

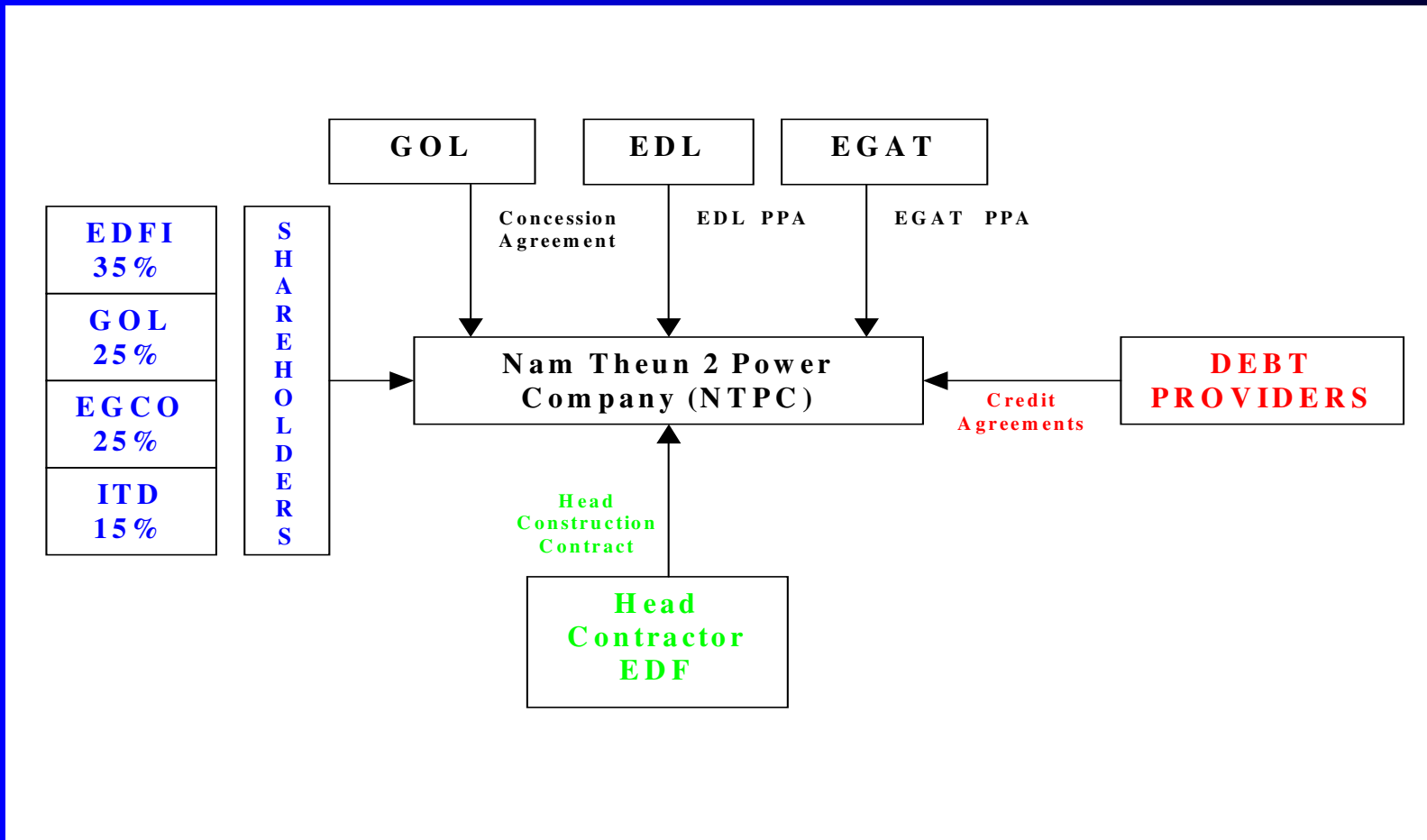
The views expressed in this presentation are the views of the author and do not necessarily reflect the views or policies of the Asian Development Bank (ADB), or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this presentation and accepts no responsibility for any consequences of their use. Terminology used may not necessarily be consistent with ADB official terms.

Concession Agreements: Typical Features Important Provisions and Possible Pitfalls

Marie-Anne Birken
30 March 2007

ADB

Contractual Arrangements



What is a Concession?

- license granted by a government or quasi-governmental authority to a sponsor to develop certain facilities or infrastructure
- agreement containing rights and obligations of both government and sponsor
- usually awarded through auction or tender
 - public – private - partnership

Concession Agreement

- agreement between Government and sponsor
 - which government entity?
 - which sponsor?
- Project (infrastructure/oil & gas/ telecom) that is economically viable
- allocation of risks between government sponsor (and other parties, e.g. offtaker)
- governing law and dispute resolution

Typical Features

- obligations of the sponsor (to build/operate/maintain the project)
- obligations of the government (permits, etc.)
- term and termination
- events of default and consequences
- financial terms
- tax and foreign exchange

➤ **Risk Allocation**

Risk Allocation

- infrastructure risk (government)
- permitting/regulatory risk (government/consumers)
- political risk (government, sponsors, lenders, IFI's)
- change in law risk (government, sponsors)
- force majeure risk (government, sponsors, lenders)
- offtake risk (sponsors, lenders)
- construction/cost overrun risk (sponsors)

Financing Considerations

- security package
 - step-in rights
 - direct agreements
 - government guarantees
- bankability of concession and project agreements