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# ROOFTOP PV IN 2014 – THE CLASH BETWEEN OPPORTUNITY AND CHALLENGE

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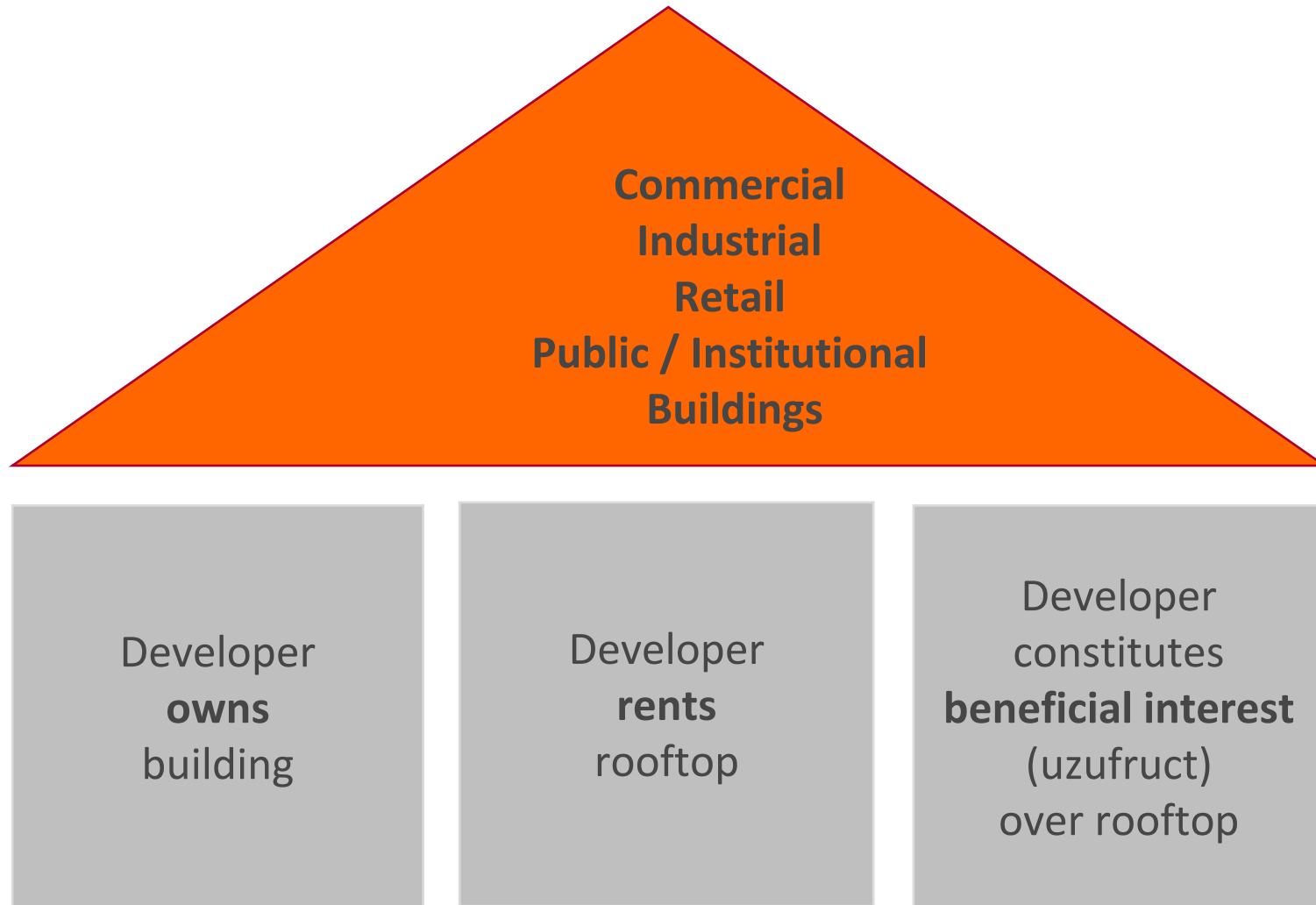
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# Opportunity – **Feed-in-Tariff** for Rooftop PV (“Tariff”)

- Entitled to receive Tariff for electricity produced
  - producers of electricity or heat from **production facilities up to 1 MW or 2 MW in case of high efficiency cogeneration from biomass**
    - +
      - **Option** in favor of **feed-in-tariff**
      - +
        - **Accreditation request**

**Note: legal framework is not in force yet!**

# Opportunity – Location (1)



## Opportunity – Location (2)



- Total or partial grid independence
- Lower electricity costs
- Higher energy efficiency factor - Directive 2012/27/EU – to be transposed into national legislation



- Directive 2012/27/EU + Law no. 159/2013
- Long term strategy for energy consume buildings -> zero (April 30, 2014)
- Role model of public authorities – yearly 2 energy efficiency measures (GEO22/2008)
- PPP bill is currently under debate and approval

# Challenges – How to Secure Right to Use Rooftop

- Conflict
  - Real right vs. personal right
- **BP** issued only based on **real right** – unless *provisory construction*
  - **Provisory construction:** Annex 2 Law. 50/1991 – “limited period of existence” (“*durată de existență limitată*”), “easy dismounting possible” (“*permit demontarea rapidă*”), “reduced dimensions” (“*dimensiuni reduse*”)
  - Provisory constructions may be erected based on personal rights
  - Art. 693 new Civil Code – reference to “land” (“*teren*”) ► *Superficies on rooftop excluded?*
- **Possible real right**, other than ownership and superficies – **beneficial interest** (*Rom. drept de uzufruct*)
  - Art. 703 new Civil Code – *right to use a good (mobile or imobile) belonging to another person, in the same manner as its owner, but having the obligation to preserve its substance*
- Possible solutions
  - Lease or
  - Beneficial Interest Agreement

# Challenges – How to Secure Right over PV Installation

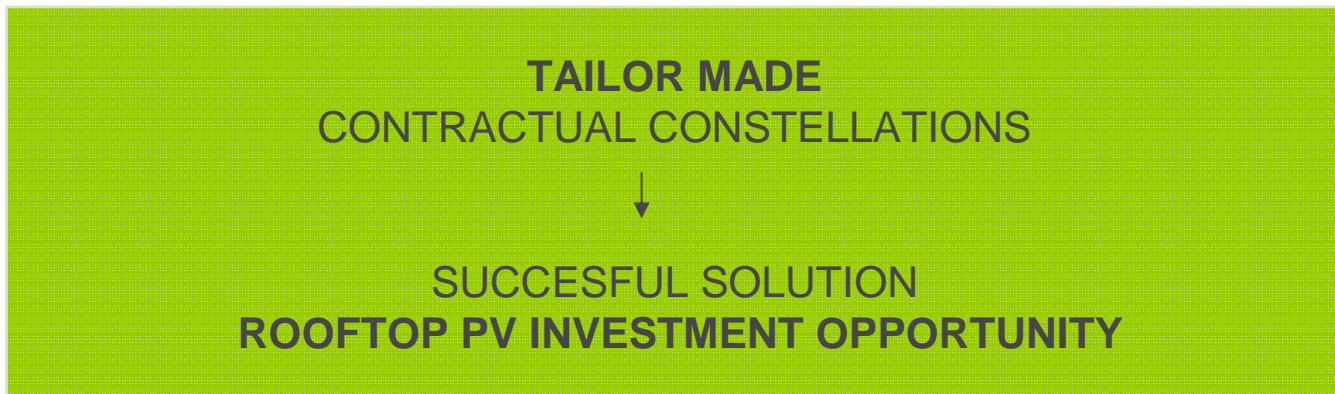
- If construction not based on Superficies agreement
  - ▶ Issue: Immobile artificial accession (“Accesiunea imobiliară artificială”)
    - Solution: exact stipulation in lease agreement / beneficial interest agreement with respect to preservation of ownership over PV installation
    - Challenge: not insolvency proof

# Challenges – Securing PV Installation from Insolvency Risk of Building Owner

- Art. 86 para. 1 Law 85/2006
  - *“In view of maximizing the value of the debtor’s assets, the insolvency administrator may cancel any contract, unexpired lease agreements or any other long term contracts, provided these contracts have not been totally or significantly executed by **all parties**”*
  
- The very fundament of your rooftop PV investment – Lease Agreement / Beneficial Interest Agreement for use of rooftop – is thus **not** insolvency proof
  
- **Possible solutions**
  - **conventional preemption right** to be executed according to Art. 1738 new Civil Code in case of insolvency of building owner

# Conclusions

1. Legal framework not in force yet
2. Lack of legal solutions tailored on the specifics of rooftop PV projects
3. Lack of focused legislative vision beginning with town planning issues through all necessary permits and prior approvals up to the building permit / SUP
4. Coherent legislative vision re taxation PV rooftop investments (equipments vs. buildings) e.g. “investment value” for BP issuance fee; building tax





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