

"Developing Albania's Hydroelectric Potential"

SOME QUESTIONS ASKED BY INVESTORS

1. Political stability
2. Contract rules (enforcement especially by government, change in law)
3. Cost of doing business (tax system, reimbursement mechanisms, offsetting)
4. Incentives
5. Employee's protection
6. Closing the business

1. POLITICAL STABILITY

- Functioning of the Parliament
- Functioning of other institutions (including courts and authorities that issue permits and authorisations. e.g. construction)
- Institutional memory
- Legal certainty (advance ruling)

2. CONTRACT ENFORCEMENT

- Legal system: (Constitution, International Conventions / FDI Law, BIT/ NY / Washington Conventions etc, Court Rulings, (private property right, no discrimination, fair compensation)
- Choice of law and Choice of Forum
- Land status (safest expropriated land)
- Administrative appeals/Court Appeals
- Enforcement (public/private agencies)

3. COST OF DOING BUSINESS

- Corporate Tax
- Value Added Tax
- Local taxes
- Compulsory insurance
- Employment benefits (Wage/Social/Health insurance)
- Cost of renting, power, water supply transportation
- Cost of services
- Cost of borrowing

Note: high cost due to risk assesement in the Due Diligence Phase

4. INCENTIVES

- Incentives used to exist years ago like in tourism sector, but now it seems that then current tax burden is being considered as sufficient to attract investors
- An incentive is in concession area (bonus granted to those who prepare an unsolicited proposal)

5. EMPLOYMENT PROTECTION

- Labor Code - a good balance between employer and employee
- Restrictions on recruitment
- Right to contract termination (more a procedural than matter of merits)
- Working Councils not developed and Collective Agreement rare
- Labor inspectorate

6. CLOSING THE BUSINESS

- Private sale of shares/ asset

Note: the process can be conducted with the support of qualified appraisers, lawyers, notaries, etc)

- Voluntary/Forced Liquidation
- Voluntary/Forced Bankruptcy

7. HP SECTOR LEGAL FRAMEWORK

- New Power Sector Law implementing the 3rd Energy Package:
 - Opens retail market gradually and changes from *feed-in* model to market model
 - Imposes liberalization and unbundling of state-owned companies;
 - Encourages the integration of the electricity market;
 - Streamlined licensing and permitting criteria for granting authorizations/licenses;
 - Suggests integration of the Albanian market in the operational regional and European electricity market.
- The secondary legislation yet to be adopted.

8. SOME OF HP SECTOR ISSUES

- Electricity sector is well-regulated.
- Market is dominated by KESH (wholesale) and OSHEE (retail). (Only a limited number of large customers contract their electricity supply outside the regulated system of “public supplier” OSHEE).
- Feed-in tariff model – currently only for SHPPs (under 15 MW).
- Long term PPA with off-taker (KESH) for under 15MW SHPPs using feed-in tariffs.

9. HURDLES IN HP PROJECTS

- Incomplete feed-in tariff allocation/allowance – currently only for SHPPs (<15 megawatts MW).
 - Feed-in model is already providing to be unsustainable due to the fragile infrastructure (inadequate grid and the historical problems of OSSH and KESH – inefficient bill collection).
 - This model has proven elsewhere not to be tenable in the long-run.
- Security options for Lenders – inadequate understanding and application of *step-in* rights.
- Barriers to increased energy efficiency and utilization of renewable
 - Lack of capacities and skills in how to prepare project proposals properly;
 - Lack of public awareness;
 - Legal framework approximation with EU directives.

10. HURDLES IN HP PROJECTS

- Title- Process of transfer of state-owned immovable properties yet to be completed. In most of cases the public land (belonging either to the central or local government) is not duly registered with the immovable registers and therefore unlikely to have a clear and established Certificate of Title
- Strict interpretation of change of control of the concessionaire and/or the project company.
- Long term PPA with off-taker (KESH) for under 15MW SHPPs using feed-in tariffs.
- ‘Stability clause’ in concession agreement often not feasible.

11. OBSTACLES IN FINANCING

- Poor security instruments to secure financing the assets and cash-flow of Sponsors, including "step in" rights and lack of financial support, or guarantee of, the Contracting Authority's proper fulfilment of its obligations.
- Specifically recent changes to the laws related to Financial Collateral have restricted means of having securing charge over intangible property, financial instruments and accounts.
- Lack of capacities and skills in how to prepare projects (proposals) properly, how to present bankable projects.
- Unclear status of holder of concession rights (Concessionaire, i.e. the winning bidder or the Project Company). Often concession contract requires changes to secure financing.

12. ISSUES IN CONSTRUCTION PHASE

- Absence of a single authority – One Stop Shop – for the delivery of permits/licenses of concessionaire companies;
- Structural delays for the issuance of permits/responsiveness of special supervisory units within the public entities;
- Real property-related issues (registration with IPRO of properties under the administration of public entities and of the Concession Contract);
- Conflicts between concession rights with existing licenses granted to third parties.

16. HOW TO OVERCOME HURDLES

- Investors expect non-recourse financing structure, so newly established Project Company holds the rights and obligations with no recourse to shareholders (bidders). Currently Concessionaire/ bidders are jointly liable until construction completion
- More legal certainty to be provided for the concession rights and obligations to be contractually passed to the Project Company.
- The contracting authority is increasingly more aware of need to make projects bankable but still more flexibility from it is expected.

THANK YOU!

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