not the case, the electricity is no longer generated under the self consumption regime and violates the legal provisions of the electricity sector.
 - Any Environmental Attributes shall remain the property, and under the sole control of the industrial customer.

Structure of RPP lease agreement template



- Conditions precedent have been adapted to meet the local requirements (esp. regulatory approval necessary for installation, operation and maintenance of the plant).
- Description of the Plant must be meticulously detailed for possible performance guarantees but also for the RPP to be identifiable to third parties.
- SPV access to the site of the industrial customer and the RPP is guaranteed in our template but must also be specified in the Plant Site Lease Agreement.
- Rental fee: freely set by Parties. It can be based on electricity generated but not only to avoid it being considered as prohibited sale of electricity.
- Removal of the Plant if there is no purchase: according to the terms and conditions of the Plant Site Lease Agreement.
- Repair and maintenance:
 - SPV obligation for the RPP
 - Industrial customers obligation for the Site

Possible performance guarantee clauses for a RPP lease

- ▶ Performance of the RPP can be guaranteed by the SPV to the industrial customer.
 - No performance guarantee included in our template as this guarantee varies so much depending on the guarantees provided by the EPC that there is no standard clause.
- ▶ Different option in case the expected performance is not met: repair or replacement obligations, reduction of the rental price, payment of the electricity that needs to be bought. Examples:

The lessor guarantees an annual minimum energy output of the RPP of Any shortfall in output below this guaranteed minimum shall be paid by the lessor to the lessee at rates charged by [national / local electricity supplier] per kWh at the time of the shortfall.

The lessor guarantees that during the Lease Term the RPP will operate within manufacturer's specifications and if it does not that the lessor will repair or replace any defective part and restore RPPs performance.

Other templates

- ▶ You will find with the study other templates to implement an embedded generation project in Ghana such as:
 - Shareholder Loan Agreement for the transfer of financial resources, and
 - Operation & Maintenance contract between the SPV and an O&M contractor.

Q&A

Possibility for foreign companies and “external companies” as per Ghanaian law entering directly into a lease agreement with a Ghanaian company or client?

- ▶ Any economic activity in the power sector (production, transport, storage, distribution, sales, installation, maintenance etc.) requires a license. An external company in this respect is not a legal person established under the Companies Act or another Ghanaian law which is required as a prerequisite for an electricity license (See AP 2, Chapter IV No. 1 of the Study). As only a Ghanaian company can acquire such a license, this doesn't seem like a viable approach as it would require a leasing agreement where none of those contractual obligations would lie with the foreign company. If the lease is stripped bare of any contractual obligations considered an economic activity in the power sector outlined in Art. 8 (2) REA, this could be possible. However, Art. 8 (3) REA states that the Commission may expand the scope of these activities.

Application of the Local Content and Participation Regulation in Leasing?

- ▶ The Local Content and Participation Regulation applies to all persons who engage in activities in the electricity supply industry. This covers power supply, electricity supply activity, electricity transmission, procurement, brokerage services etc. Leasing contracts typically cover a lot of contractual services for which the regulation is applicable. For an overview of the thresholds in the respective activities, see table 8 (AP 1, Chapter I No. 11) of the study. Like in question 1, there theoretically could be a contractual arrangement in which none of this is the case, but this would require a legal examination of the individual case.

Q&A

Licensing needs when using subcontractors?

- ▶ Since the license requirements are based on the activity performed, the requirement for a license can be circumvented with appropriate subcontracting. The licensing parameters are, as stated above, defined in Art. 8 (2) REA. The complete list here (which could be expanded, see above) is: production, transport, storage, distribution, sales, marketing, importation, exportation, re-exportation, installation and maintenance. However, this also requires the individual examination of the respective case in order to avoid the risk of the business model involving an activity requiring a license without having a license. As the multiplication of RPP lease agreements are viewed critically and could be forbidden in the future, the most generalized answer that we can give would be that the approach of a general “work-around” by subcontracting everything is to be taken cautiously and only under further consultancy of the actual agreement.

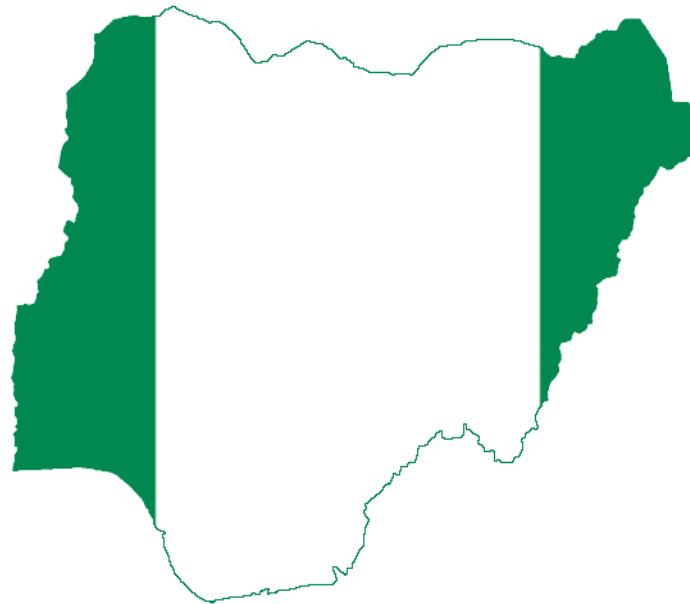
Possibility of a price adjustment clause referring to a foreign currency for pricing escalation?

- ▶ We haven't found any legal restriction against the possibility of a price adjustment clause referring to a foreign currency for pricing escalation in our study findings. Based on feedback from German companies and our local partners in Ghana, we know that indexing based on currency is being used.

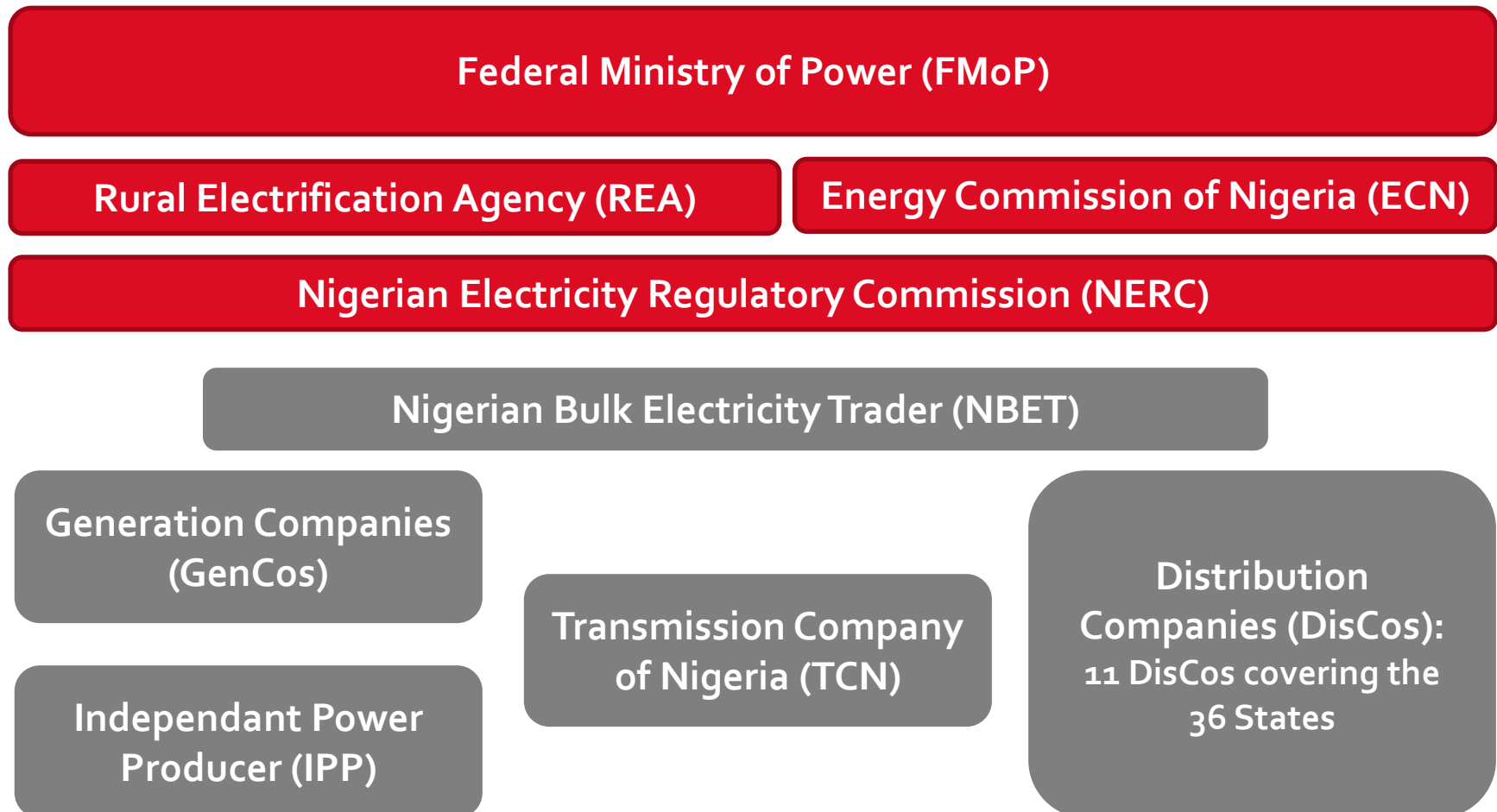
Min. capitalisation for companies with limited liability considering GIPC regulation?

- ▶ There is no formation capital requirement per the companies act. However, the local content regulation applies and its requirements apply. According to the GIPC, all companies that are 100 percent Ghanaian-owned and companies with foreign participation that want to employ foreign staff (e.g. experts) for their companies in Ghana must meet the relevant minimum capital requirements in accordance with Section 35 of the Law 865. The bandwidth of investment requirements depends on the structure of the enterprise (see AP 2 V No. 2, p. 46 of the Study) and is 200.000,00 USD in the case of a joint enterprise with a Ghanaian citizen if that Ghanaian citizen holds at least 10% of equity participation and 500.000,00 USD if the enterprise wholly owned by a non-citizen.

Regulatory framework for embedded generation in Nigeria

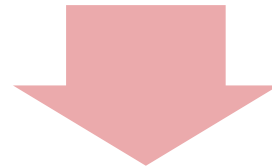


Mayor Stakeholders



Electricity Regulation in a Federal State Structure

Federal Ministry of Power (FMoP)



Federal Regulation

State Authority

State Regulation:

- Consistent with Federal Regulation
- State related deviations possible if not in conflict with federal law

Regulatory Environment

Electricity Power Sector Reform Act 2005 (EPSRA)

NERC Application for Licences,
Generation Transmission, System
Operations, Distribution and Trading
Regulations 2010

NERC Licence and Operating Fees
Regulation 2010

Captive Power
Generation
Regulation 2008

Embedded
Generation
Regulation 2012

Regulation on
Off-Grid
Generation

Mini-Grid
Regulation 2016

EPSRA - General Regulatory Approach

No activity in the Nigerian electricity market (generation, transmission, distribution or sale) without a licence (Section 62)!



Construction, Ownership and Operation of a power plant with a generation capacity of 1 MW max.

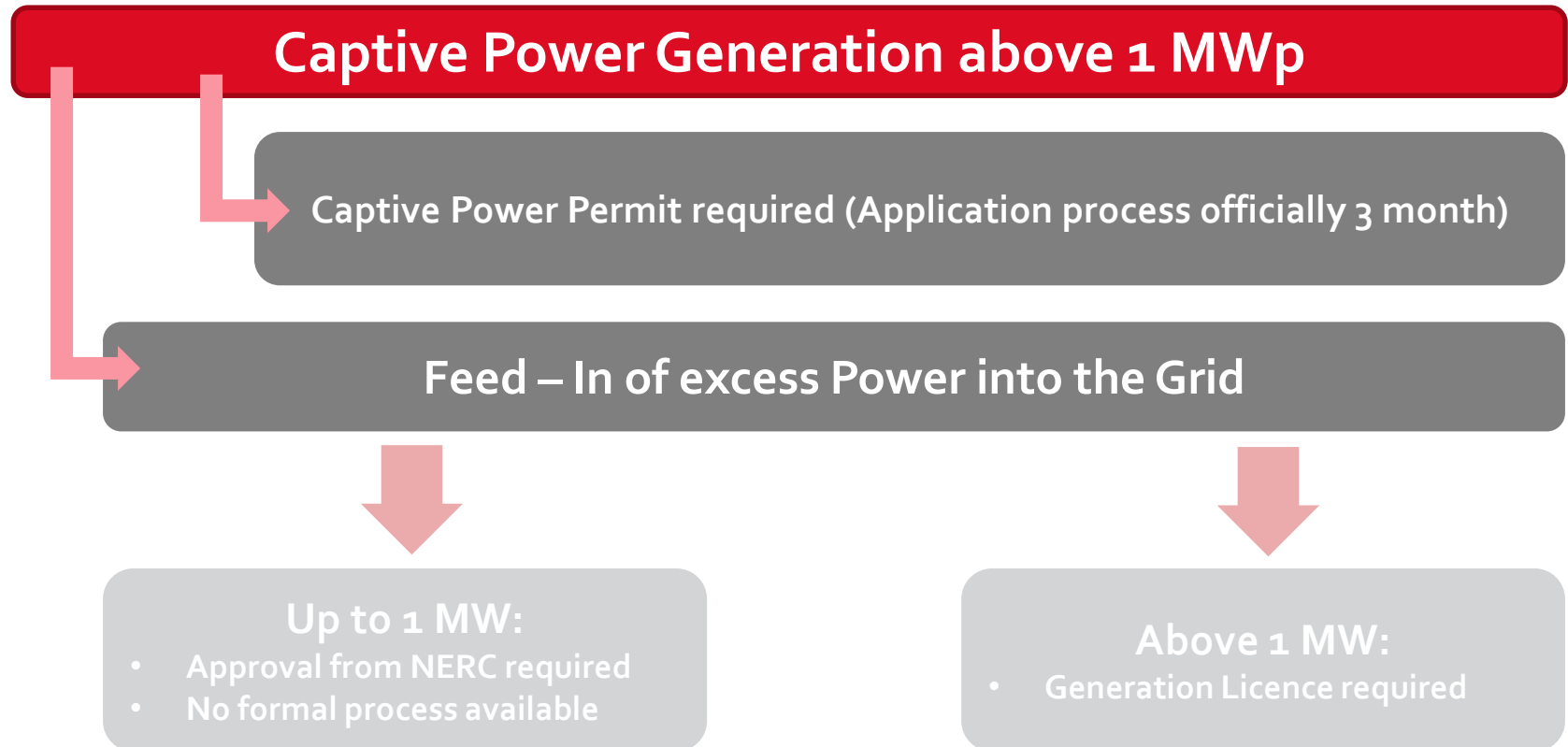


NERC has to be informed about the project and will respond accordingly



Construction, Ownership and Operation of a distribution network of 100 kW max.

Captive Power Generation Regulation



Regulation on Off-Grid Power Generation

Off-grid PV Solar Systems:

- not directly connected to the public grid
- directly connected to the Off-Taker grid, which is connected to the public grid

=> The PV Solar System can be indirectly connected to and synchronised with the grid



No Feed – In of excess power possible

Embedded Generation and Mini-Grid Regulation

Embedded Generation Regulation 2012

Power Plant embedded in the distribution network

PPA with the Distribution Company (DisCo)

PPA with eligible customer

Mini-Grid Regulation 2016

Isolated or interconnected network with own generation facility

0 (100kW) to 1 MW – permit process

Agreement with the proposed consuming community

NERC Generation Licence Process

Application Process is based on:

- EPSRA Section 70
- NERC Application for Licences, Generation Transmission, System Operations, Distribution and Trading Regulations 2010

The required application documents include :

- Completed /signed application form
- Details/design of the PV-system
- Business Plan for 10 Years
- PPA
- Financial Arrangements
- Etc.



Licence Period: 10 Years (extension for additional 5/10 years possible)

Fees: Application Fees NGN 50,000.00 (ca. 115 €)/License Fee 910,015.00 NGN (2,030€)

Application Process Time: 6 months

Requirements in the Development Process

Environmental Impact Assessment

- Issued by NESREA
- Not required for power plants below 10 MW

Construction Permit

- According to State requirement

Certification of the Power Plant

- Inspection, Test and Certification Process carried out by the Nigerian Management Services Agency

Building Approval

- Buildings with generation facilities employing more than 10 people have to be registered
- Approval process carried out by the *Director of Factories*

COREN Registration

- Council for the Regulation of Engineering in Nigeria (COREN)
- Registration of Engineer/Construction Companies involved in such projects

Local Content Regulation in the electricity industry

Regulations on National Content Development for the Power Sector 2014 (implemented since 2019)

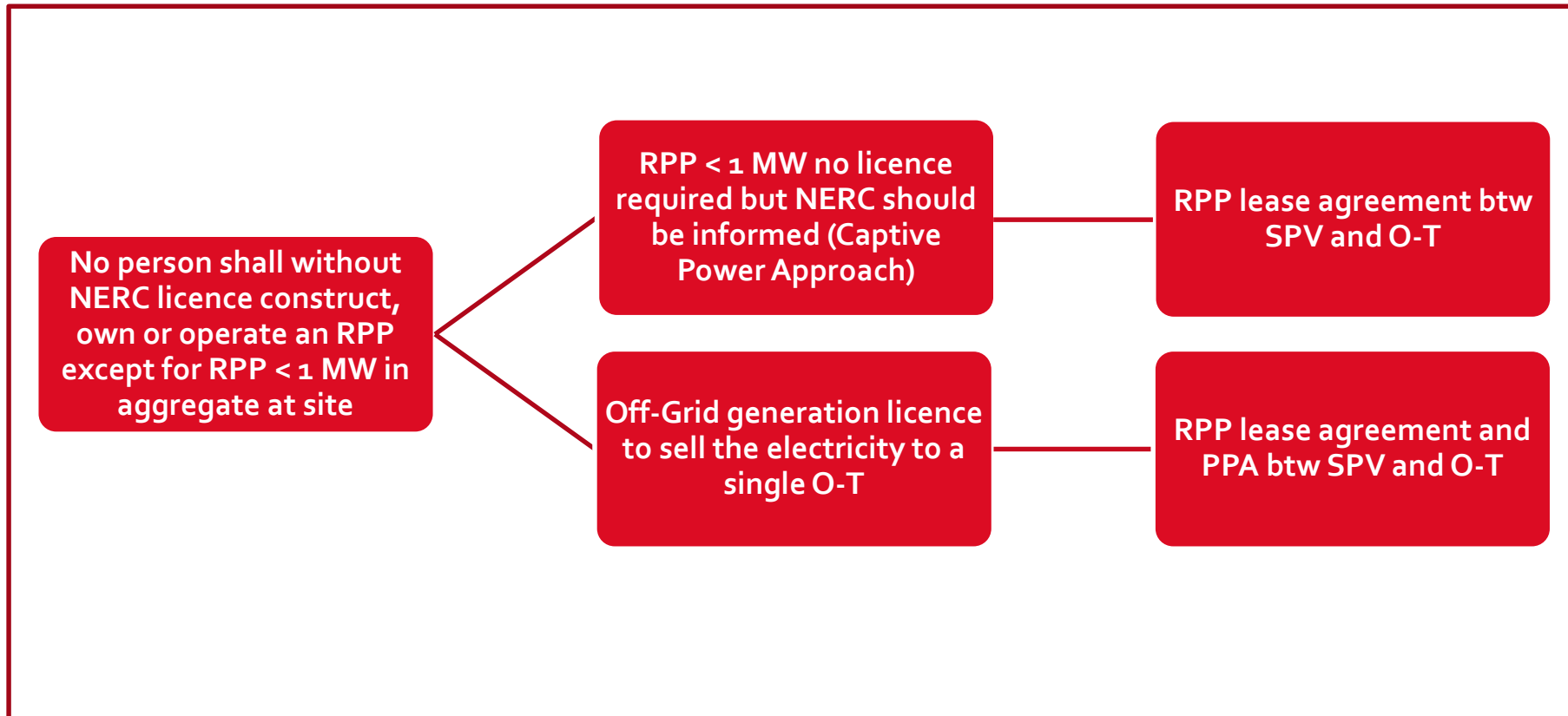
No Limitation on Foreign Investment/Ownership

Local Content rules apply for:

- Management and employees
- Hardware/Equipment
- Services

Initial and annual reporting to NERC

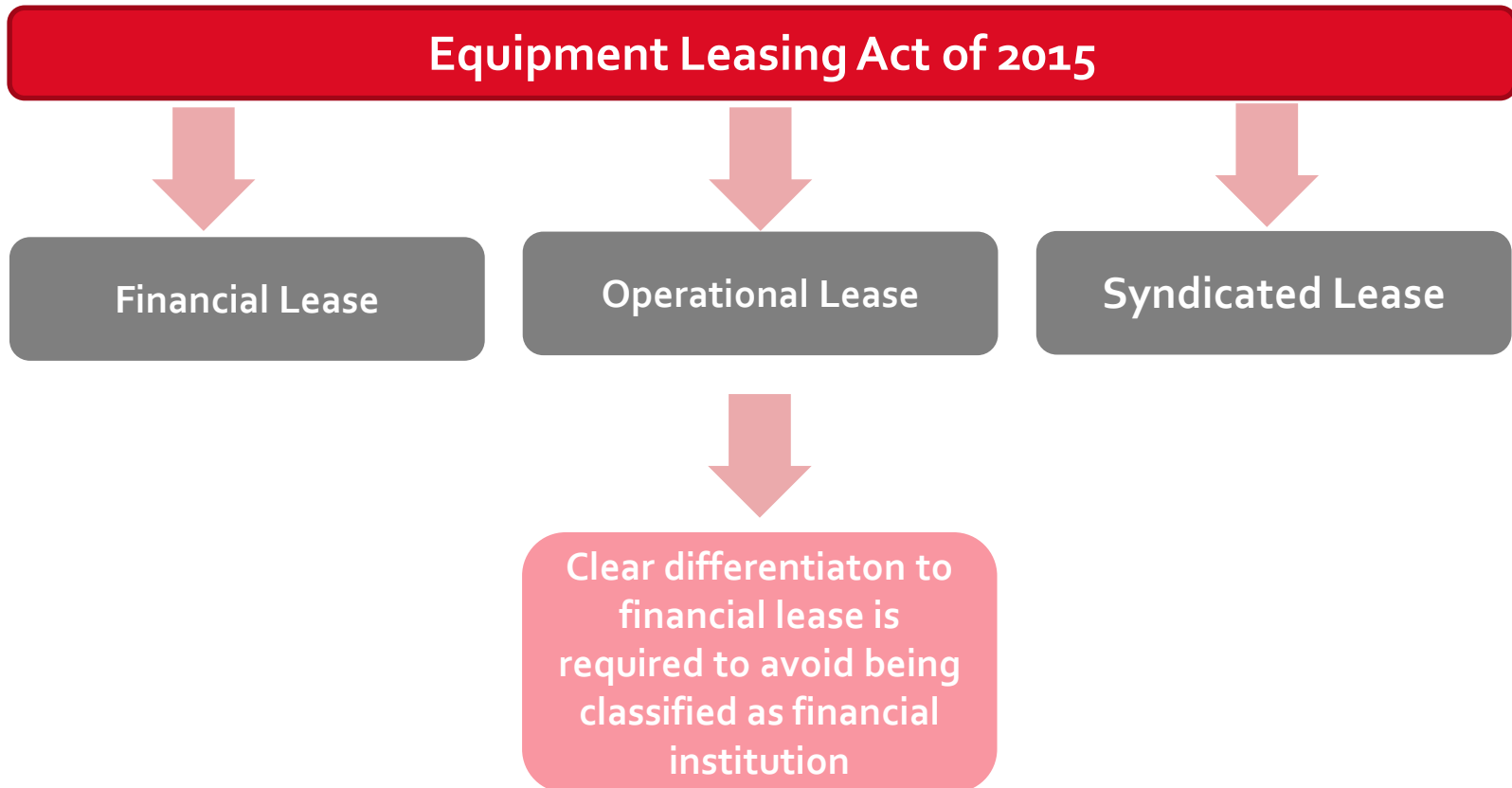
How to implement embedded generation in Nigeria without Generation Licence?



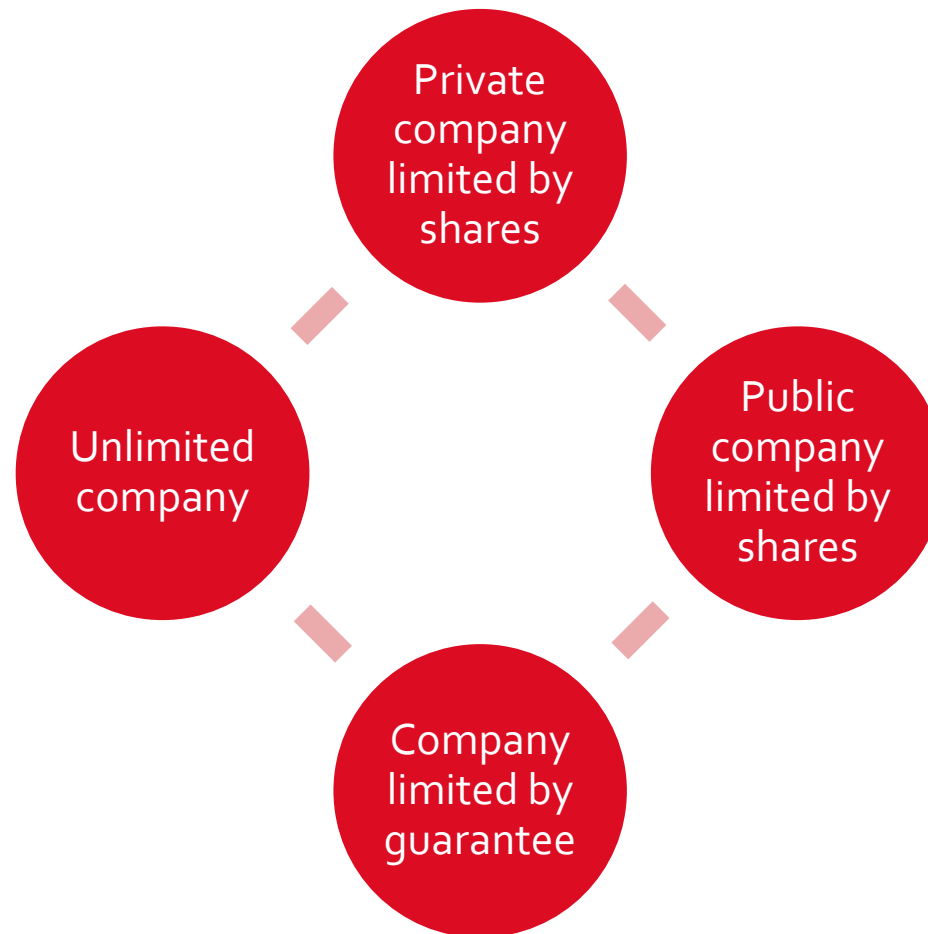
PPA as preferred Business Model

- ▶ Power Purchase Agreements (PPA) and Leasing (to-own) structures have emerged as viable business models.
 - While PPA depend on the actual power delivered,
 - Leasing charges are usually fixed and not related to the energy supplied.
- ▶ In cases where both business models can be implemented it is an economic project specific decision:
 - IFRS 16 Accounting Standard could affect the use of lease

Alternative Option: Lease



Possible legal forms in Nigeria for the SPV



Recommended legal form: Private company limited by shares

▸ Companies and Allied Matters Act, 1990:

- Limitation of liability
- Established legal framework provides safety
- Capital contribution:
 - 10 Million NGN for companies with foreign investors
- Companies with foreign investors have to register in addition at the Nigerian Investment Promotion Commission (NIPC)



Incorporation & Financing of SPV

Remuneration of Shareholders

- ▶ Recommended legal form for the SPV: Private Company Limited by Shares
 - Can be 100% owned by foreign shareholders > necessity to obtain Certificate of Capital Importation – eCCI in such a case
- Accounting standards: IFRS. New Leasing standard IFRS 16: all leases shall be reflected in the balance sheet.
- Recommended financing of the SPV : cash contribution and shareholder loan agreements.
- Tax and custom incentives: 0% custom tariff for solar cells, 20% for storage with 5% VAT and 5% for inverter and 0% VAT.
- No Double Taxation Convention: taxation in Nigeria and in Germany for SPV's German shareholder.

Transfer of financial and material Resources

▶ **Loan Agreements**

- Are considered in Nigeria as economic contracts which are freely negotiable
- In case of Intercompany Loan Agreements:
 - must be agreed on at market prices
 - For foreign loans need a certificate of capital importation (eCCI)



Company Registration

INSTITUTION	RESPONSIBILITY
Corporate Affairs Commission	Onlineportal for registration of companies For foreign investors: Certificate of Capital Importation (eCCI)
National Security Trust Fund	Social Insurance
Nigerian Investment Promotion Commission	Registration of companies with foreign shareholding
National Immigration Service	Visa, temporary and permanent residence permits
Institute of Chartered Accountants Nigeria	Invoicing and auditing rules

Running a foreign bank account in Nigeria

▶ Currencies in Nigeria for payment of services

- The Naira (NGN) is the only legal means of payment
- All domestic sales and purchases of goods and services in Nigeria must be made in the local currency Naira.
- Current exchange rate:

1 EUR = 450,23 NGN



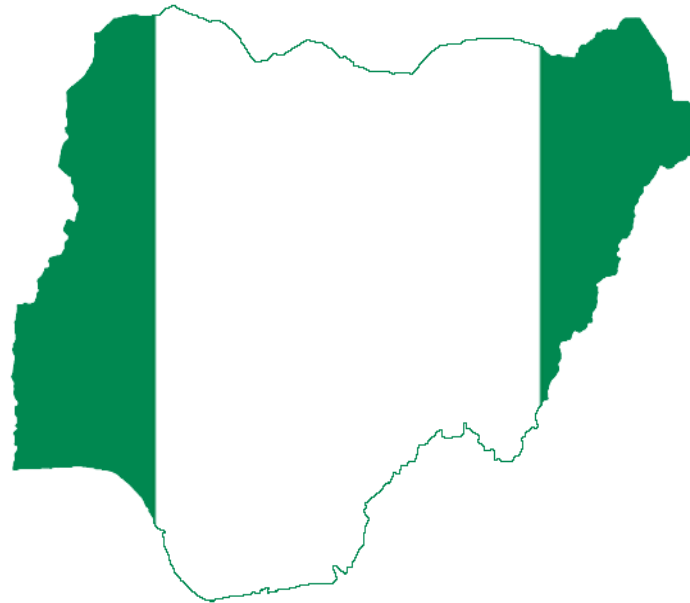
▶ Foreign Currency Account

- Locals and Foreigners can open Bank accounts with authorized Banks
- Interest must be paid from an account balance of USD 10,000.

Tax Structure in Nigeria

Nigerian Tax Law	<ul style="list-style-type: none"> Nigerian Tax Authorities
Energiesector	<ul style="list-style-type: none"> Electricity Power Sector Reform Act 2005 - EPSRA
Management Fees	<ul style="list-style-type: none"> Introduction of management fees as option for tax optimisation German Holding/Nigerian SPV Administrative effort including related tax consultant fees might not be covered by the possible tax gains
Assessment Period	<ul style="list-style-type: none"> Calendar Year
Corporate Income Tax	<ul style="list-style-type: none"> For companies with an annual revenue of up to 25 Mio. Naira: No CIT For medium sized companies with an annual turnover up to 100 Mio. Naira: 20 % CIT
Tax Losses	<ul style="list-style-type: none"> Tax losses can be carried forward indefinitely (insurance up to 4 years only) Tax loss carryback is prohibited
Withholding Tax	<ul style="list-style-type: none"> Concerning payments in Nigeria and abroad Withholding Tax for dividends 10,0 %
VAT	<ul style="list-style-type: none"> VAT on local and imported goods 5 % (increase to 7,5% expected)

Introduction template contracts for Nigeria



Contract templates : PPA

- The term *embedded generation* is not to be used in the document (because of the different definition)
- Nigerian drafting style:
 - More details (ex. representations & warranties: power to execute, duly executed and legal obligation enforceable against third party etc.
 - Contractual obligations are repeated as representations,
- Contract duration:
 - Automatic extension in case of Force Majeure
- Conditions Precedent:
 - Include local obligation of authorisation and registration
- Insurance clause contains a mandatory commitment to the Employees Compensation Act from 2010:
 - Employer to contribute 1% (one *per cent*) of its total monthly payroll or an amount assessed by the National Social Insurance Trust Fund ("**NSITF**") into the Employees Compensation Fund ("**ECF**").
 - The ECF is used to compensate employees (or their dependants) for any death, injury, disease or disability arising from or in the course of employment.

Contract templates : PPA

- Full commercial operation date
 - Right for the Seller to claim an extension for exceptional weather condition, additional work resulting from ext. sources
- Pay according to consumption Option:
 - Purchaser pays only the Net Electrical Output consumed
 - In such a case ACAS advises that the Seller shall be the exclusive provider except if the Purchaser's electric energy requirements at the Site exceeds the Net Electrical Output delivered to the Purchaser.
- Option to sell the surplus is provided for the Seller only :
 - Not provided in case of *take or pay* because only the Seller has a license
- In case of late payment, option for the Seller to request security for subsequent payment
- Option to purchase the Plant:
 - Provided that the Purchaser is not in default under the Agreement, the Purchaser may at the end of the Agreement purchase the Plant from the Seller
 - Purchase price determined in accordance with the price formula set out in Annex F.
- Liability limitation of the Seller to the total payments made by the Purchaser under the Agreement
- Seller may assign its rights hereunder to such financing parties without the prior written consent of (but with notice to) the Purchaser.

Possible performance guarantee clauses for the Hire-purchase of RPP

- ▶ Performance of the RPP can be guaranteed by the SPV to the industrial customer.
 - No performance guarantee included in our templates as this guarantee varies so much depending on the guarantees provided by the EPC that there is no standard clause.
- ▶ Different option in case the expected performance is not met: repair or replacement obligations, reduction of the rental price, payment of the electricity that needs to be bought. Examples:

The lessor guarantees an annual minimum energy output of the RPP of Any shortfall in output below this guaranteed minimum shall be paid by the lessor to the lessee at rates charged by [national / local electricity supplier] per kWh at the time of the shortfall.

The lessor guarantees that during the Lease Term the RPP will operate within manufacturer's specifications and if it does not that the lessor will repair or replace any defective part and restore RPPs performance.

Other templates

- ▶ You will find with the studies other templates to implement an embedded generation project in Senegal such as:
 - By-laws of the recommend legal form for the SPV,
 - Shareholder Loan Agreement for the transfer of financial resources, and
 - Monitoring & Maintenance contract (// O&M) between the SPV and an O&M contractor.

Studies and Templates published in August!

The studies will be available via: <https://www.german-energy-solutions.de/GES/Navigation/DE/Maerkte-Weltweit/Publikationen/publikationen.html>

and

<https://www.german-energy-solutions.de/GES/Redaktion/DE/Meldungen/Aktuelle-Meldungen/2020/20200810-pep-neuer-rechtlicher-rahmen.html>

We welcome your Feedback!

Please let us have your feedback and any questions on the studies, the contract templates as well as this webinar via carsten.jung@giz.de

Thank you for your attention

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