

Contracts and Legal Issues of Participating in Solar

Ontario Solar Power Systems Forum

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Aird & Berlis LLP and Randy Williamson



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A partner of the firm, with ~ 30 years experience as a practising lawyer, qualified C.A., public company senior executive and three-time business owner/operator, Randy Williamson provides strategic advice to private companies, their owner/managers and strategic and financial investors, as well as public issuers, on acquisitions/divestitures, senior and subordinated debt and equity financings, and restructuring arrangements. Randy also helps businesses structure shareholder/partnership, employment, joint venture/development, outsourcing, distribution and licensing arrangements. Randy has a particular focus on Ontario's growing clean technology and renewable energy sector (the 'clean economy').

Randy devotes substantial time to community organizations, including as founding Chair of Big Brothers Big Sisters Alumni; Chair of the Investment, Finance and Audit Committee and Council Member at St. James Cathedral, Toronto; Vice-Chair and Investment Committee Member of the Toronto Atmospheric Fund; Vice-Chair of York University's Alumni Board; past Chair of the National Board of Big Brothers Big Sisters of Canada; past founding Board member of Ontario's Promise to Children and Youth; and past President of Advancing Canadian Entrepreneurship. Randy has been honoured with Queen Elizabeth II's Golden Jubilee Medal for Community Service and was twice Toronto's Big Brother of the Year.

Ontario's Feed-in Tariff (FIT) Program

- ***Green Energy and Green Economy Act, 2009* created the FIT Program, operated by the Ontario Power Authority (OPA) – in effect since September 2009**
- **OPA is the power purchaser from generators under standardized 20/40 year agreements – a creditworthy customer upon which to finance and develop renewable energy projects**
- **FIT Program can help Ontario achieve its announced Long Term Energy Plan (LTEP), expecting \$87 billion in public and private sector investment to achieve**
- **LTEP anticipates that non-hydro renewables will represent 10-15% of the supply mix by 2018, with 10,700 MW of nameplate capacity**

Explosion of FIT Projects

- **~1,450 FIT projects in development/operation, with ~4,000MW of capacity – 63+% Wind, 30+% Solar PV (rooftop, groundmount), ~240MW Hydro and Bioenergy (Aug. 24/11)**
- **If all contracted projects are built, will represent about \$12 billion in total capital invested by developers**
- **Currently ~5,400 active applications (90+% Solar PV, 3,875 rooftop), representing 12,650MW additional capacity (55% Wind)**
- **To reach the LTEP 10,700MW goal, 4,000MW additional renewable energy contracts could eventually be contracted/built, with an additional \$12+ billion in capital invested**
- **And this doesn't even count >30,000 microFIT (<10kW) offers and contracts (99% Solar PV), for 270+ MW, requiring \$1.3-\$2.0 billion to build**

Why is FIT So Popular? – Price/kwh!

Renewable Fuel	Project Size	Price/kWh
Rooftop Solar PV	≤ 10 kW	80.2¢
Rooftop Solar PV	> 10 kW ≤ 250 kW	71.3¢
Ground Solar PV	≤ 10 KW	64.2¢
Rooftop Solar PV	> 250 kW ≤ 500 kW	63.5¢
Rooftop Solar PV	> 500 kW	53.9¢
Ground Solar PV	> 10 KW ≤ 10 MW	44.3¢
Wind Onshore	Any Size	13.5¢
Waterpower	≤ 10 MW	13.1¢
Waterpower	> 10 MW ≤ 50 MW	12.2¢
Bioenergy	Various Sizes	10.4¢ - 19.5¢

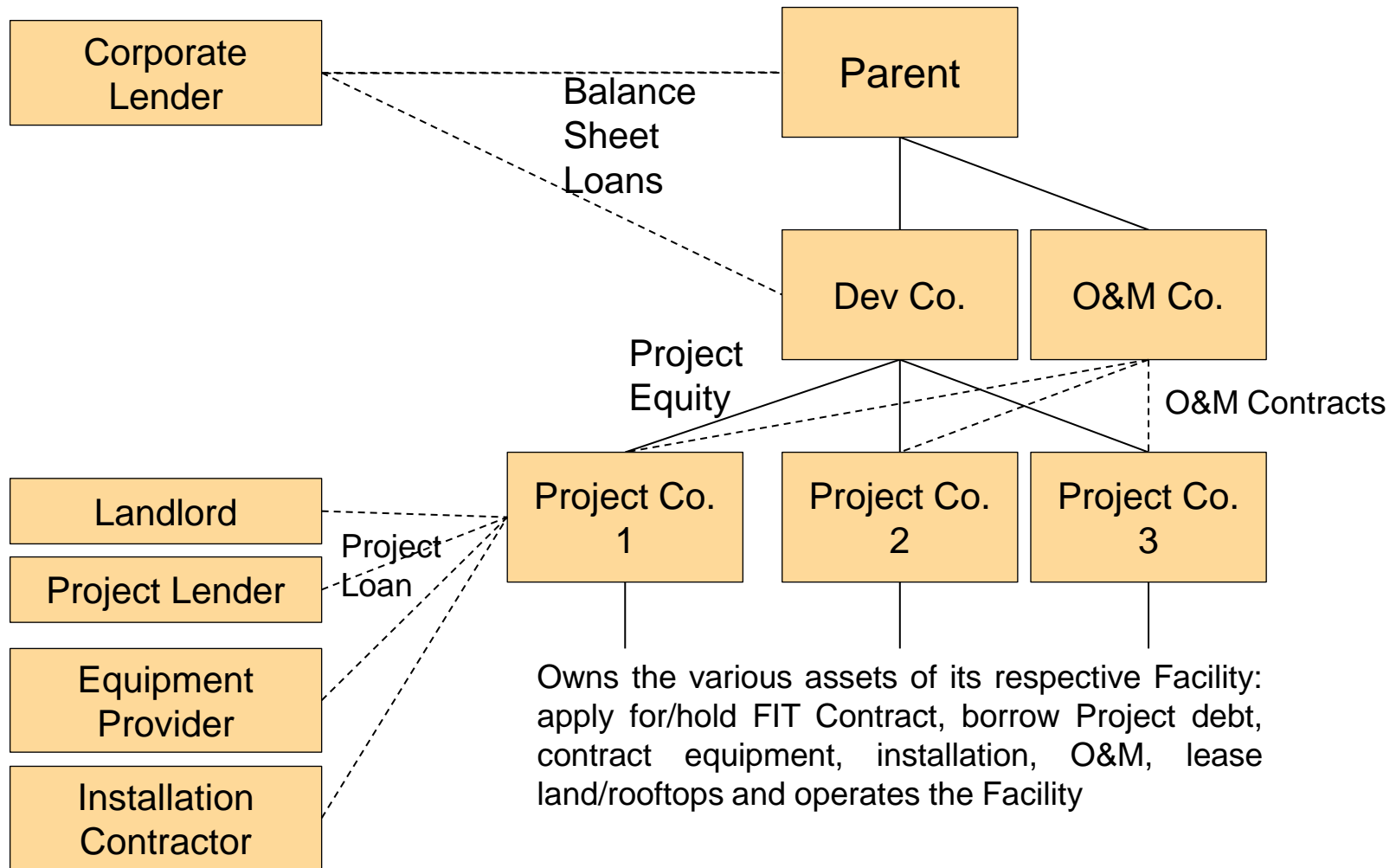
Development Steps

1. **Organize Project Development Company/LP**
2. **Assemble Land or Rooftop “Access Rights”**
3. **Apply for FIT Contract, provide Application Security**
4. **Receive FIT Contract Offer Notice, provide Comp. Sec.**
5. **Engage consultants, source equipment, installation**
6. **Seek project equity, construction/permanent debt**
7. **Continue project development (incl. REA, if applic.)**
8. **Seek NTP, close construction (permanent?) financing**
9. **Construct**
10. **Commence Commercial Operations**

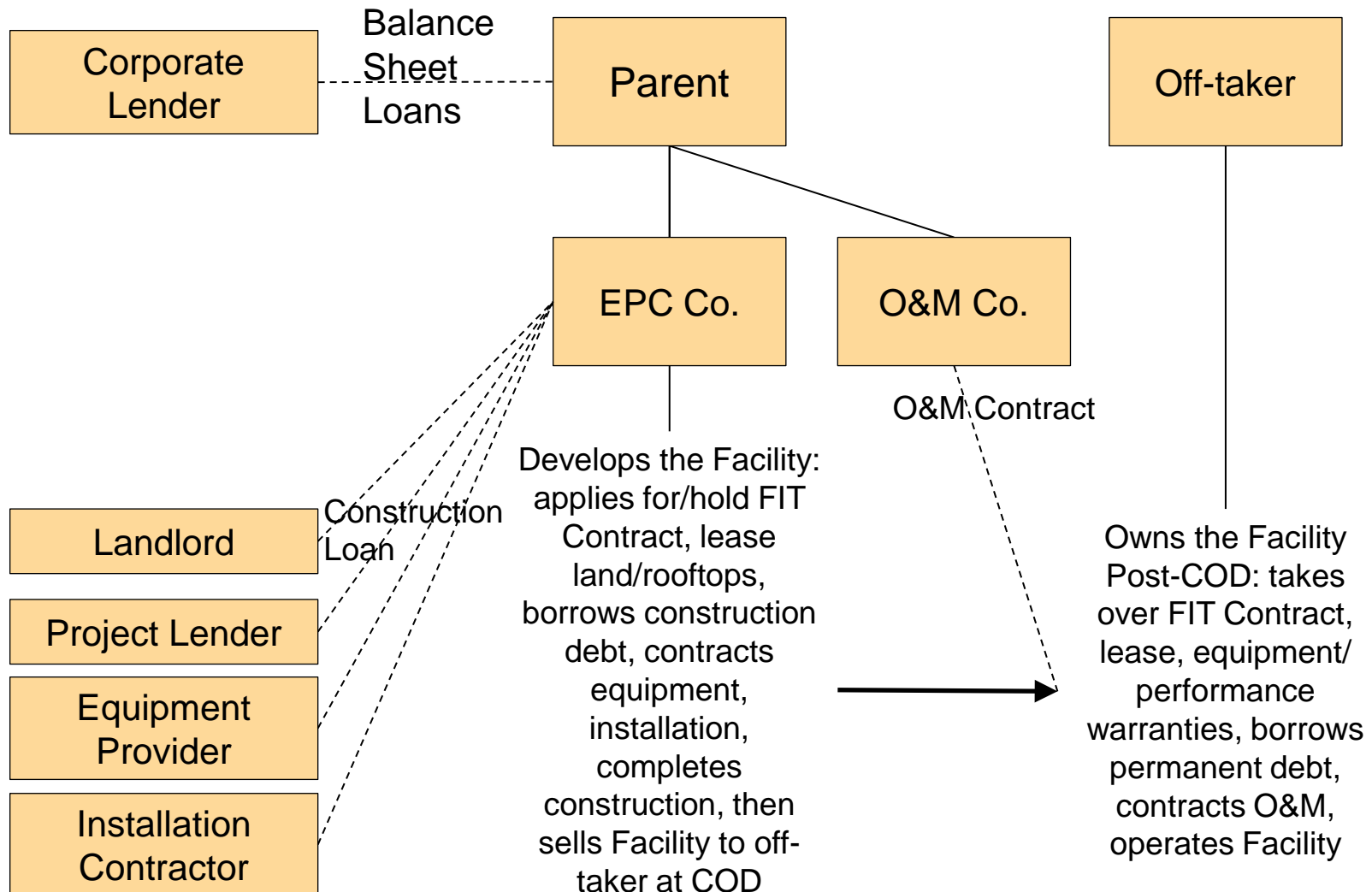
Each step ‘de-risks’ the Project, increasing its value

Failure to finance/reach next step requires Project change

Develop to Own Model



Develop to Transfer Model



FIT Contracting Process

- **Pre-application Planning**
 - Building Availability, Suitability, Rooftop Integrity, Facility Design
 - Secure “Access Rights”
 - Consider ownership, financing approaches
 - Consider LDC connection issues (and costs!)
- **Application**
 - Mandatory (Access Rights, connection details, etc., plus filing fee @\$0.50/kW to \$5,000 max)
 - Application Security, for non - Capacity Allocation Exempt (CAE) projects @\$20/kW
- **Contract in 60-90 days (theoretically) for CAE projects; longer for CAR projects; but both have been ‘batch’ processed to date**

Financing Considerations

- **Sufficient equity to develop all planned Facilities?**
- **If not, is additional corporate or project equity sought**
- **Only corporate debt likely available until construction, but security will still be taken over FIT assets**
- **Project debt usually only available at construction**
- **Is there sufficient equity to fund cost overruns?**
- **Is permanent debt (or Facility off-taker) obtained at same time?**
- **Construction debt provider will want to know take-out**

Challenges for Developers

- **Educating building owners on Rooftop opportunity**
- **Establishing credibility; separating developers from ‘promoters’**
- **If leasing, securing a lease form outside landlord norms**
- **Securing ‘bankable’ and domestic content compliant PV modules and inverters**
- **Maintaining sufficient development equity, and accessing debt capital to develop multiple Facilities simultaneously**
- **Working through connection issues, costs with LDCs**
- **OPA program changes favour some, hurt others**

Considerations for Building Owners

- **Do you want a Solar PV facility on your building?**
- **Do you want to own it? Or simply lease your rooftop?**
- **Establishing credibility of development partner – sector experience, capital sources, equipment bankability, security of supply**
- **Affect on membrane warranty, future rooftop flexibility, development of surrounding lands**
- **Affect on realty taxes – may be less of an issue for publicly owned buildings, but an issue for private owners**
- **Consider changes to building/rooftop, and its use, financing, ownership over a 20 year period**

Development Partner Questions

- **How long in business; experience in renewables**
 - of developer and its related group; so few have been around long, so what brought them to the renewable energy development business
- **How many projects completed; expect to complete by YE, 2012**
 - solar Facilities can be completed quickly, so how many “notices to proceed”
- **How many facilities are being developed; how many MWs**
 - how many different building ownership groups; portfolio group needs are different
- **What is its financial credibility**
 - again, related group financing may be relevant
 - committed equity capital to development; intended construction/permanent debt
 - intention regarding post-commercial operation ownership; many will sell
- **What are the equipment/services arrangement/obligations**
 - are they tied into one manufacturer, installer – is that good or bad?

Development Partner Questions (cont'd)

- **What is its equipment 'domestic content' compliance plan**
 - will help determine how closely they work with suppliers
- **Equipment room, external access requirements**
 - are they tied into one manufacturer, installer – is that good or bad?
- **What is ongoing operations and maintenance plan**
 - will they do it, or outsource it
 - what are the preventative standards
- **Rooftop warranties**
 - will help determine limits of buildings that are suitable
 - will also identify roofing companies they're working with
- **Insurance arrangements**
- **Local LDC relationships**
 - how many projects installed with it as the interconnection
 - what has LDC said about connection availability

Key Issues – For Rooftop Leases

- **Term – 20 years**
 - Longer than usual for landlords; requirement for FIT
 - Consider renewals for continued energy generation after year 20
 - Termination provisions, decommissioning and removal requirements
- **Landlord's interruption – under-roof tenant needs, re-roofing requirements**
- **Tenant Insurance – integration with Landlord's**
- **Non-Disturbance / Quiet Enjoyment**
 - Landlord not to impair sun resource
 - Landlord to obtain releases from its mortgagees
- **Permitted Assignments**
 - Developer requires release and assignment to subsequent owner(s)

What's in FIT's Future?

- **Lots of Adjustments – just as there have been since the start**
 - Stratifications (ground mount microFIT)
 - modifications of requirements (“ability to connect”, extended Milestone Dates, pre-NTP termination rights waiver)
- **Required two-year review of FIT Program**
 - pricing reductions!
 - new hurdles to discourage applications? or a general moratorium?
- **Transmission/Distribution resources are a real limiter**
 - can't build a project if it can't connect – economic connection test changes?
- **Political considerations**
 - what will be the effects of each parties' election campaign promises

Conclusions

- **There's a worthy economic opportunity in FIT Projects**
 - whether as landlord, or as owner (in whole or part)
- **Selection of Development Partner is a Key Ingredient**
 - as elsewhere, experience and backers matter
- **FIT Development is not Straightforward**
 - notwithstanding intent for streamlined processes, it's still a development business
- **Political situation is a large risk factor affecting FIT**
- **But, Renewable Energy Electricity Generation development will continue, regardless of program and governing party**

Thank You

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