



Termination provisions (clauses 27-30)

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1. Termination – objective & November terms



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- **Objective: to provide an appropriate and proportionate approach to contract enforcement in order to ensure projects are efficient and deliver value for money**
- November Heads of Terms: stringent approach to managing government risks

Failure to meet
Milestone

'Conditions Precedent'
unfulfilled by deadline
dates

Termination event
occurs

Insolvency

Non-payment

Breach of warranty

Irremediable material
breach

Remediable material
breach

Key project
documents

Loss of licence

Loss of facility

Credit support default



2. Termination – revised approach

- Listened to and considered feedback received and restructured approach

Failure to meet
Milestone^{CP}

'Conditions Precedent'
unfulfilled by deadline
dates^{CP}

Termination event
occurs

Insolvency

Non-payment^{CP}

Breach of key
obligations

Credit support
default^{CP}

Breach of metering
obligations^{CP}

Change in Law*

- ✓ Simplified approach to termination
- ✓ Focussed termination right on breaches fundamental to the contract
- ✓ Improved flexibilities

CP = cure period applies

- ✓ Force majeure protection

** termination right when Change in Law prevents construction or prevents generation – no "Termination Payment" owed (compensation mechanism applies)*



3. Termination Payment

What is it?

- Generator obliged to pay the Counterparty a “Termination Payment” if CfD is terminated on or after the start date (except where formula results in 0)

How does it work?

- Forecasts net payment flows between the Parties in remaining years from point of termination to the CfD term expiry date
- Lump sum payment, one way – generator to Counterparty
- Calculated mechanically using formula in Schedule 3 of draft CfD – worked example in Annex 4 of Explanatory Notes

Why?

- Reduces incentive for generators to seek to prompt termination in order to avoid obligations to make payments to the Counterparty if and when the market reference price is higher than the strike price.

4. Termination – questions!



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Discuss these questions in your groups:

1. We have significantly reduced the scope of the termination clauses since the November publication, do you agree this has improved the bankability of the CfD?
2. Are the termination clauses realistic and appropriate for your technology type? If not, why and how can they be improved?
3. Are the 'cure periods' specified for the generator to try and resolve certain breaches of contract appropriate for the breach concerned?
 - a) If not (and/or if they are blank) what length of time would you suggest and why?
 - b) Should other breaches be offered cure periods?
4. We have reflected on comments received since November on the Termination Payment when developing the formula, are there any further comments/observations you would like to note on the approach taken or the formula itself?