WHITE & CASE

Project Finance: Transactional and Process Considerations

ESQ LEGAL – POWER / PROJECT FINANCE WORKSHOP

Olaniwun Ajayi LP

Nneka Wood

ESQ Legal Practice Seminars

Project finance – Advantages

- **Sponsors' financial obligations to project lenders**
  - Limited in time – prior to "project completion"
  - Clearly defined
- **Typical project finance structure permits**
  - Significant financial leverage – typically, 60-70%
  - Long tenor (often 10-15 years) - depends on lender, sponsors and project
  - Relatively low-cost financing – attractive to non-investment grade sponsors
- **Off-balance sheet accounting treatment**
  - Availability depends on applicable accounting standards
  - Not available prior to project completion
- **May not be caught by debt restrictions under sponsors' debt covenants post-completion**
- **Independent verification of the project feasibility**
  - May be beneficial when dealing with shareholders, analysts or partners

Project finance – Disadvantages

- **Time-consuming and costly process**
  - Review and verification by project lenders and their advisors
  - Preparation of complex documentation
  - Involvement of third parties (government, offtakers)
- **Lack of operational and financial flexibility for the project company**
  - Long-term offtake and other project agreements
  - Restrictive covenants in loan documents
- **Risk that completion test will not be met**
- **Potentially adverse effect on equity returns**
  - Forward sales (if required) may limit upside returns and alienate certain shareholders
  - Costs of required insurances
  - Stranded cash in debt service reserve account
  - Restrictions on payment of dividends and "cash sweep" requirements

Process considerations

- **How to enable project finance**
  - Pre-financing stage
    - Feasibility studies completed to a "bankable standard"
    - Preliminary financial model and budget, environmental impact assessment
    - Bankable project agreements
  - Financing stage
    - Involvement of IFIs and/or ECAs
    - The process of selecting project lenders

Process considerations (2)

- **Negotiated financing v. tendered financing**

	Negotiated Financing	Tendered Financing
Lenders' commitment	Commitment to enter into loan documents consistent with term sheet	Commitment to enter into agreed form loan documentation (binding)
Loan Documentation	Heavily negotiated based on term sheet (potential for new issues)	Commitment to enter into agreed form loan documentation (binding)
Project documents	Agreed with counterparties, but subject to lender review and comment	Approved by lenders' counsel before selection of lenders
Advantages	Transaction can be tailored to meet specific concerns of lenders	Maintains price tension throughout Process
Disadvantages	Protracted negotiations with little negotiating leverage	High up-front costs and risk of market rejection

Negotiating strategy

- **Strategy depends on the market**
  - "Balance of power" between borrowers and lenders
- **In many sectors, the market is currently lender-driven**
- **Strategy will vary depending on strength of sponsors, country and project**
- **Consideration of:**
  - Current trends in the project finance market
  - Recent precedents of similar deals
- **Appointment of competent technical, financial and legal advisors at an early stage:**
  - Experience in the relevant industry
  - Experience in the relevant jurisdiction
  - May not be possible with some lenders (e.g., IFIs)