

Concession Agreement of IPP

from the Lao Government's Perspective

Xaypaseuth Phomsoupha
Director General
Department of Energy Business
Ministry of Energy and Mines, Lao PDR

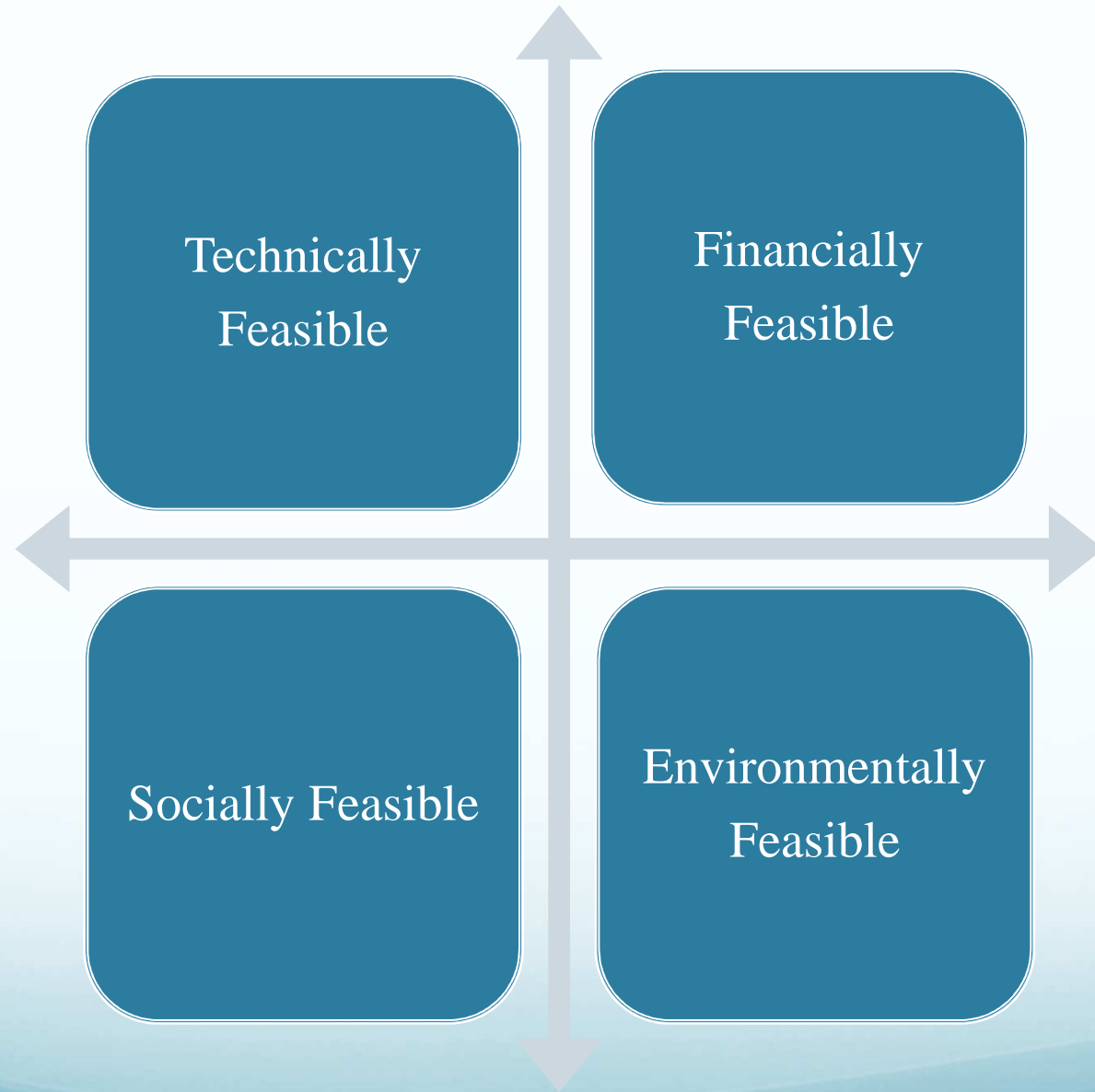
Background of Power Sector Development

- Country's electrification profile
 - 1990~15%
 - 2000~70%;
 - 2015~90%
- Current installed capacity: 6,300MW (total population is 7.1m)
- Projects under construction: 4,000MW
- Projects under study: 10,000MW
- Power projects have been mostly developed in a IPP mode by diverse participation with a PPP scheme

Key Concept of Project Financing

- New project developed on Build-Own-Operate-Transfer
- Ring-fenced project through special purpose company (limited liability company)
- Lenders rely upon future cash flow of the project for interest and debt repayment
- Main security for lending banks are concession agreement, power purchase agreement, assets and rights of project company as set forth in project's agreement
- No financial guarantee from host country
- Guarantee from investors limited to equity i.e. “**limited recourse financing**”

IPP Must be Feasible in all Aspects



Key Players Must Benefit

Benefits to the
Host country

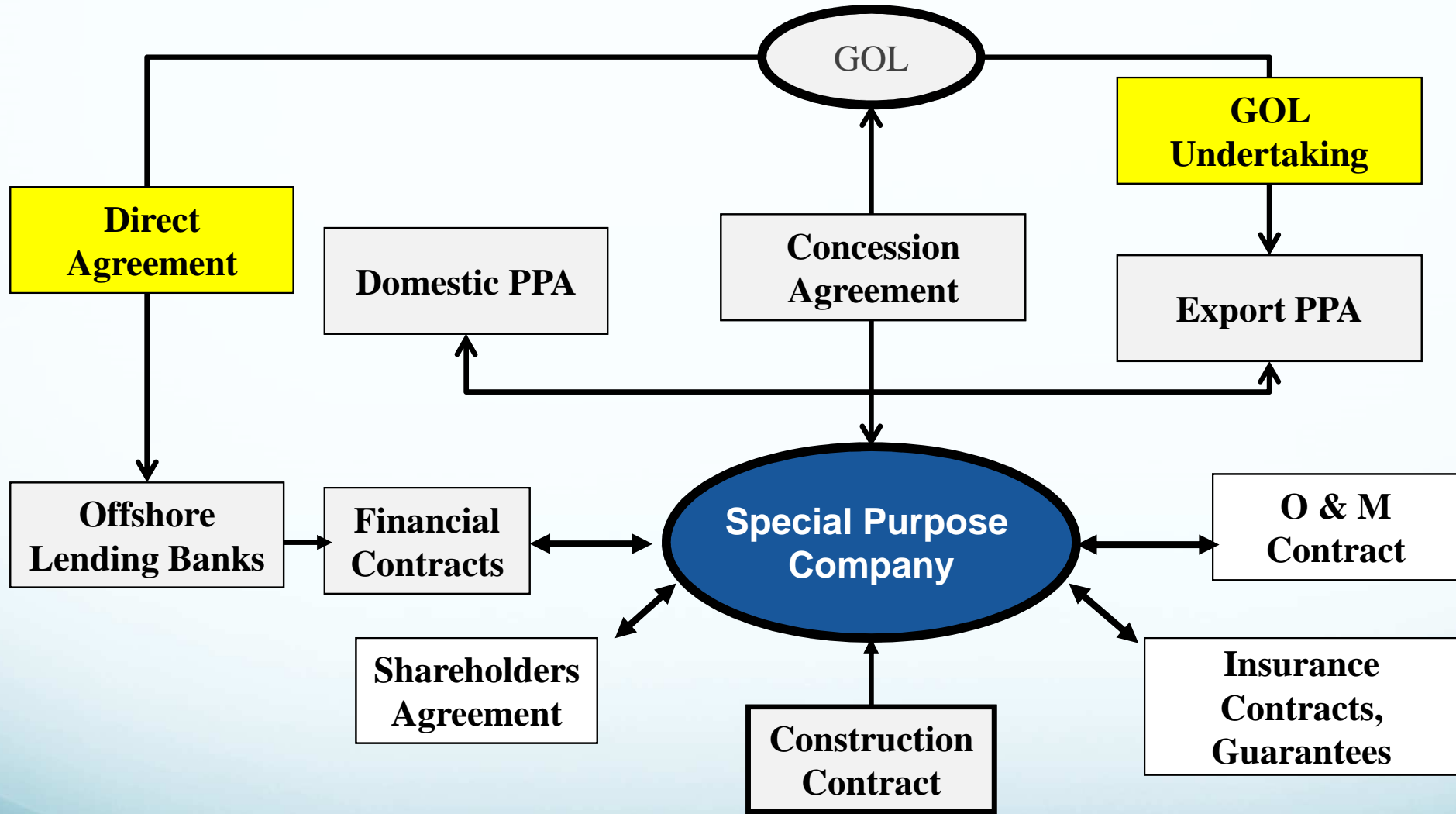
Commitments by
Power Off-taker

Project Affected
Persons (PAP)

DSCR for the
Lenders

Return on Equity
for Developers

Project Company Agreements for Lao IPP Projects



Concession Agreement

- Parties: Government of Laos (GOL) and SPC
- Language: Project agreements and documents in English
- Concession Rights: design, finance, build, operate (25-30 years) and transfer back to government
- Developers' Obligations:
 - To construct the Project as so designed to achieve COD as committed
 - To bear all costs including environmental and social aspects
 - To pay resource usage levies and taxes
- GOL Obligations:
 - To issue specific approvals as required by law
 - To carry out protection and management watershed area
 - To mobilize people participation

Risk Allocation

- GOL defaults giving rise to the termination right of the Company and hence the GOL is obligated to compensate loss/benefit to lenders and developers
- Company defaults giving rise to the termination right to be exercised by the GOL and if so exercised the GOL is obligated to pay outstanding debt service
- Force Majeure
 - Events: Earthquake, fire, flood, acts of god.
 - Consequence: addressed by insurance.
- Political Force Majeure
 - Event: Confiscation of project assets, change-in law, war, which are considered as government actions.
 - Consequence: The GOL has obligations to compensate loss/benefit to lenders and developers.

Direct Agreements

- Direct Agreement between GOL and lenders
 - GOL to acknowledge lenders providing debt financing to the project as the party
 - Lenders to qualify compensation payable by GOL through mechanism of financing agreements and CA
 - Lenders to exercise its step-in right
- GOL(U) is direct agreement between GOL and foreign off-taker.
 - GOL to acknowledge a foreign off-taker as the party
 - Foreign off-taker to qualify liquidated damages or compensation payable GOL through mechanism of PPA and CA
 - Foreign off-taker to exercise its step-in/out right
 - Once the foreign off-taker has stepped in, it shall be treated as the concessionaire in respect of financial previlleges

Dispute Resolution

- Neutral arbitration procedures and a venue in the third country are accepted
- Venue: Singapore International Arbitration Center (SIAC)
- Rule: United Nations Commission on International Trade Law
- GOL to maintain ratification of New York Convention 1958
- GOL to waive its sovereign immunity

Conclusion

- The Project shall
 - Be technically and financially viable (required return on equity (ROE) around 10-12%)
 - Be able to meet debt servicing as scheduled
 - Be supported by the publics
- The power off-taker to accept take-or-pay commitment
- The lenders to accept Min Debt Service Coverage Ratio (ADSCR) 1.2:1
- The GOL shall
 - Accept step-in right that may be exercised by lenders upon events of defaults committed by either GOL, Project Company and off-taker
 - Accept neutral dispute resolution

Thank you very much for your attention

For more information:

Tel: 021 453539-40

Fax: 021 415 626

Mail: energy@deb.gov.la

Web: www.poweringprogress.org