

Sustainable Water Integrated Management (SWIM) Regional Training Event

**Funded by the EU European Neighbourhood and Partnership
Instrument (ENPI) South/Environment.**

**TRAINING ON EVALUATING AND STRUCTURING PPPs
IN THE WATER SECTOR**

Day 3

**Public-Private Interaction, Pre-tendering, Tendering, Award,
Negotiations, Construction and Performance Monitoring
*Employment, Personnel, Risks, Securities and Mitigation***

*By: M.Najjar
m.najjar@orange.jo*

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Employment and Personnel

- As part of any PPP transaction, and before entering into any agreement, the private party/concessionaire shall:
 1. indicate the names, qualifications and experience of the key personnel during the prequalification process. They shall be employed by the contractor/concessionaire and shall perform the functions respectively set against their names as part of the works and the ser-vices;
 2. employ full and sufficient numbers of competent staff, including site staff, having relevant qualifications and experience to exe-cute the works and perform the services and shall ensure that such staff each devotes as much time and attention to the works as is necessary or expedient.

Employment and Personnel

3. not allow any of its proposed employees to undertake any other responsibilities which might prejudice or conflict with the obligations of the contractor/concessionaire.
4. warrant that it will employ locals to the extent practicable in the execution of the works and/or performance of the Services.
5. be entitled, without limitation, to employ non-locals to the extent required for purposes of works and performance of the services
6. ensure that all persons employed in performing the services are properly qualified and supervised
7. ensure the availability of standby employees ready to address any emergency in an expeditious manner

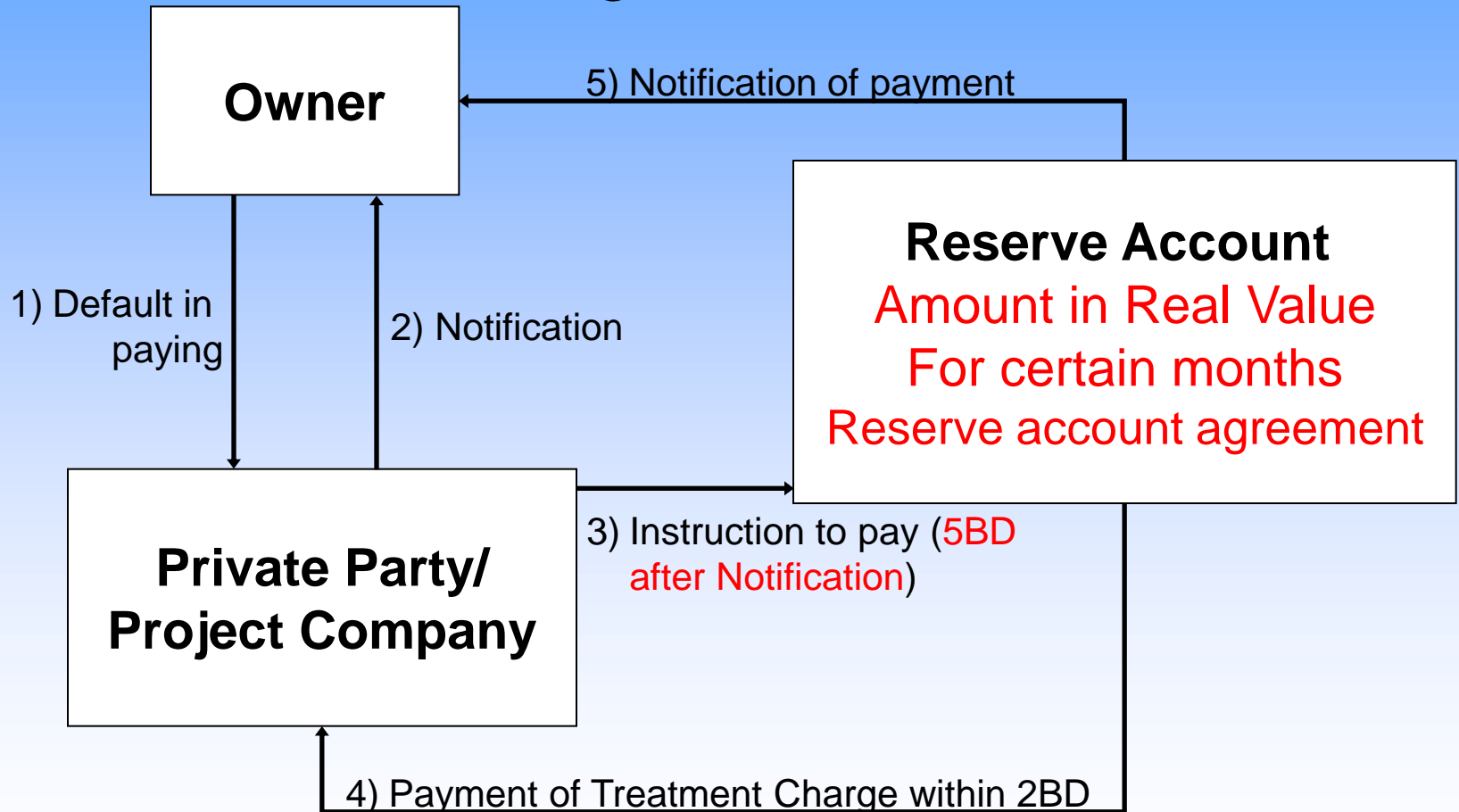
Employment and Personnel

- Representative(s) and key personnel shall remain among the permanent staff. If for any reason the representative(s) or any member of key personnel must be replaced, the contractor/concessionaire shall furnish details (including details of qualifications and experience) to the owner of any proposed replacement for approval.
- The owner shall:
 1. assign competent representative(s) who shall remain during the contract/ concession period and notify the private party in case of any replacement
 2. assign or employ either professional consultant or individual experts on full or part time as the contract may require. This will facilitate decision making and providing oversight

Securities, Risks & Mitigations

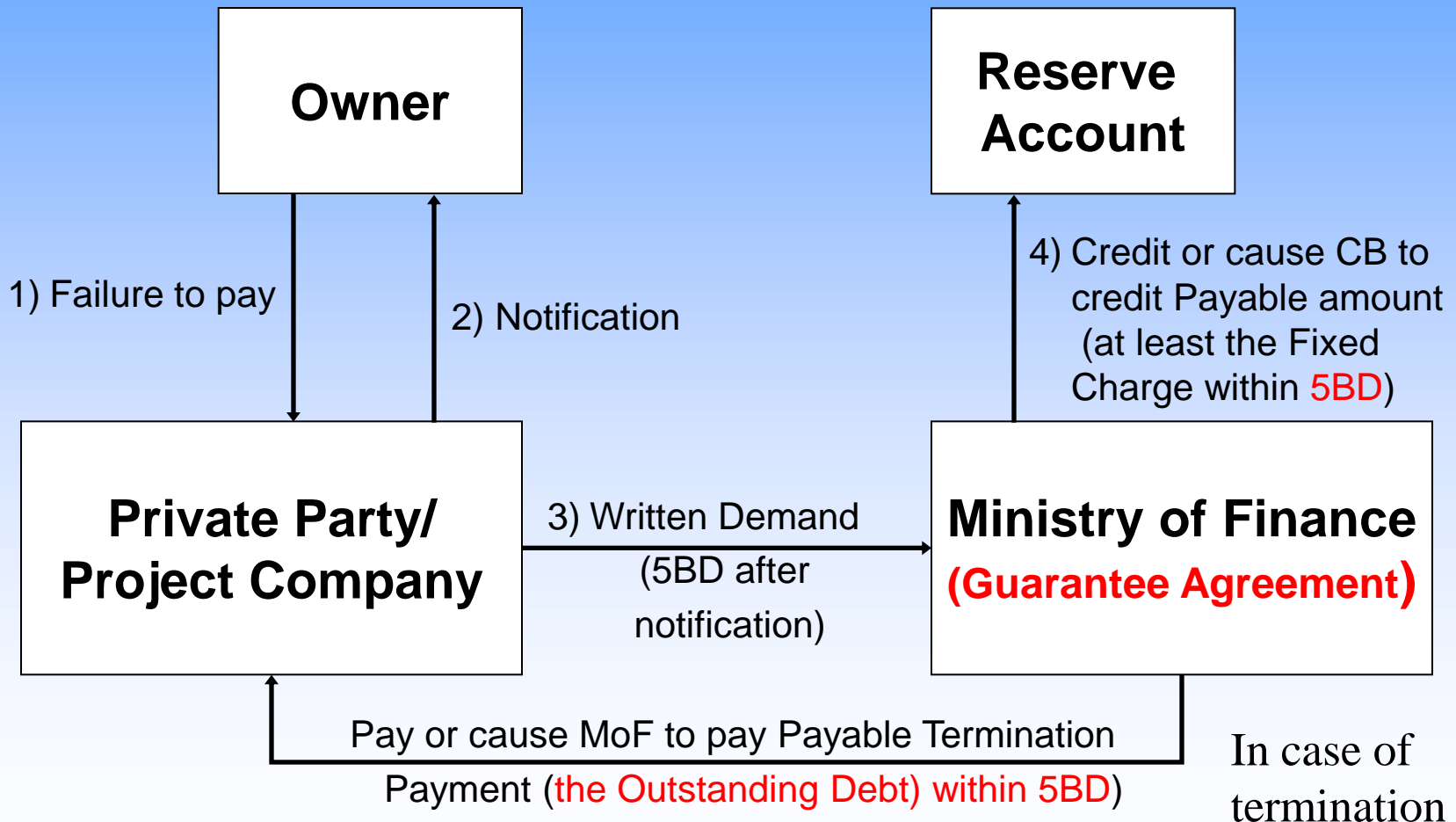
Project Company's Securities

1. Payment Assurance Scheme/Reserve Account Agreement



Private Partner's/Project Company's Securities

2. Payment Assurance Scheme/Ministry of Finance Agreement



Alternative to this agreement is the sovereign guarantee

Project Company's Securities

A. Insurances during construction period:

- i. Marine and Air Cargo Insurance,
- ii. Loss of Revenue (following Marine or Air Incident)
- iii. Contractors' All Risk Insurance (physical loss or damage or cost of replacing or repairing defective items)
- iv. Loss of Revenue (following All Risk Incident)

B. Insurances during construction period:

- i. All Risks Insurance: against all risks of physical loss or damage resulting from fire, lighting, explosion, storm, wind, tempest, flood, hurricane, water damage, riot, strikes, malicious damage, earthquake, and/or collapse.
- ii. Consequential Loss Following All Risks: Coverage shall insure against loss of revenue and/or loss of output as a direct consequence of loss of or damage to the facilities

Project Company's Securities

B. Insurances during construction period:

- iii. Machinery Breakdown: Coverage of all machinery, facilities and equipment forming part of the works against sudden and unforeseen physical loss or damage resulting from (example: mechanical and electrical breakdown, electrical short circuits, vibration, misalignment, current or voltage, overheating, etc).
- iv. Consequential Loss Following Machinery Breakdown: Coverage shall insure against loss of revenue and/or loss of output as a direct consequence of loss or damage caused by a peril insured under the Machinery Breakdown Insurance.

Project Company's Securities

- C. Insurances during contract:
 - i. Commercial/General Liability: Coverage shall insure against legal liability to third parties for body injury or damage to or loss of property arising out of the design, construction, testing, commissioning, ownership, operation and maintenance
 - ii. Workers Compensation and Employers Liability: Coverage shall include workers' compensation, temporary disability and other similar insurance required by applicable Statutory Requirements

Other Project Company's Securities

- i. Interest rate for payment's delays beyond the time agreed in the Security Schemes - interest rate is calculated according to laws applicable at the time.
- ii. Indexes to the charges formulae,
- iii. Compensations for termination followed owners default or breach
- iv. Certain compensations as consequence of Force Majeure events

Project Company's Risk Sharing/Owner's Security

1. During Construction.
 - Equity Investments
 - No profit for acceleration of Works
 - Liquidated damages for completion delay
 - Mother Companies guarantee for grant contribution (if any)
 - Performance guarantee
 - Second degree insurances assignment

Project Company's Risk Sharing/Owner's Security

2. During Operation

- Second degree insurances assignment
- Insurance ~ value of Project/ works/ Properties/assets
- **Performance Guarantee**
- **Liquidated damages for violating quality requirements (and reporting)**

Liquidated Damages and Penalties/Owner's Security/Samra as Example

1. During Construction:

Failure to reach the Final Completion Date, the Project Company should pay \$ 15000/ day (Maximum \$ 8000000)

2. During O&M:

- a. The liquidated damages for insufficient odour treatment is JD 3000/day.
- b. The liquidated damages for excessive levels of noise is JD 3000/day.

Liquidated Damages and Penalties/Owner's Security/Samra Example

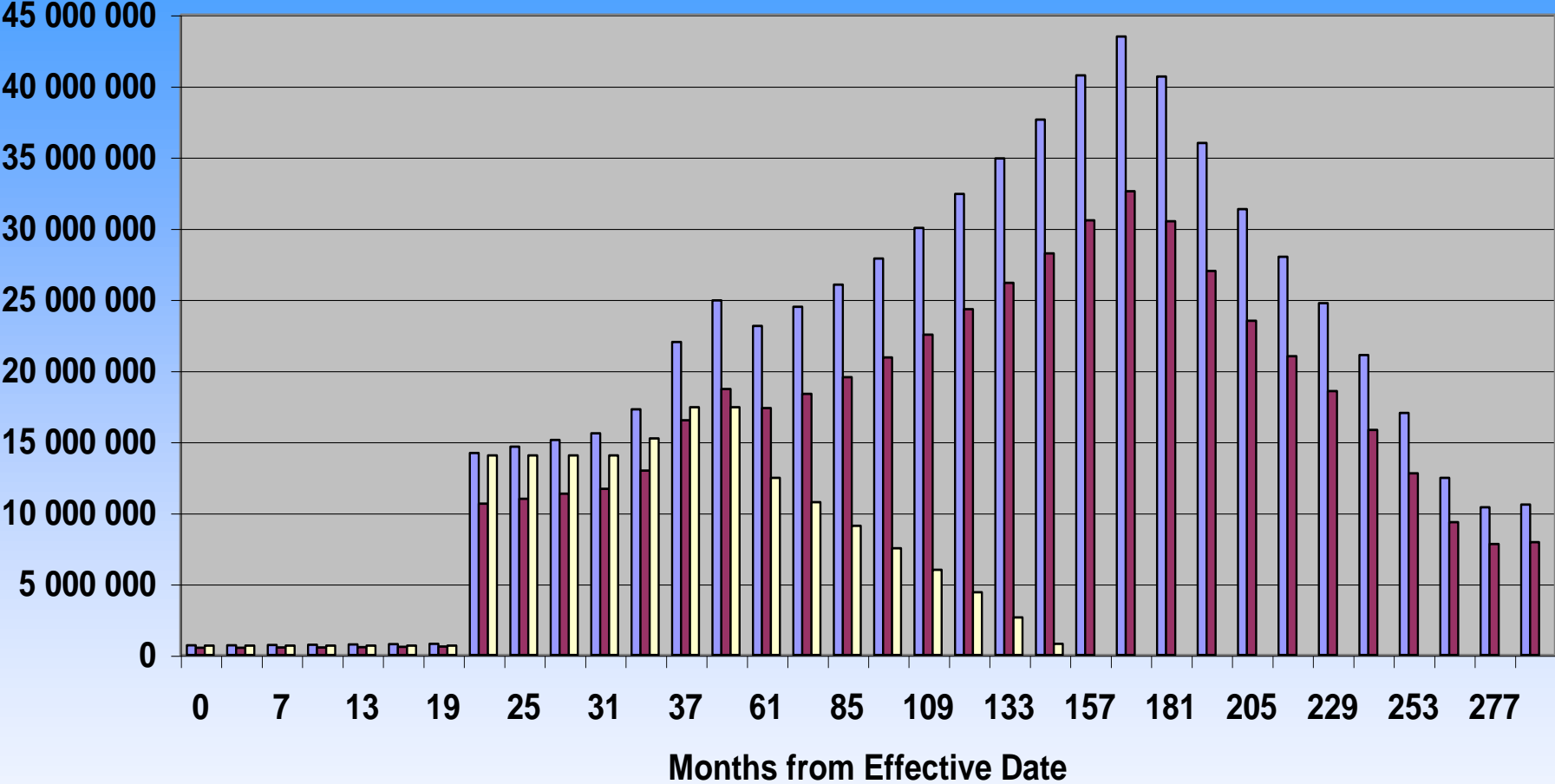
- c. Violation of the treated water quality in terms of BOD, Nitrogen & Bacteria = $T.C/2 * (\% \text{ of BOD exceedance} + \% \text{ of Nitrogen exceedance} + 10\% \text{ of difference log of bacterial Number})$.
- d. The total liquidated damages shall not exceed twice the daily charge. **Capped to Fixed F Cap/ month & 50% per year**
- e. Penalties on delay in reporting = 0.05% of TC for the previous month every day **capped to 2.5% of TC for the previous month**

Risk Sharing-Equity Compensation/Private Party's Security/Samra Example

Payable in USD following Termination, based on the injection and return on the Equity Investment over the Contract Period forecast at the bid submission date:

1. MWI Default or Political Force Majeure - 100% of the forecasted amount
2. Indirect Local Political Force Majeure - 75% of the forecasted amount
3. Indirect Foreign Political Force Majeure and Non Political Force Majeure - Initial Equity Investment, net of distributions

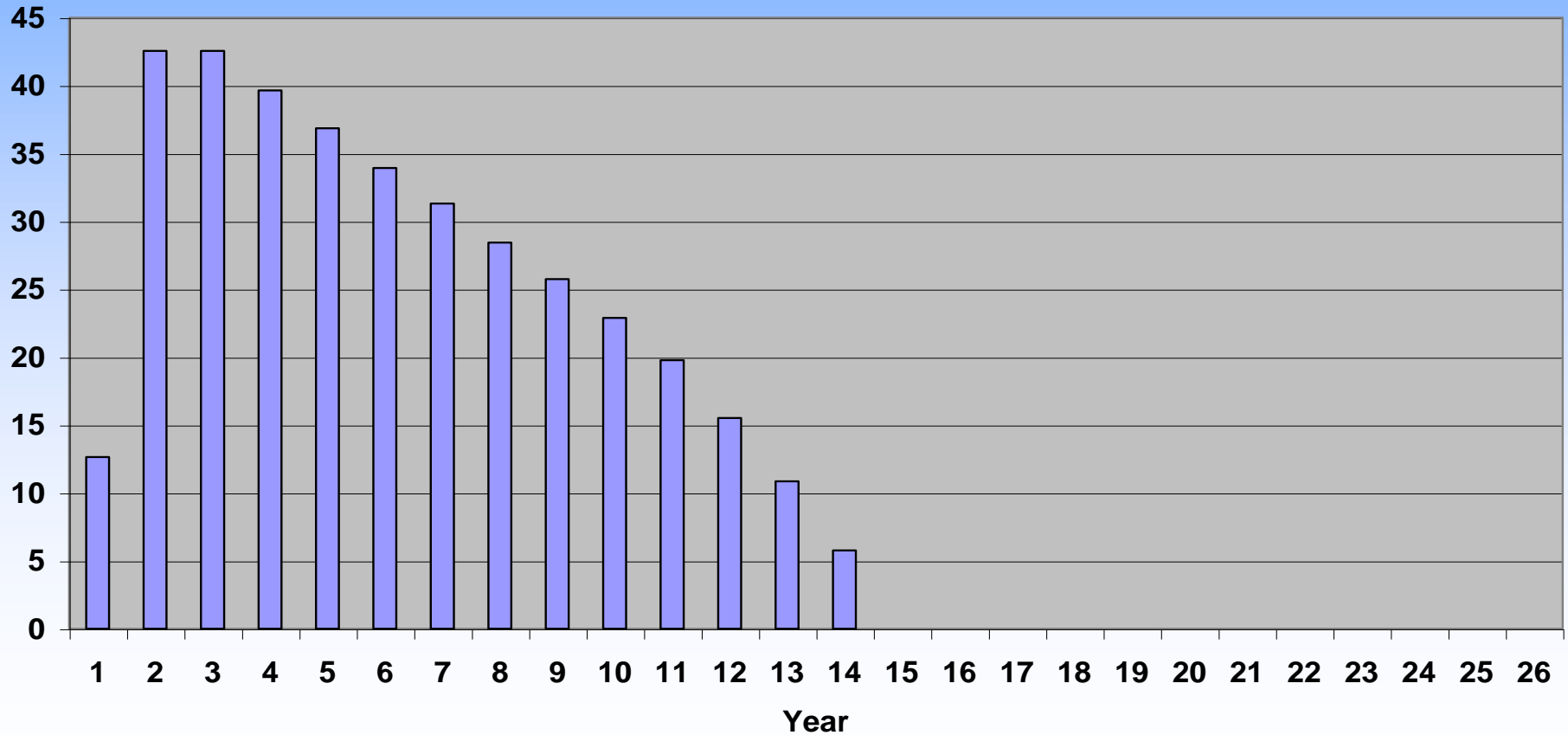
Equity Compensation (Revised)



- MWI Event of Default or Political Force Majeure Event
- Indirect Local Political Force Majeure Event
- Non-Political Force Majeure Event and Indirect Foreign Political Force Majeure Event

MWI Exposure to Outstanding Debt/Lenders Security

Payable in JODs but adjusted to USD following Termination, in case of step in right is not invoked by Lenders.



■ MWI Exposure to Outstanding Debt (Revised)

Lenders Securities

1. First ranking Guarantees over property, assets, and borrower's undertakings including reserve or escrow accounts
2. Assignment of all licenses and concessions
3. Assignment of all rights of the borrower
4. Pledge of the Project company's shares Step in rights
5. Assignment of insurances and reinsurance policies
6. Assignment of all project agreements (Project agreement, Sponsors agreement, EPC and O&M agreements)
7. Assignment of Project performance ponds (EPC and O&M)

Lenders Securities

8. Assignment of the assurance payment agreement or government's guarantee(s)
9. Assignment of the assurance payment agreement or government's guarantee(s)
10. Assignments of other kinds of equities (equity bridge, guarantee etc)
11. Assignment of all accounts opened for the project or concession
12. Lenders right to oversee the project progress, equity injections and financial status
13. The Lenders shall have the right to off-set any amount against any outstanding obligations owed to the Lenders by the Borrower.

Lenders Securities

14. Accounts to be opened on banks owned by lender(s) are:

- a) Lenders disbursement account
- b) Revenue account,
- c) debt service account,
- d) debt service reserve account,
- e) maintenance reserve account - account fed from revenue. From this account the repayment of sponsors loans and dividends to shareholders
- f) Renewal account
- g) Retention account

The only **real** risk that the Lenders are taking is WHAT? Corporate

Parties Risks For FM Events

Force Majeure event	Prior to Com. Operation	After interim or com. op	Outstanding Debt (OD)	Equity	Termination Cost
Local Political FM	MWI pays all costs less insurance received by P Company MWI continue paying operational TC	MWI pays all costs less insurance received by P Company MWI continue paying Fix TC	MWI Pays OD with the difference in the interest rate up to termination date	MWI pays the historical value of equity less dividends (less insurance coverage)	MWI Doesn't pay termination cost
Indirect Foreign Political FM	Every party bears its own cost	MWI pays water charges during substance of FM	MWI Pays OD with the difference in the interest rate up to termination date	MWI pays the historical value of equity less dividends (less insurance coverage)	MWI Doesn't pay termination cost

Parties Risks in termination For FM Events

Force Majeure event	Outstanding Debt (OD)	Equity	Termination Cost
Non-Political FM	MWI Pays OD with the difference in the interest rate up to termination date	MWI pays the historical value of equity less dividends (less insurance coverage)	MWI Doesn't pay termination cost
Foreign Political FM	MWI Pays OD with the difference in the interest rate up to termination date	MWI pays the 75% of equity compensation less dividends (less insurance coverage)	MWI Doesn't pay termination cost

Parties Risks in termination For FM Events

Force Majeure event	Outstanding Debt	Equity	Termination Cost
Local Political FM	MWI Pays OD with the difference in the interest rate up to termination date	MWI pays 75% of the equity compensation investment with return (less insurance coverage)	MWI pays termination cost
Political FM	MWI Pays OD with the difference in the interest rate up to termination date	MWI pays 100% of the of the equity with return (less insurance coverage)	MWI pays termination cost

Parties Liabilities in Restoration Cases

Force Majeure event	SPC Liability	MWI Liability
Non-Political FM	50% of the restoration cost (less insurance coverage)	50% of the restoration cost (less insurance coverage)
Indirect Foreign Political FM	50% of the restoration cost (less insurance coverage)	50% of the restoration cost (less insurance coverage)
Indirect Local Political FM	0%	100% of the restoration cost (less insurance coverage)
Political FM	0%	100% of the restoration cost (less insurance coverage)

If restoration is not an option, then insurance cover is used to pay the outstanding debts to the lenders, then other third party debts and the remaining to MWI

Parties Liabilities in Default Cases

Party at Default	Outstanding Debt	Equity	Termination
SPC	MWI pays with right to Off-set	No Equity compensation nor Dividends to be paid	No termination fees to be paid
MWI	MWI pays without set-off	MWI Pays 100% of Equity with return (with a ceiling based on the financial model revised prior to signing)	MWI pays termination fees

Risks During Construction	Party Assuming Risk							
	Project Company	Sponsors	Owner/ Gov	Lenders	EPC Contractor	Insurance Companies	Manufacturer	
Exchange rate (currency risk)	Transferred to EPC				Financial hedging			
Interest rate increase				Fixed rate loan				
Inflation rate	Back to back with EPC				Financial hedging			
Regulatory & statutory requirements								
Construction delay	Turnkey contract							
Construction overrun	Turnkey contract							
Physical loss or damage while in transit by sea or air	Back to back with EPC				Insurance policies	Marine & air cargo insurance	-	
Loss of revenues because of the above (delay)	Back to back with EPC				Insurance policies	If caused by Cargo delay		
Physical loss or damage to material on site (All risks-fire, storms)	Back to back with EPC				Insurance policies		If material and equipment are defected	
Loss of revenues because of the above causing delay	Back to back with EPC				Insurance policies		If material and equipment are defected	
Losses caused by design (cost of, replacements, delay etc)	Back to back with EPC				Insurance policies			
Force Majeure events	See other slides					initial	ultimate	Possible

Risks During Operation	Party Assuming Risk							
	Project Company	Sponsors	Owner/Gov	EPCC	O&M Contractor	Insurance Companies	Manufacturer	
Exchange rate (currency risk)								
Interest rate increase								
Inflation rate								
Regulatory & statutory requirements								
Loss of revenue	O&M Agreement							
Quality of final product	O&M Agreement							
O&M overrun	O&M Agreement							
Physical loss or damage to material on site (All risks-fire, storms)	O&M Agreement				Insurance Policies			
Losses caused by design (cost of, replacements, reinstatement, etc)	O&M Agreement							
Consequential losses due to the above	O&M Agreement							
Force Majeure Events	See other slides					initial	ultimate	Possible

Risk Mitigation Tools

Every party accepting any risk will try to protect itself by many means:

1. Insurance: Insurance companies offer their services during the project term. All parties shall consider this option at an early stage (cost of insurance be included in cost during the bidding process)
2. Stand by facilities between lenders and developers
3. Partial Risk Guarantees offered by some institutions such as the WB. But this is another way of diverting the risk to the owner

Risk Mitigation Tools

4. Offering step-in rights to the lenders to give comfort and leverage (Direct Agreement)
5. Involving Export Credit Agencies gives more flexibilities in overcoming some types of risks such as cost, some political FM events
6. Payment assurance schemes by the owner
7. Renewal accounts to ensure project life time operability
8. Sovereign Guarantee shall be the last resort. This depends on the importance of the project and the complexity