

1. REGULATORY FRAMEWORK

Each state in India has its own solar policy. This leads to a lack of uniformity in the Power Purchase Agreements (PPAs) issued by various distribution companies (DISCOMS).

Tip: Some states structure their PPAs better.

2. TARIFFS

Standard PPAs mostly have no provisions for developers to renegotiate tariff in case of delays. They also do not provide for security against payment defaults. Hence, negotiations can become a long drawn out process, involving state electricity regulatory commission (SERC).

Tip: Seek clarifications for deviations during the bidding process.

3. INCENTIVES

Incentives like Renewable Energy Certificates can be traded with other DISCOMS to meet their renewable purchase obligations (RPOs), but there is no mechanism to enforce the RPOs. A more acceptable incentive is the Carbon Credit Certificates, but they have to be shared with the DISCOM issuing the PPAs.

Tip: Plan the financial incentives properly.

4. EPC CONTRACTS

EPC contracts need to clearly communicate obligations, responsibilities and risks. The EPC cost might vary based on tax efficiency, so contracts need to be structured well.

Tip: Forget about the Silver Book (or any other standard) when you carry out EPC contracting in India. EPC contract structures have to be approved by tax consultants first.

5. FINANCING

Contrary to the global trend of limited recourse / non-recourse financing, lenders in India demand promoter support during the project tenure. For foreign promoters, this is exceptionally tough due to stringent investment and borrowing regulations.

Tip: Be ready for tough negotiations and documentation if you want to borrow in India.

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6. LAND ACQUISITION

Land holdings in India are fragmented. Locations identified for most solar projects are on agricultural land that need to be converted into non-agricultural land. Additionally, companies with FDI cannot acquire agricultural land, leading to the need for land aggregators.

Tip: Structure and formalize the relationship between foreign developers and land aggregators.



7. LICENSES AND PERMITS

In the absence of a single window approval process, requisite licenses and permits will have to be procured from multiple central as well as state authorities, complicating a process which is already cumbersome and time-consuming.

Tip: Dedicated (in house or third party) resources might need to be formed specifically for licenses and permits. The time required for these should be factored into the project planning.

8. DISPUTE RESOLUTION

The PPAs generally provide for the state electricity regulatory commission as a forum for adjudicating disputes and not an independent forum such as SIAC/ LCIA.

Tip: Segregation of tariff disputes to the commission and non-tariff related disputes to an independent forum (arbitration) has better chance of succeeding during negotiations with a DISCOM.

9. SALE OF PROJECTS

Approvals for stake sale are needed from multiple agencies like DISCOMs, lenders, nodal agencies etc. Permits are mostly not transferable and buyer has to re-apply, leading to a tedious, inefficient process.

Tip: Plan and communicate well. Stay in constant touch with the lender.

WHAT WE CAN DO

BTG Legal has provided assistance in over 1 GWs of solar power plants in India. We provide legal assistance through the entire life cycle of a solar project including:

1. Analyzing risks and bottlenecks in the tender documents issued by DISCOMS, negotiating with DISCOMS to amend the PPAs if feasible.
2. Structuring the EPC contracts and sub-contracts to make them tax efficient and planning for risk mitigation.
3. Carrying out land related diligence, legal due diligence and health check on purchaser/ supplier companies in India.
4. Drafting, negotiating and finalising financing documents with banks, financial institutions and other stakeholders.
5. Managing disputes.
6. Executing diligence and documentation related to sale and purchase of solar power assets (including assessment of construction risks).

