

# Legal framework for power projects in key emerging countries

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## Agenda



Indonesia



Vietnam



Myanmar

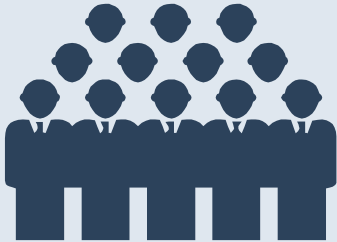
## Indonesia

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# Indonesia Opportunities

## Demographic and economic opportunity

4<sup>th</sup>



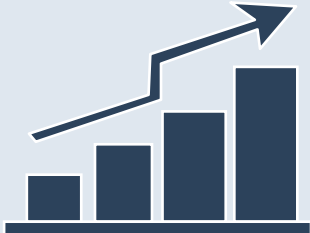
Most populous country in the world

10%



Electricity consumption per capita in Indonesia is 10% of the average in developed countries

7.1%



Average year on year electricity demand increase

## Indonesia Opportunities (cont.)



Ambitious Government Plans

**35 GW**

New installed capacity  
to be added by 2019

**750%**

Increase in installed  
capacity by 2050



Proven Track Record

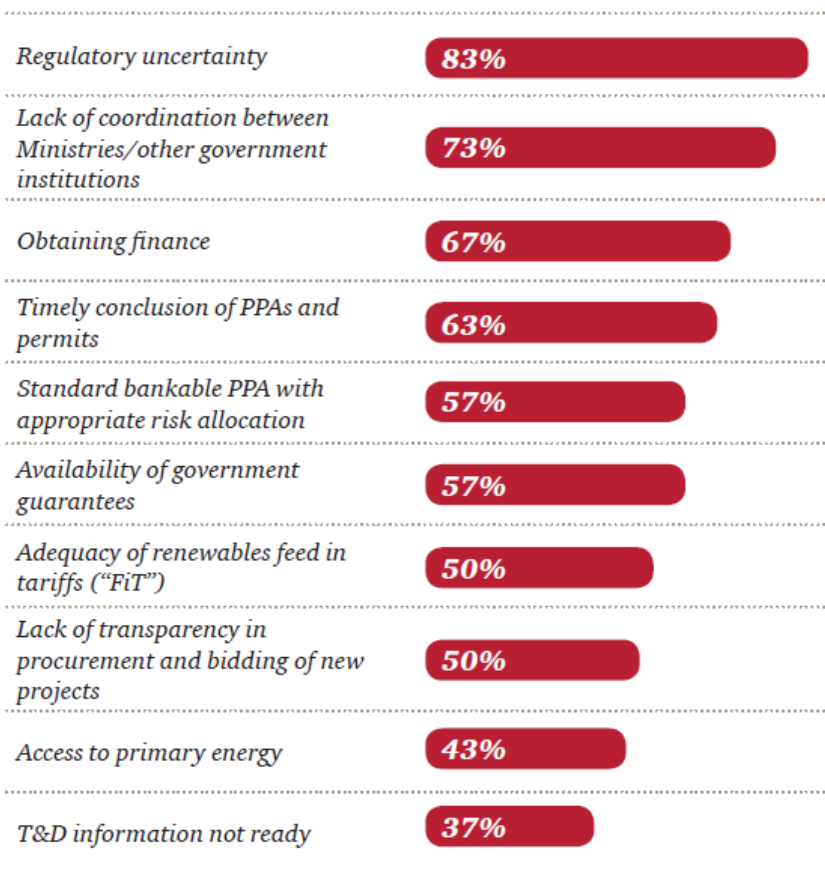
Indonesia investment grade rating

Long track record of successfully  
financed IPPs

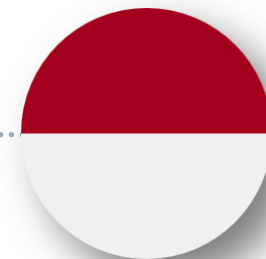
Eg. US\$4.2 Billion Central Java IPP  
US\$2.7 Billion Paiton Refinancing  
(US\$ 2 Billion Bonds/US\$750  
Million Loans)

## Indonesia Challenges

### What are the key barriers to investment in new large scale generation?



Source – PwC “Powering the Nation: Indonesian Power Industry Survey 2017”



## Key Players



### Ministry of Energy and Mineral Resources (MEMR)

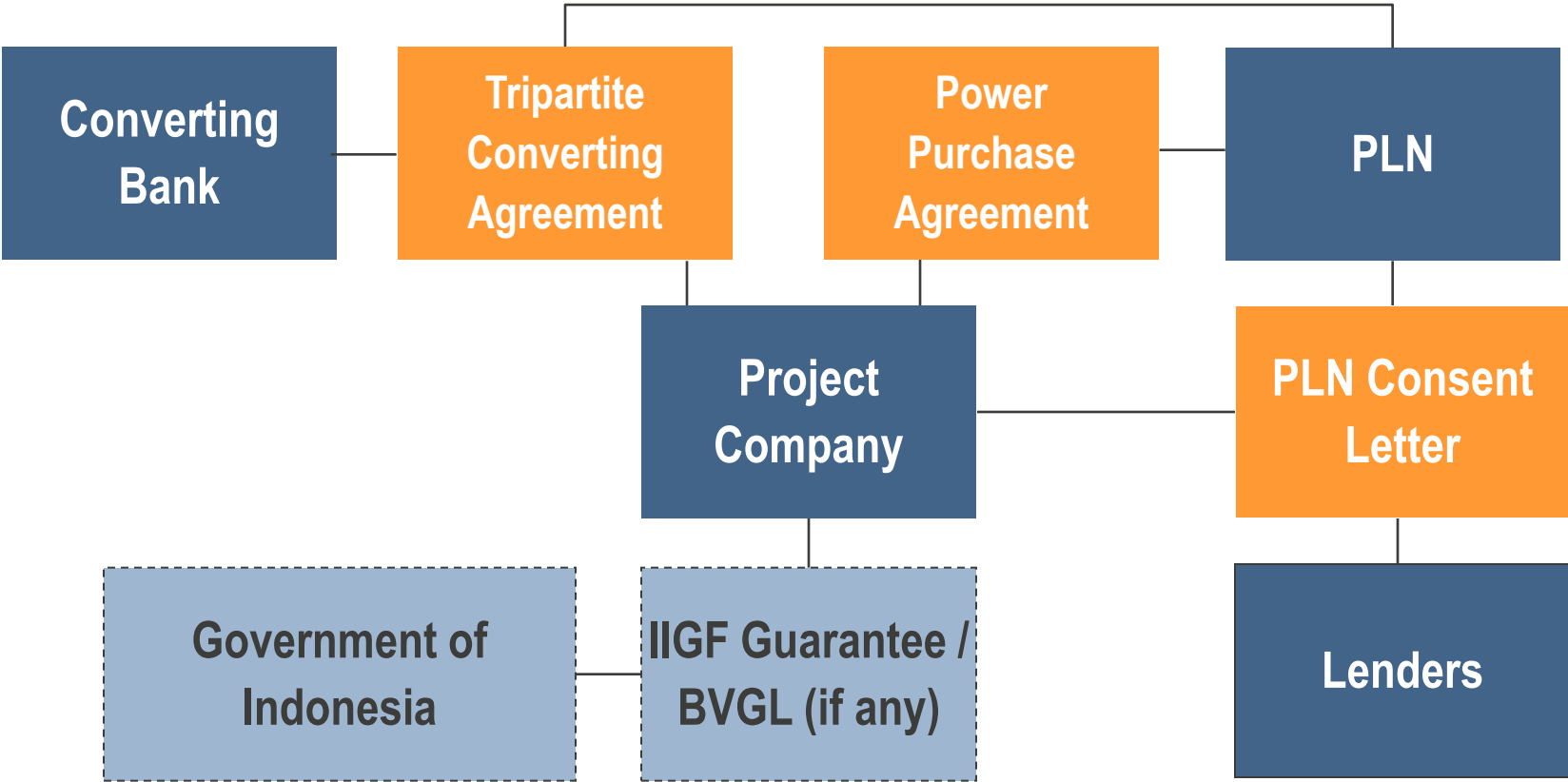
- Creates a national policy formulation, policy implementation and technical policy in the field of energy



### Perusahaan Listrik Negara (PLN)

- the State Electricity Company and holder of the Power Business Authority (PKUK) with the task of providing electricity for the public interest
- Operates as a vertically integrated utility company, operating power generation, transmission, distribution and retail sales of electricity
- PLN is the single buyer of electricity

# Indonesia Contractual Structure





## Regulatory Developments in 2017

Over 50 new regulations, many of which revise changes introduced earlier in the year.

Key regulation sets:

**MEMR Regulations 10 and 49**

Changes to terms and risk allocation of PLN PPAs

**MEMR Regulations 42 and 48**

Changes to share transfer restrictions

**MEMR Regulations 12, 24 and 50**

Caps on IPP tariffs based on “Generating BPP” (average local power generation cost)

## MEMR Regulations 10 and 49 – codification of PPA risk allocation

Issue	Before Regulations 10 + 49	After Regulations 10 + 49
Change in Law	<ul style="list-style-type: none"> <li>- PLN risk</li> <li>- IPP benefits from               <ul style="list-style-type: none"> <li>- deemed commissioning/ capacity payments</li> <li>- termination rights</li> <li>- tariff adjustments for increased costs</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Change in law is a force majeure event for both PLN and IPP</li> </ul>
Grid Force Majeure	<ul style="list-style-type: none"> <li>- PLN risk</li> <li>- IPP benefits from               <ul style="list-style-type: none"> <li>- Deemed commissioning/ capacity payments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- IPP risk</li> <li>- PLN not required to make payments if cannot take power due to grid force majeure</li> </ul>

## MEME Regulations 42 and 48 – Share transfer restrictions

### Before

- No transfer restrictions by law/regulation

### After

- No share transfers in project company pre-COD except to 90% owned affiliate.
- Impact on lender share pledge?

## MEME Regulations 12, 24 and 50 – caps on tariffs



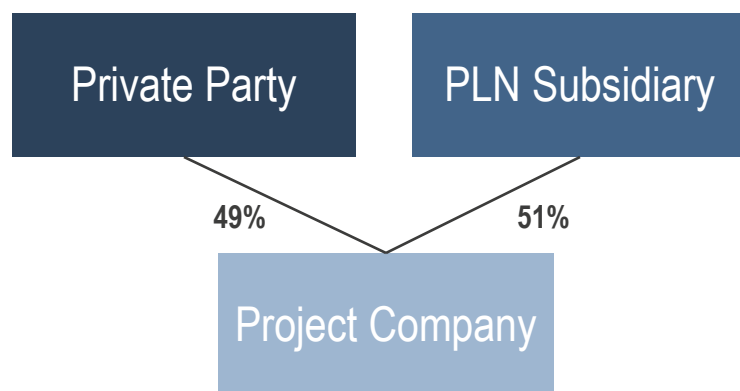
- “Generating BPP” = Average cost of generation in each area
- Regulations impose cap on tariff based on “Generating BPP”
- Is this an appropriate benchmark?

## New IPP Procurement Option – PLN 51% Participation

### Procurement Options

1. Direct appointment by PLN
2. Participation by PLN (via subsidiary) in 51% of Project Company

### PLN Shareholder Participation



### Key Terms/Issues

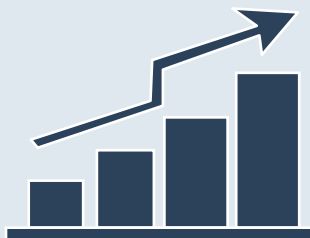
- World Bank Negative Pledge
  - Is the whole project a “state asset”?
- PLN subsidiary equity
  - Soft 10% equity contribution obligation?
  - No support for equity contributions
  - Same dividend entitlement
- Governance
  - PLN control at board and shareholder level
  - No conflicts of interest provisions
- PLN undertakes O&M

## Vietnam

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## Vietnam Opportunities

10-12%



Power demand  
growth to 2020

Power as  
priority sector



PDP 7

## Vietnam Challenges



- Regulatory certainty / interface with Government authorities
- Foreign exchange risk
- Cap on termination payments





## Key Players



### MOIT – Ministry of Industry and Trade

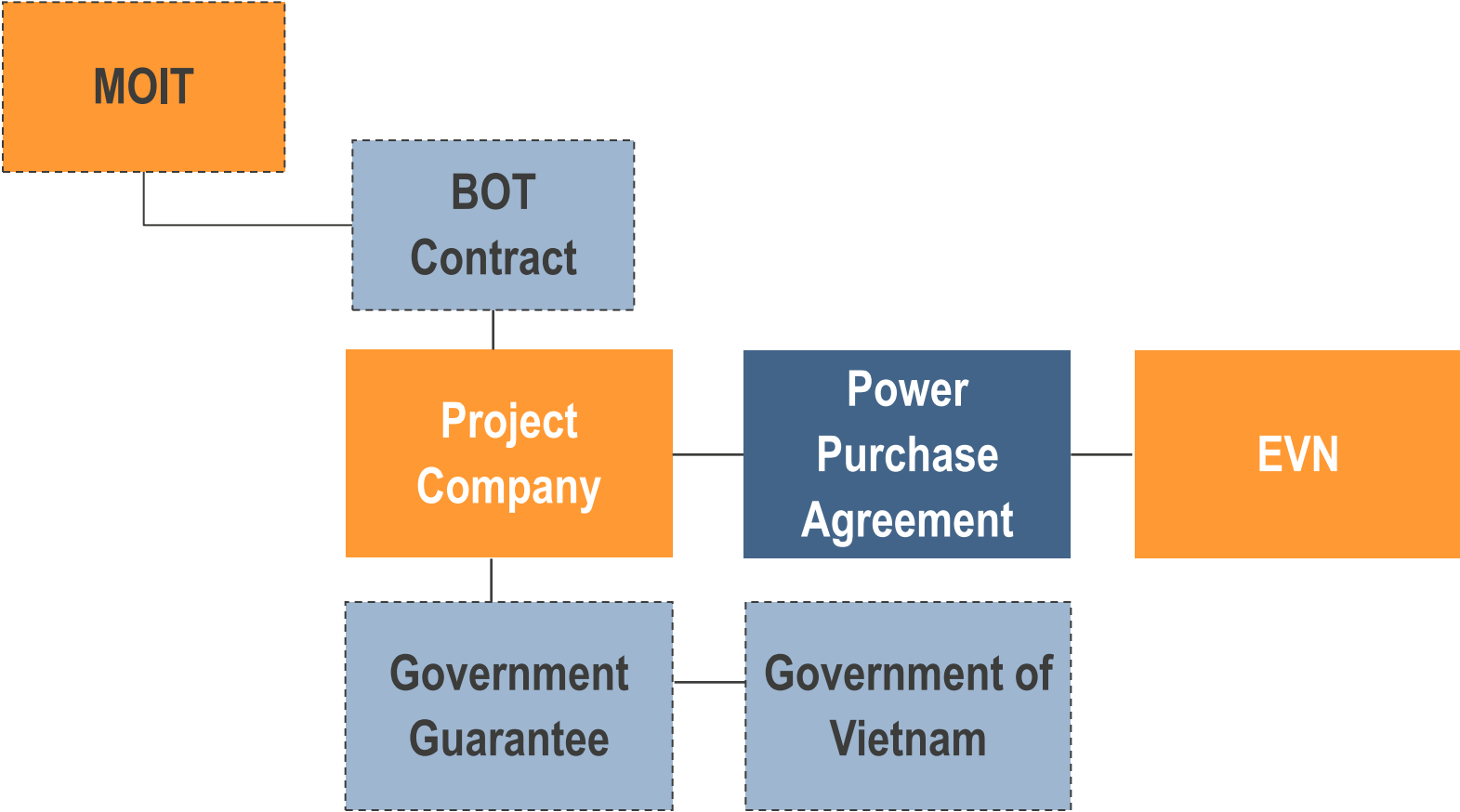
- Overseas implementation of Vietnamese government policy in power sector
- Tariffs to the public are recommended by MOIT and approved by Prime Minister



### EVN – Electricity of Vietnam

- State-owned utility
- Largest power purchaser
- Monopoly on transmission and distribution

# Contractual Structure



## Renewable Energy Developments



### The Good

- Tax incentives
- Obligation to buy all electricity
- Attempt to develop “Model PPA”
- Feed-in tariff indexed to foreign currency



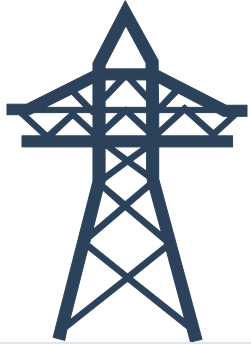
### The Bad

- No government guarantee of EVN’s payment obligations
- No political risk (eg. change in law) protection
- Project takes grid unavailability risk

# Myanmar

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## Myanmar Opportunities



### Strong demand fundamentals

217 kWh

Electricity  
consumption per  
capita in Myanmar  
(2014)

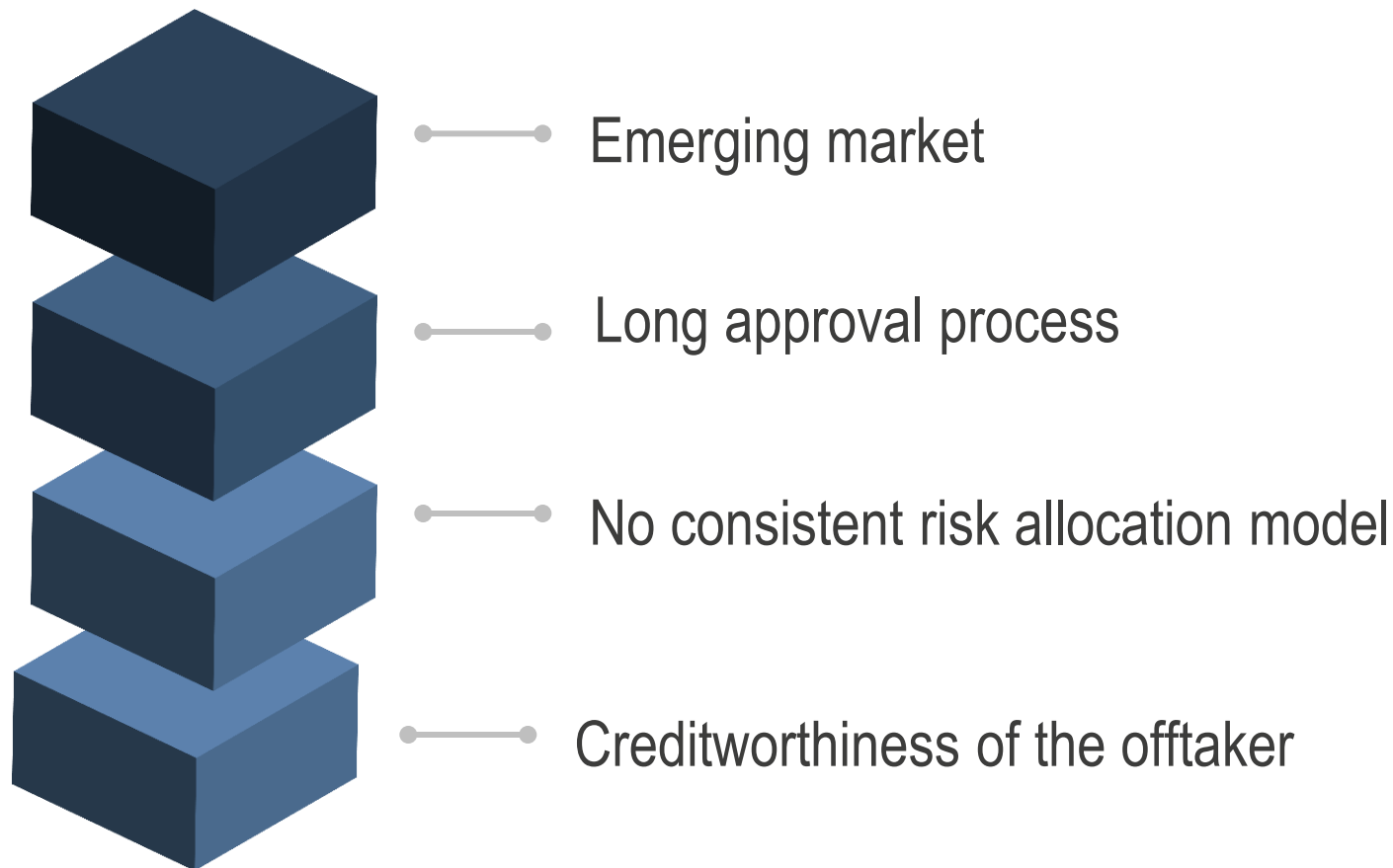
33%

Electrification rate  
(2014)

15-17%

Annual demand for  
electricity  
estimated by  
Ministry of Electric  
Power and Energy

## Myanmar Challenges





## Key Players



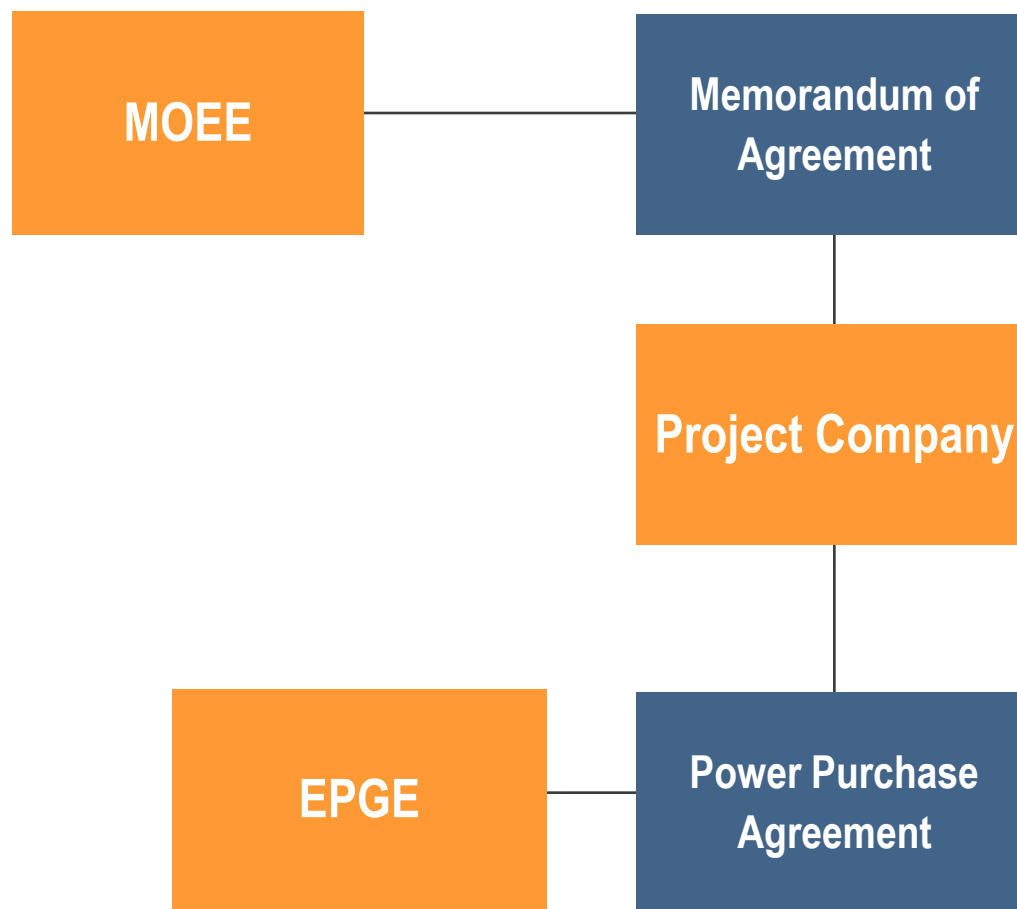
### Ministry of Electric Energy

- Overall responsibility for power sector
- Separate departments for development of power generation, transmission and distribution

### Electric Power Generation Enterprise

- State owned monopoly offtaker

## Contractual Structure





## Key Risk Allocation Issues



### Government support

- Guarantee by MOEE vs Guarantee by the Ministry of Planning and Finance (MOPF)
- Draft regulations are under review by the Government to expand the scope of MOPF guarantee

### Currency of tariff

- Tariff under PPAs entered into in 2016 were in USD
- Some uncertainty as to currency of tariff for future projects

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