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STEP BY STEP – CONSTRUCTION OF A BIOMASS & BIOGAS FACILITY – LEGAL INSIGHTS

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Agenda

New Frame Set – Law 122/2015

Construction of a Production Facility

Conclusions

New frame set: Law 122/2015 | 1

**Biomass from
import becomes
eligible**

**Opening of the GC
support scheme to
renewable energy
producers located in
other EU Member
States
(Still 6-8 months away)**

**Bilateral trading of
electricity for power
plants < 3 MW + small
or medium
enterprises, as defined
by Law 346/2004**

- in addition to existing exemption
- does not apply to trading of green certificates
- obligation to inform ANRE - 3 days from completing the transaction - fines and, for power plants > 100 kW, also suspension of the production license for a period of 3 months

**Quarterly fulfillment
of the mandatory
green certificates
quota**

- failure to achieve at least 90% of the annual mandatory quota is sanctioned with fines
- Exception, until 31 December 2015, for the suppliers to large industrial consumers mandatory GC acquisition quota - considered annually

New frame set: Law 122/2015 | 2

**Changed Invoicing
of GC**

**Exclusion from the GC
support scheme of
electricity sold for
negative prices**

**More severe sanctions
for breach of Law 220**

- distinction between natural and legal persons falls away
- fines ranging from 10,000 to 100,000 RON and up to 5% of the turnover, in case of at least 2 breaches during a calendar year

**Feed-in tariff –
still 6 months
away?**

Construction of a Production Facility – To Be Considered | 1

Location and land securing

Law 50/1991 – obligation to obtain an *in rem* right over the land in order to request and obtain the building permit (ownership, superficies)

- Perform your own “checks” of the property you wish to acquire
- Consider the results of these checks when contract drafting
- Construct according to your building standards
- Mind the legal validity of the town planning documentations and building permits
- Get “sophisticated” and ask for specific conditions to be fulfilled by the seller
- Mind the insolvency risk of your contractual partners
- Conclude a Title Insurance if some issues cannot be otherwise healed

Construction of a Production Facility – To Be Considered | 2

Biomass & Biogas Production Facility –
„Building“ according to Law 50/ 1991 →

Building Permit

+

EPC Agreement

EPC Configuration Alternatives

1. Unitary EPC Agreement
2. Split in two Agreements:
 - a. Procurement Agreement for Facility / b. Engineering and Construction Agreement for Planning and Execution – Coupling between two contracts difficult, but imperative!

1. Planning Documentation- BP Documentation (Rom. DTAC) and BP-Project (rum. PT) needed

2. Execution of Construction Works

3. Reception – 2 Types of Reception

4. Payments and Payment Guarantees

5. Construction Schedule and Default

6. Testing, Reception and Commissioning

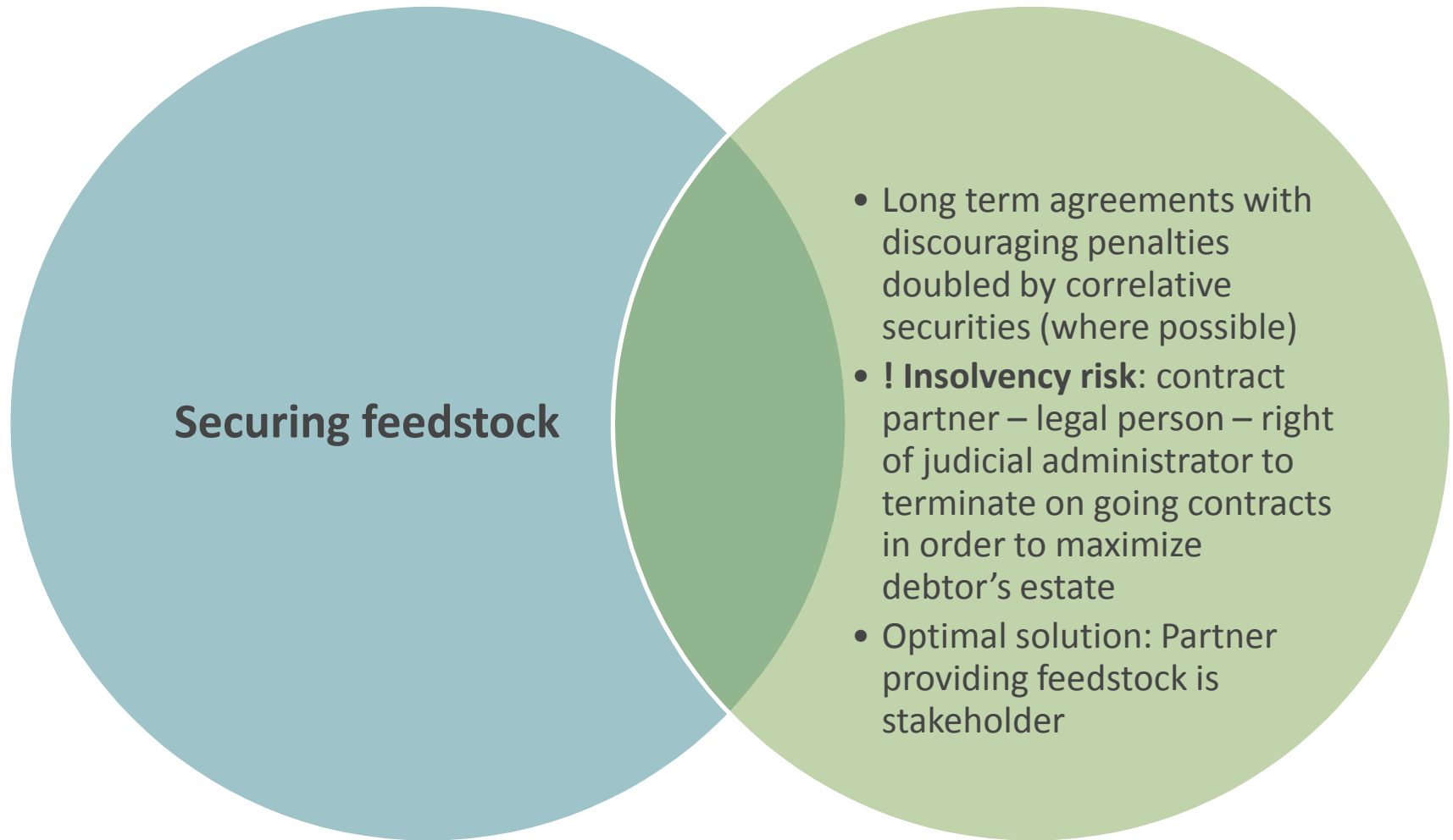
7. Contractual Warranties

8. Transfer of Risks


9. Responsibility for the Construction and Energy Approvals

10. Responsibility for Access Roads and Cable Rights

Construction of a Production Facility – To Be Considered | 3



Conclusions



The particularities of the Romanian building law (especially acceptance proceedings and legal warranty for defects) have to be considered when drafting and concluding the contracts

The configuration of the EPC contract is possible as unitary contract or as two different contracts

Due to lack of sufficient legal provisions, legal doctrine and case law → clear and detailed contractual clauses are needed

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