PROJECT FINANCE

What Does it Take to be a Project Finance Lawyer?

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Project finance lawyers must have mastery not only of the same legal and commercial skills as any other banking lawyer, ranging from the drafting of sophisticated financial covenants to creating security over every class of asset imaginable. They must also delve into assessing how large industrial facilities will be able to generate sufficient revenues to service their debt obligations over periods that often extend to decades. To say that gaining a thorough understanding of the inner workings of a project at the same time as applying sound legal skills is challenging is an understatement. The documentation to be considered encompasses not only the usual realms of finance and security documents found in other forms of secured lending, but also a multitude of complex commercial contracts, permits, and licences that frame the terms under which the underlying project will operate.

Project finance is used as a means of funding investment across a broad spectrum of industrial activities, notably in the natural resources, telecommunications, transportation, social services, power generation, and transmission sectors. The cost of financing an investment of this sort can be minimised to the extent that the loans are repayable over time from the project's net revenues. As the long-term reliability of these revenues underpins the repayment of the loans, lenders focus close attention on ensuring that the project will in fact be able to generate robust revenues over the life of the loans. The "magic" of project finance is that, once that reliability is adequately established, it can turn a collection of permits, contracts and other promises into vibrant economic undertakings. Transformations of this nature are very much the purview of lawyers, and the contribution to the success of an investment project can thus be significant.

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Projects are being financed across the globe. Concerns over climate change are leading to investment in both low carbon power and energy efficiency, while urbanisation is driving the development of utilities, roads, and railways. Steadily rising commodity prices have been an important contributor to the number and scale of natural resource projects as exploration for new discoveries is driven to ever more remote locations. Although the pace of investment in the developed economies of Europe and North America has varied by country and sector, often constrained by the Euro-zone and related financial crises, it has remained more consistent elsewhere. Growth has been particularly robust in the often-cited BRIC economies, as well as in countries such as Saudi Arabia, Indonesia, Mongolia, Colombia and Vietnam, whose (often untested) legal, regulatory and political environments present challenges that can only be met with considerable creativity.

In recent years, financing large-scale deals has necessitated the mobilisation of increasingly diverse sources of capital as the commercial banks, long the primary source of non-recourse funding, face the tighter credit constraints that flow from the implementation of the Basel III accords. The resulting liquidity gap has been filled in part by lenders from across Asia, the Middle East, and Latin America and in part by the growing involvement of export credit agencies, multilateral development organisations and, for stronger projects, the capital markets. As a consequence, a project's financing now often involves weaving together the intricate requirements of a wide variety of lenders. Divergent currencies, tenors and interest rate mechanisms are only the more technical issues to address. Harmonising the interests of a large group of lenders, some of whom may have a long-term focus on development or other policy matters, some of whom do not (capital markets investors being particularly driven by short-term gains from trading their project debt), can be particularly challenging.

In the face of geographic and industry diversity in the types of projects being financed, and an ever-expanding universe of lenders, projects lawyers must thrive on travel, relish the subtleties of cultural differences and enjoy learning new languages. Conveying complex issues across time zones, languages and cultures in a manner that can readily be understood by all project participants can be difficult; doing so in a manner that will lead to resolution of issues without undue delay and expense is perhaps an art. The process of closing project financings is necessarily drawn out, but were each of the parties to negotiate every point as if it were a matter of life and death, the consequent cost and delay could overwhelm the process. Unless all parties are satisfied, deals will not close. It is thus incumbent on project finance lawyers, on whichever side of the table they sit, to recognise where compromises may be made and to understand underlying risks in order to help structure solutions to unique problems. Project finance lawyers must thus combine a broad range of cross-cultural skills with sound legal and commercial judgement. The ones who are successful in doing so can make a significant contribution to fostering real economic growth.