

## Sample: 10 Important Features of Bankable Power Purchase Agreements for Renewable Energy Power Projects

From Overseas Private Investment Corporation, U.S. Department of Commerce, U.S. Agency for International Development, and the U.S. Trade and Development Agency (<http://www.opic.gov/sites/default/files/files/10%20Elements%20of%20a%20Bankable%20PPA.pdf>)

A bankable power purchase agreement (PPA) is essentially a long term offtake agreement executed with a creditworthy offtaker and having a sufficient tenor to enable repayment of debt by providing an adequate and predictable revenue stream.

### 1. Dispatch Risk

There are two structures generally accepted by lenders for mitigating the risk that the offtaker may not dispatch the generating facility.

**Take or Pay:** The offtaker pays a fixed tariff comprising a capacity charge (a fixed amount that is paid for available capacity - no dispatch required) and an output charge (an amount paid in respect of energy actually delivered). This permits the power producer to cover its fixed costs with the capacity charge, including debt service, fixed operating costs, and an agreed equity return.

**Take and Pay:** The offtaker must take and pay a fixed tariff for all energy delivered (no dispatch required). If energy cannot be physically taken by the offtaker and output is “curtailed,” energy will be calculated and paid for on a “deemed” delivered basis.

### 2. Fixed Tariff

It is important that the revenue of any PPA, whether “take or pay” or “take and pay,” be a certain amount per kilowatt-hour generated to adequately cover the cost of operating the facility, repay the debt and provide a reasonable return on equity.

### 3. Foreign Exchange

In order to avoid subjecting the power producer to currency risk, the PPA should be either denominated in or linked to an exchange rate of the currency of the power producer’s debt, and there should be no limitation or additional approvals required to transfer funds to offshore accounts as required.

### 4. Change in Law or Change in Tax

The agreement should explicitly state which party takes the risk of the law or tax regime changing after the date of the agreement in such a way as to diminish the economic returns of the transaction for such party (e.g., increase in taxes on power producers reducing the producer’s returns). In order for PPAs to be bankable, most lenders require the offtaker to take this risk.

### 5. Force Majeure

The agreement should excuse the power producer from performing its obligations if a force majeure event (an event beyond the reasonable control of such party) prevents such performance. The allocation of costs and risk of loss associated with a force majeure event will depend on the availability of insurance and in some cases the degree of political risk in the country/region.

### 6. Dispute Resolution

The agreement should provide for offshore arbitration, in a neutral location, under rules generally acceptable to the international community (e.g. United Nations Commission on International Trade Law, or London Court of International Arbitration, or ICC).

## **7. Termination and Termination Payments**

The PPA should set out clearly the basis on which either party may terminate the PPA. Termination by the offtaker may leave the project with no access to the market and thus should be limited to significant events. The agreement should provide that if the PPA is terminated for any reason, then in case of transfer of the facility to the offtaker, the offtaker shall provide a termination payment at least equal to the full amount of the power producer's outstanding bank debt, and in the case of the offtaker's default, a return on equity.

## **8. Assignment**

The PPA should allow collateral assignment of the agreement to the power producer's lenders with the right to receive notice of any default and to cure such default. Additional step-in rights are generally set forth in a separate direct agreement between the lenders and the offtaker.

## **9. Offtaker Payment Support**

Depending upon the size of the project and the creditworthiness of the offtaker and the development of the energy sector in a certain country, short term liquidity instrument, a liquidity facility and/or a sovereign guaranty will be required to support the offtaker's payment obligations.

## **10. Transmission or Interconnection Risk**

The PPA should indicate which party bears the risk of connecting the facility with the grid and transmitting power to the nearest substation. The more significant these risks (due to terrain, distance, populated areas), the more the lenders will require the offtaker to bear all or a significant portion thereof.