



Solar project financing: Essentials of legal due diligence under the OPA's FIT Program

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What Investment Opportunities Are There For Financiers?



Renewable Energy Standard Offer Program (RESOP)

- 525 MW of solar PV contracts awarded for projects greater than 10 kW.
- Fewer than 45% of RESOP projects have achieved commercial operation.



Ontario Power Authority's Feed-In Tariff Program

- 1,092 solar PV contracts executed with an aggregate nameplate capacity of 823 MW*.
- 33 additional ground-mounted solar contracts totaling 257 MW offered on February 24, 2011.

*As of February 18, 2011



OPA's microFIT Program

- 3710 solar PV contracts awarded with aggregate capacity of 31 MW*.

*As of February 18, 2011

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Samsung Deal with the Ontario Government

500 MW of Solar PV to be in service over the course of 5 development phases by 2016

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Approved Capacity for Solar PV in Ontario = 2136 MW

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MORE INVESTMENT OPPORTUNITIES TO COME

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Top 10 Things to Consider During Legal Due Diligence Review



Issue # 1 - Size of Solar Project

- 10 MW max per property allowed!
- Beware of any misrepresentations about project size and review the FIT Rules



Issue # 2 - Interconnection

- Is transmission or distribution capacity available to connect the project?
- Obtain copy of written evidence from local distribution or transmission company



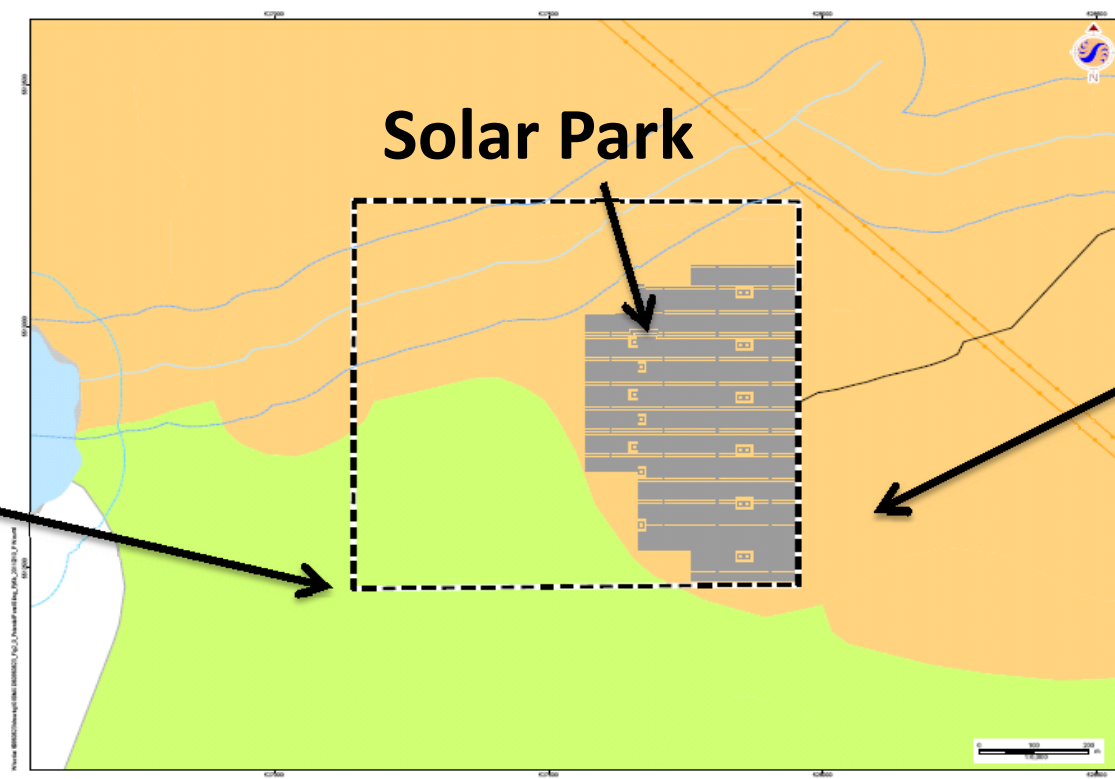
Issue # 3 - Land Classification

- How are the lands at the proposed project site for ground-mounted solar classified?
- No commercial scale ground-mounted solar on Class 1 & 2 prime agricultural lands.

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**Class 3
Lands**

**Class 4-7
Lands**



Issue # 4 – Are the Project Land Rights Secured?

- Perform title searches
- Review lease/option agreements to ensure that they are financeable (no napkins please)!



- Notices of Options/Leases must be registered on title.
- Mortgage Registered on Title?
Obtain a non-disturbance agreement
- Is the proposed site located on mining property? **BEWARE!**



Issue # 5 – Project Timeline & Delays

- Gain understanding of matters delaying realization of project (ex: Renewable Energy Approval up to 2 years for MOE approval)



Potential Consequences of Delays

- Liquidated damages for failing to achieve commercial operation by the milestone date for commercial operation are **\$0.25 per kilowatt (kW) per day**.
- Termination of FIT Contract



Issue # 6 – Identify Options to Mitigate Risk

- Force Majeure claim
- Extension of up to 1 year offered to existing FIT contract holders on February 9, 2011



Issue # 7 – Connection Cost Estimates

- Connection costs can jeopardize economic viability of project



Issue # 8 – The EPC Contractor

- Who is the EPC Contractor?
- Is the price being charged reasonable?
- How will the domestic content requirements be met?
- Is the EPC Agreement bankable?



Issue # 9 – When should I invest?

- Prior to issuance of Notice to Proceed, the risks are the highest with the greater upside as well
- Equity financiers who seek to finance projects after NTP may be too late in the game.



Issue # 10 – Change of Control Restrictions

- Once the FIT application is submitted to the OPA, OPA consent is generally required where an interest of more than **75%** is acquired in the project prior to commercial operation.

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Dale & Lessmann LLP is a full service business law firm based in Toronto, Ontario, Canada. The firm has one of Canada's leading law practices devoted to advising European companies, with respect to the establishment and expansion of their businesses in the Canadian marketplace. **Sven Walker** is a Partner at the firm. He practices renewable energy law with an emphasis on Canadian-European cross-border business. Sven was born in Germany, speaks fluent German and acts for Dale & Lessmann LLP's many renewable energy clients. In the solar industry, Sven is legal counsel to a number of industry leading equipment manufacturers, developers of rooftop and ground-mounted solar projects, and financing entities. Sven has been involved in some of the most complex due diligence reviews and acquisitions of project pipelines by foreign financial investors under the Ontario Power Authority's FIT and microFIT programs. For more information about Dale & Lessmann LLP, please visit www.dalelessmann.com, call 416-369-7848 or e-mail swalker@dalelessmann.com.