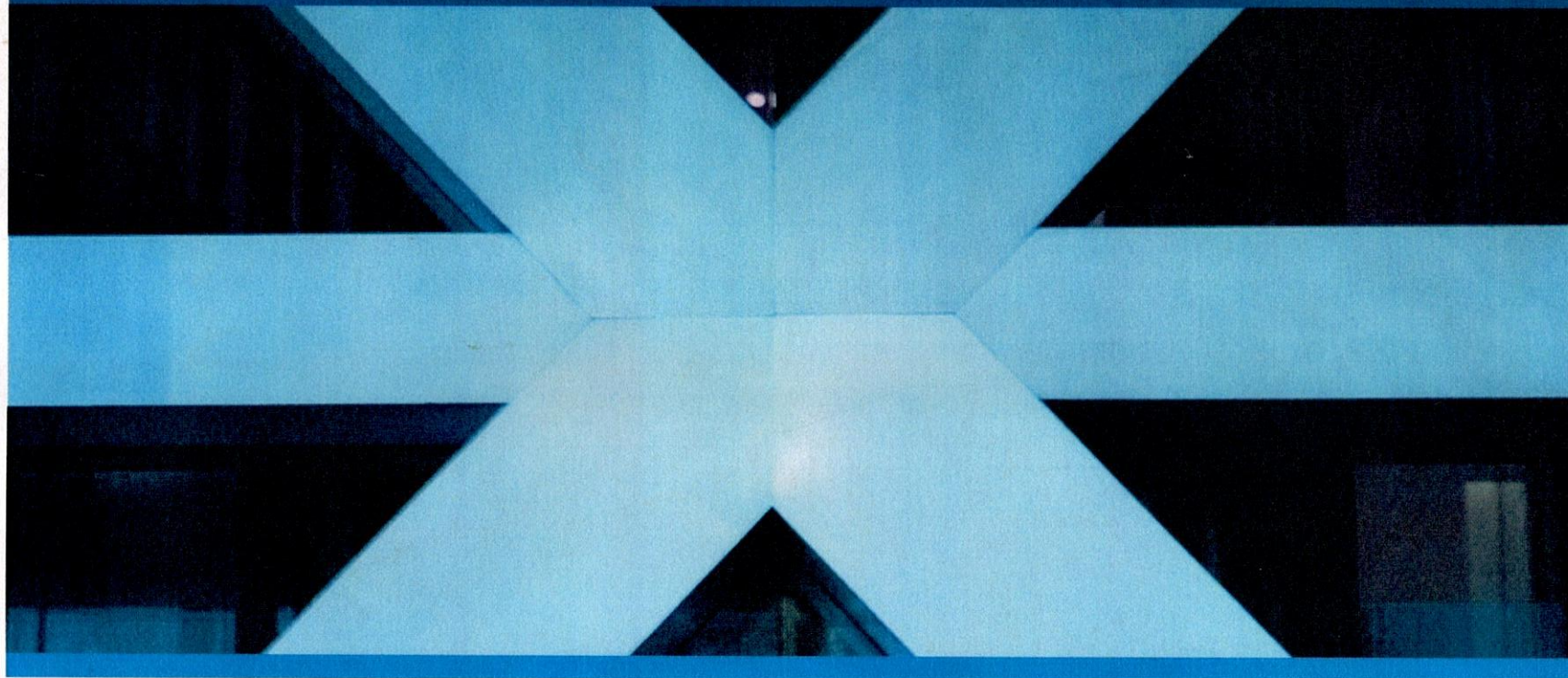


WHITE & CASE



Security

Security

- **Purpose?**
 - Give the lenders proprietary interest
 - Priority over other creditors
 - Control if things go wrong
 - Defensive nature
- **What security do we give?**
 - Nature of the Project
 - Available?
 - Practical?
 - Most useful?
 - Cost?
- **Who “holds” security?**
 - Multiple lenders
 - Appoint entity to “hold” security
 - Onshore & offshore
- **Possible security over:**
 - Cash
 - Concession
 - Physical assets
 - Project company
 - Contract rights
 - Shareholders rights
- **Onshore vs offshore**
- **Onshore**
 - Project company
 - Asset security
 - Contract rights incl. insurance
 - Permits?
- **Offshore**
 - Accounts
 - Contract rights including insurance

Issues with taking security

- **Possible to take security**
- **Local law**
- **Restrictions?**
 - Political reasons
 - National security?
- **Practical considerations**
- **Cost**
- **Time**
- **Effectiveness?**

Creating security - shares

- **Control of business**
- **Remove the need to enforce asset security**
- **De facto “security” over concessions and licences of the Project Company**

- **Problems**
 - Shareholder agreement
 - Change of control provisions
 - Restrictions on the Shareholders
 - Negative pledge

Creating security – Concession and Physical Assets

- **Concession**
 - Project has little value without it
 - May not be possible under local law
 - Government consent required
 - Better to have share security?
- **Physical assets**
 - Immoveable property
 - Moveable property
 - Form of security varies with jurisdiction
 - Formalities to “perfect” security
 - **Registration**
 - **Notarisation**
 - **Fees**
 - **Updates**

Creating security – Project Contracts

- **Do the contracts allow for security?**
 - Right to create security needs to be negotiated
- **Governing law of the underlying contract**
- **Insurance contracts**
- **Comprehensive insurance cover with creditworthy international insurers**
- **Reinsurance contracts**
- **Perfection**

Creating Security - Accounts

- **Location of the Accounts**
- **Accounts hold cash**
- **Onshore – operating amounts**
- **Offshore – larger deposits**
- **Where to take security?**
- **Maintain sufficient control over the accounts**
- **Ability to block accounts on defaults**
 - Potential events of default?
- **Bank holding accounts – right of set off**

Quasi Security

- **Direct Agreements**
- **Lenders having direct contractual arrangements with major counterparties**
 - EPC Contractor
 - Fuel Supplier
 - Offtaker
 - O&M Contractor
- **Why?**
 - Maintain key contracts even if Borrower defaults

Round up

- **Sponsor support**
 - How much is needed?
 - How much are the sponsors willing to give?
- **Security**
 - Getting the balance right
 - How much security do you need?
 - Making life simple
- **Recognising Lender concerns**
- **Making the deal function**

Worldwide. For Our Clients.

whitecase.com

In this presentation, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.