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The International Comparative Legal Guide to:

Project Finance 2013

2nd Edition

A practical cross-border insight into project finance

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Continued Overleaf

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the second edition of *The International Comparative Legal Guide to: Project Finance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of project finance.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting project finance, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in project finance laws and regulations in 38 jurisdictions.

All chapters are written by leading project finance lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor John Dewar of Milbank, Tweed, Hadley & McCloy LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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Chapter 1

Why the World Needs Multi-Sourced Project Financings (and Project Finance Lawyers…)

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Introduction

Project financing has evolved significantly since it was first used to finance maritime operations and infrastructure developments in ancient Greece and Rome. Its modern incarnation in the 1980s was as a tool, used principally by commercial banks, to finance the construction of large-scale infrastructure projects in North America and Europe. The project financing techniques developed in the 1980s in North America and Europe were subsequently honed in the 1990s in the emerging markets of the Middle East, Latin America and Asia, however, despite this geographical shift, project finance lenders and sponsors (the term used to describe the ultimate owner(s) of a project company) remained primarily based in (or near) Tokyo, London or New York. In recent years, the concentration of project finance lenders and sponsors has been notably diluted as a far wider range of lenders and sponsors located all over the world have now become active participants in the market. The increased pressure on commercial banks (the traditional source of project finance debt) resulting from the on-going financial crisis and the application of the Basel III standards, has made it harder for sponsors to raise finance for their large-scale projects without including a broad range of lending institutions from all over the world in their financing plans.

Notwithstanding the constraint on the availability of credit from commercial banks, the market continues to see significant levels of activity on projects of ever-increasing size and complexity. That this level of activity can occur in such challenging credit conditions is possible, thankfully, due to a number of factors:

- the increasingly central role taken by export credit agencies (ECAs) and development finance institutions (DFIs) in financing projects;
- the emergence of creative solutions by sponsors to fill the funding gap left by the absence of liquidity in the commercial bank market (such as mini-perm structures);
- where possible, the increasing use of Islamic finance (it would now be rare not to find at least one Islamic finance tranche in any multi-sourced financing for a project in the Middle East);
- the increasing popularity of project bonds, either from the outset or as a refinancing option; and
- the intrinsic value of the firm foundations that the discipline of project financing imposes on the stakeholders (such as extensive due diligence, strong collateral packages, transparent financial structures and bankable risk allocation),

which have meant that the project finance market has remained a viable option for the financing of large infrastructure projects around the world.

The Importance of Multi-Sourced Financing Solutions

A sponsor's ability to procure financing on acceptable economic terms will have a significant impact on the profitability (and in some cases viability) of a project. The primary goal of a sponsor will always be to identify the cheapest source of financing available and from the outset of a project a sponsor will focus substantial effort on assessing the financial markets in order to identify the optimal sources of financing for its project. The availability and cost to a sponsor of its financing will be dependant on a number of factors, such as:

- the project's location (for example, how liquid are the local commercial banks in that country and are there DFIs with a particular focus on that region?);
- the project's contractors (are the parties constructing the project able to benefit from the support of their country's ECA?);
- the industry sector for that project (is the project using tried and tested technology, in which case the perceived risk to the lenders will be lower?);
- the identity of the sponsor (does the sponsor have a track record of successfully developing projects on time and on budget?); and
- the procuring government authority (is there clear political support for this project?).

In today's project finance market, regardless of the identity of the sponsor or the robustness of a project's predicted future revenues, large-scale or complex projects will almost always require a sponsor to combine financing from a number of different sources in order to achieve a fully funded finance plan. As one might expect, the diversity of finance and financing structures has meant that the accompanying legal issues in multi-sourced project financings has become increasingly complex. Notwithstanding this complexity, these new structures have been welcomed and integrated into the project finance market and it is today seen as normal to have such diverse funding sources form part of the financing plan for a large-scale project financing. In this innovative and creative market, project finance lawyers have a unique and crucial role of being able to advise their clients, whether sponsors or lenders, as to how they can optimise the structuring of their projects so as to maximise their access to diverse pools of finance.

Commercial Banks

Commercial bank debt has historically been the main source of finance for projects. However, since the onset of the financial crisis in 2007 commercial banks, with some notable exceptions, have found their ability to offer competitive pricing and long term tenors severely constrained. Despite current liquidity constraints, loans from commercial banks remain an attractive option for sponsors due to the commercial banks' project finance experience, their appetite for cross-border financings, the funding flexibility they have in managing construction drawdown schedules and multi-currency draws and their capacity to be a positive and responsive partner during the life of the project.

Regulatory Restrictions

Even prior to the financial crisis, any commercial bank's decision to participate in a project financing would have been influenced by the treatment of its loans by the regulatory framework to which it is subject. One of the primary factors for the current credit constraint in the commercial bank market has been the U.S. and European regulatory response to the downturn in the global financial markets. European commercial banks (who traditionally have been very active participants in project financings all around the world) have found it increasingly challenging to participate in project financings due to an increased regulatory burden focussing on capital adequacy and minimum capital requirements. At the time of writing, implementation of the Third Basel Accord ("**Basel III**") is expected to occur in Europe in 2014 and it is anticipated that U.S. regulators will implement Basel III capital adequacy rules in the same way as Europe and on a similar timescale. As Basel III has been formulated with the causes and consequences of the "credit crunch" firmly in mind, many commentators predict that the introduction of the Basel III regulations will further impair the ability of European banks to participate in the global project finance market.

Commercial Bank Liquidity

The traditional project finance funding model developed in the 1980s saw projects being funded by international commercial banks which would often hold the loans they had originated until they were repaid. During the 1990s it became much less common for a commercial bank originating a loan to hold that exposure in the long term. Instead, it became the norm for originating lenders to quickly distribute their booked loans in order to create space on their balance sheet thereby enabling them to participate in further financings. Prior to the downturn in the banking market in 2007, commercial bank activity in the project finance market was high, in part, because there was a wealth of options for commercial banks to distribute their exposure, whether through syndication, secondary market sales or, to a lesser extent, securitisation.

The current lack of options for commercial banks to distribute their booked loans and create space on their balance sheet, combined with high internal funding costs and increased regulatory constraints has meant that, with the notable exception of Japanese commercial banks, international commercial banks have struggled to remain competitive in terms of pricing and tenor in the global project finance market. The Yen is at historical highs against most major currencies and Japan has abundant accumulated private wealth and deep government borrowing capacity. The Japanese banks Mitsubishi UFJ Financial Group Inc. (BTMU), Mizuho Financial Group Inc. and Sumitomo Mitsui Financial Group Inc. (SMBC) were the top three lead managers of global syndicated loans for international projects in the first half of 2012 and their surge to the top is attributable to the growth in the number and size of deals that are being led by Japanese client firms, as well as the relative weakness of western banks who have been affected by the financial crisis.

Local Commercial Banks

In countries where there is a high level of commercial and political risk, local commercial banks are likely to figure prominently in a sponsor's financing plan as they can play an important role in providing comfort to their co-lenders through their knowledge of the local regulatory system and political environment. In addition, in jurisdictions where local commercial banks have significant liquidity (such as many of the GCC countries in the Middle East) they are often key participants in project financings in that country. Most large scale project financings in the Middle East region have significant participations from local commercial banks who have lower funding costs than, and do not suffer from the same regulatory constraints as, their international counterparts and are consequently able to offer cheaper loans with longer tenors.

Mini-Perm

The inability of many international commercial banks, in particular the U.S. and European banks, to provide long term debt has led to an increased focus on "mini-perm" structures. "Mini-perm" structures (which have long been common in North American project financings) enable commercial banks that are unable to offer long term tenors to participate in financings through the provision of loans with much shorter tenors. Such "mini-perm" loans will cover the construction phase of a project and, typically, a four or five-year period after project completion.

There are two types of "mini-perm", "hard" and "soft". A "hard mini-perm" requires sponsors to take 100% of the refinancing risk since if a refinancing does not occur by a certain date this triggers an event of default under the loan documentation. A "soft mini-perm" differs in that the sponsors are incentivised to refinance because the project company becomes subject to increasingly onerous financing terms (such as an increase in the margins on the loans, cash-sweeps and/or prohibitions on dividends and other distributions to the sponsors).

Market sentiment is split on the long-term viability of the "mini-perm" as both commercial banks and sponsors remain wary of refinancing risk. Many commentators take the view that a "mini-perm" structure is unlikely to be successful unless there is clear evidence that the project will be able to access the capital markets once it becomes operational (which, as we discuss below, will usually require the project to be able to obtain at least a BBB+ credit rating). That said, if a commercial bank judges that a project may be able to access the capital markets at a future stage, it may be incentivised to participate in the initial financing so as to try to position itself to be in pole position to lead a debt capital market refinancing.

Future Prospects

Notwithstanding that project finance lending from international commercial banks (as a percentage of the overall project debt) may be smaller than seen in previous years, there can be no question that international commercial banks, with their huge depth of global project finance experience and know-how, still have an important role to play in the project finance market. ECAs, now key players in any major project financing, will often prefer to finance a project alongside an international commercial bank (regardless of the size of that bank's participation) so as to obtain a degree of comfort that full due diligence on the project has also been undertaken by an international commercial bank with expertise in that industry sector or geographic region and that the project's risks are regarded by the private-sector debt market as "bankable". As a result, co-financings of projects by commercial banks, ECAs and DFIs have become a standard feature of the cross border project finance market.

Export Credit Agencies and Development Finance Institutions

With project finance as much in demand as ever, but the liquidity of commercial banks increasingly strained, the rise of the ECA and DFI has continued apace in recent years. For a number of years, and well before the current credit constraints in the commercial bank market occurred, ECAs and DFIs have played significant roles in financing projects in commercially or politically challenging jurisdictions where commercial banks would otherwise be unwilling or unable to lend without some element of political or country risk mitigation. As a result of the difficulties faced by the commercial bank market from 2007 onwards and the subsequent global financial crisis, the role of ECAs and DFIs in financing projects has dramatically increased as sponsors have sought to fill the funding gap left by credit constrained commercial banks.

The rise in the importance of ECA funding has meant that sponsors will often spend time weighing-up the advantages gained on a bid from a contractor where its host country's ECA is able to provide funding compared to a bid from a contractor that may be less expensive but which does not qualify for ECA funding. Likewise, sponsors will undertake a cost benefit analysis of the additional expense of satisfying the host country for that project's development objectives so as to be able to access DFI funding.

"Soft" Benefits of ECAs and DFIs

As well as their ability to offer or support loans with long tenors at reasonable pricing, having an ECA or a DFI participate in a project financing is attractive to sponsors as their involvement facilitates the participation of commercial banks. The reason for this is that:

- the participation of an ECA or a DFI is commonly perceived to increase the likelihood that the host government will be supportive of the project for fear of losing access to future financial support from ECAs and DFIs; and
- ECAs and DFIs are regarded as having access to diplomatic channels and therefore being able to act as a "soft" mitigant to any political risks (such as government expropriation or interference with the project) entailed in projects in less developed regions of the world.

ECAs

Unlike commercial banks, ECAs are motivated by the aim of promoting the supply of goods and services from their country. ECAs are government departments, or financial institutions that benefit from government guarantees or direct funding, which provide financing as a means of supporting exports from their countries. Most ECAs follow the rules of the OECD consensus agreement (the "**Arrangement**") which governs the terms on which they provide finance for particular sectors and countries (the most notable exceptions being Russia and China). The Arrangement, which is not legally binding and is akin to a gentleman's agreement, permits ECAs to make or support loans of up to 85% of the export value of the relevant contract, plus up to 30% of the project's "local" costs.

There are different types of ECA:

- those that provide credit insurance to other lenders like commercial banks (for example, Compagnie Française d'Assurance pour le Commerce Exterieur (COFACE) of France and Euler Hermes Kreditversicherungs (Hermes) of Germany); and
- those that are also able to lend directly (for example, the Export Import Bank of the United States (US Ex-Im Bank), the Japan Bank for International Cooperation (JBIC) and the Export-Import Bank of Korea (Korea Eximbank)).

Annual lending from ECAs remains well above pre-financial crisis levels and increasingly ECAs are being seen co-financing with other ECAs, including those that may traditionally have been viewed as a competitor.

An ECA's ability to make direct loans is a particular commercial advantage to its country's exporters as, following the financial crisis, regulatory changes have made ECA-backed loans less attractive to commercial banks which has had the effect of shortening the tenors and raising margins on the ECA backed loans that commercial banks are able to provide. Unsurprisingly, a number of ECAs that do not currently have the capability to provide direct loans are reported to be actively looking at ways that they can start to provide direct funding to borrowers. In December 2012, it was announced that a £1.5 billion direct lending facility was to be established so that the United Kingdom's ECA, UK Export Finance, can provide loans to overseas buyers who purchase goods and services from British exporters. Other financing vehicles, including those tied to fund investments, capital market issuances (including ECA-wrapped bonds), and direct equity investments also look set to gain prominence in the near term within the ECA financing arsenals.

DFIs

DFIs play a crucial role in providing credit and assistance to projects in developing countries where the political or credit risk is such that commercial banks are unable to lend to those projects or where export content is not sufficient for an ECA financing (for example, where a project entails a substantial civil works component). DFIs differ to ECAs in that rather than promoting the supply of goods and services from their country of origin, they are financial institutions whose purpose is to promote social and economic development. As a corollary, a DFI will (as will an ECA) seek to ensure that any project which it finances meets specific environmental and sustainability standards.

DFIs can be divided into two categories – bilateral development banks and multilateral development banks. A bilateral development bank is created by the government of a single country and is solely funded by that government. European bilateral development banks such as the French development agency, Promotion et Participation pour la Coopération Économique (Proparco), the German development institution, Deutsche Investitions und Entwicklungsgesellschaft mbH (DEG) and the Dutch development bank, Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO) are regular participants in the project finance market.

By way of contrast, a multilateral development bank is a body or agency created by international agreement among multiple countries (each a "member country") and each member country will contribute to the funding of the multilateral development bank. Multilateral development banks are also sometimes referred to as international finance institutions (IFIs). The principal global multilateral, the World Bank, is comprised of two institutions – the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). Each of the IBRD and the IDA principally extend credit to sovereign borrowers (i.e. the government of a country). Where credit is not extended directly to a government, the World Bank will usually direct state support (i.e. a government guarantee) in respect of such credit.

The World Bank is part of the World Bank group. The Work Bank group is made up of the World Bank, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). Unlike the IBRD and the IDA, the IFC and MIGA extend credit principally to non-sovereign borrowers. The IFC is a regular participant in the project finance market as it seeks to stimulate growth in the private sector of developing countries by encouraging domestic and foreign capital and making loans and equity investments to private sector participants that have projects in such countries. Unlike the World Bank, the IFC does not require direct state support. MIGA primarily provides both debt and equity guarantees against losses caused by non-commercial risks, including currency transfer restrictions, expropriation, war and civil disturbances and, in certain cases, breach of contract.

Multilateral development banks which are focussed on specific regional development, such as the Inter-American Development Bank (IADB), the European Bank for Reconstruction and Development (EBRD), the African Development Bank (AfDB) and the Asian Development Bank (ADB), have also been established and are now regular participants in the project finance market.

"A/B Loan" Structures

DFIs have additionally historically facilitated commercial bank lending to projects by providing debt guarantees or fronting a loan through the use of "A/B loan" structures whereby the DFI acts as lender-of-record on the loan but sub-participates all or a portion of the loan exposure to commercial banks. "A/B Loan" structures have traditionally been popular with DFIs and commercials banks as the structure allows a DFI to leverage available liquidity from commercial banks whilst remaining the "lender-of-record" in the loan agreement. This allows DFIs to commit more funds to a project in order to achieve its development priorities and provides the participating commercials banks the ability to hold an economic interest in loans that, as they are being administered by the DFI, may enjoy a "preferred creditor status" in the event that the host country experiences a foreign exchange crisis.

Under the typical "A/B loan" structure, the DFI will enter into a single loan agreement (the "A Loan") with the project company for the entirety of the loan and enter into a form of participation agreement with the commercial banks to sell participations in the A loan (the "B Loan"). As far as the project company is concerned, the DFI is its sole contractual lender and as such, under the loan agreement, the DFI is solely responsible for administering the loan and collecting payments from the project company. Under the participation agreement, the DFI is responsible for distributing the payments it receives among itself and the commercial banks on a *pro rata* basis.

Domestic Development Organisations

Many countries have established financial institutions that will have a specific focus or provide support to a particular group or sector. In the Kingdom of Saudi Arabia, for example, the Saudi Industrial Development Fund (SIDF) and Public Investment Fund (PIF) have active lending roles in the fulfilment of the country's programmes for industrialisation and the development of its economy. In the United Kingdom, the publically owned Green Investment Bank was launched in October 2012 with a mandate to invest in a range of "green" projects in areas such as offshore wind, waste and non-domestic energy efficiency. Such publically owned financial institutions may yet prove to be crucial in filling the gap left by the commercial banks for commercial projects that are important to the development of a nation's economy but which, whether through insufficient experience or capital (or both), cannot be undertaken solely by the private sector.

Capital Markets

While sponsors have accessed the capital markets to raise financing for projects since the 1980s, project bonds have typically been a less common source of finance than commercial bank, ECA or DFI debt. The attractiveness of the capital markets to sponsors unsurprisingly increases when, as in recent years, the comparative cost and availability of finance from commercial banks, ECAs or DFIs makes it challenging or more expensive to construct a financing plan based solely on those sources. At the time of writing, by way of contrast to the commercial bank market, for well structured and sponsored projects the capital markets remain liquid and more than capable of providing long tenors and large amounts of debt. Accordingly, sponsors are increasingly looking to find ways of integrating project bonds alongside loans into their multi-sourced financing structures.

Project Bonds

The U.S. has a long history of this practice (and, indeed, to date most project bonds have been issued to the U.S. market for predominantly U.S. projects). Although there is a perception amongst some sponsors that issuing project bonds can be a labour and time intensive process and dealing with a large pool of bondholders during the life of a project (rather than a group of lenders accustomed to the demands of a project financing) can be problematic, the pricing and tenors available in the capital markets have meant that this is a financing option that cannot be ignored by sponsors seeking to optimise their financing plans.

Whilst project bonds are certainly not uncommon in project financings, there are a number of characteristics of the capital markets which have meant that, where possible, sponsors have chosen to finance their projects using the loan markets. As such, notwithstanding the benefit of (currently) competitive debt costs and longer tenors available from the capital markets, a decision to issue project bonds is not one that is taken lightly by a sponsor.

Regulatory and Rating Requirements

The securities laws to which a project bond will be subject, which do not apply to loans, inevitably make the process of issuing a project bond more laborious than entering into a loan due to the documentary and regulatory work entailed. Historically, the largest market for project bonds has been the U.S. market and therefore generally, issuers (both U.S. and foreign) will seek to structure their bond offering so that they can make offers and sales into the U.S. market to ensure access to sufficient investor demand and competitive funding terms for their bonds.

As with any jurisdiction, raising capital from the public markets in the U.S. is heavily regulated by both state and federal law. The body which regulates these matters in the U.S. is called the United States Securities and Exchange Commission (SEC) and the principal legislation which applies to offerings in the U.S. is the Securities Act of 1933 and the Securities and Exchange Act of 1934. This legislation requires all offerings to be registered with the SEC and imposes extensive disclosure and reporting obligations on the issuer both prior to and after the offering. Project bonds issued to

U.S. investors under Rule 144A require underwriters to obtain so-called "10b-5" disclosure opinions which will require both sponsors' and underwriters' counsel to carry out extensive due diligence in relation to the project.

An issuer of a project bond will usually be required to have the bonds obtain a credit rating of BBB+ or better. One of the primary reasons why project bonds have in the past held little appeal for sponsors as an alternative to loans is because many project companies located in emerging jurisdictions have lacked the ability to obtain a sufficiently robust credit rating.

Consent Issues

One of the advantages of a project bond for sponsors is that bondholders will typically have less stringent documentation requirements which affords the project company greater flexibility as to how it constructs and operates the project (it should be noted that a sponsor will not benefit from this flexibility if the project bond forms part of a multi-sourced financing). Despite the extensive documentation governing the project participants' relationships, issues that had not been contemplated at the time of signing can (and often do) arise during the life of any financing and, when this happens, lender consent will usually be required for an amendment or waiver of the relevant terms of the finance documentation. In the context of project bonds, this process can be problematic for sponsors as it is generally more difficult to obtain the consent required to amend (or obtain waivers of) finance documentation from a large pool of bondholders than a group of lenders accustomed to the demands of a project financing.

Construction Risk

Although it can be mitigated through completion support, one of the main obstacles to project bonds being more widely used in project finance has been the reluctance of bondholders to take construction risk on a project. This reluctance stems from the identities of the investor base for project bonds which typically comprises of insurance companies, bank treasuries, pension funds and asset managers looking for long term assets with predictable revenue flows. One very popular option for sponsors is therefore to hardwire into the initial finance documentation the possibility of refinancing the initial loans with project bonds (as these will likely become available on more attractive terms once the project is fully operational since bondholders will no longer be taking a project's construction risk into consideration when pricing the debt). Sponsors are unlikely to seek to refinance commercial bank debt for projects financed between 2004 and 2008 as, in comparison with the current market, the debt pricing on these projects is likely to be relatively cheap. However, using project bonds to refinance bank debt incurred from 2008 onwards on projects that are now operational is a very attractive option for sponsors.

Future Prospects

Commercial banks and their credit committees are reviewing project structures and credit risk with far greater scrutiny than they did before the financial crisis. This scrutiny, combined with the complexity of large-scale projects, means that many project financings are taking longer to execute than they did before the financial crisis. As lenders' documentation requirements and credit approval conditions have slowed down the timetable for the execution of transactions the competitive edge that the loan market once enjoyed over capital markets because of its ability to execute transactions rapidly has lessened and it seems likely that if commercial banks' ability to provide long-term debt remains constrained, and the pricing of bank debt remains relatively expensive in comparison to bond yields, then more and more sponsors will shift their attention to the project bond market.

Islamic Finance

The growth in the use of Islamic finance (i.e. finance which complies with the principles of Islamic law) has, in a large part, been stimulated by the increase in the economic prosperity of the Middle East and Asian regions. This prosperity has fuelled both the number of projects undertaken in these regions and the expansion of the Islamic finance sector, indeed, the boom seen in the Middle Eastern projects market fuelled the development of Islamic financing structures which could be incorporated into more traditional project financing templates in the region. As the Islamic finance market has developed, sponsors have increasingly considered Islamic finance as a key funding source and an Islamic finance tranche is now commonplace in any large-scale multi-sourced project financing in the Middle East.

Islamic finance is finance that is structured to be compliant with the principles of Islamic law (known as *Sharia'a* law in Arabic). The key principles of Islamic financing are that profit and loss are to be shared between the financier and the project company (as Islam perceives that the ideal relationship between contract parties should be that of equals where profit and losses are shared) and conventional interest is not permitted to be applied to any financing. These principles mean that Islamic facilities cannot be made using conventional practices and therefore various financing structures have been developed to create *Sharia'a* compliant financing arrangements which operate in a similar manner to conventional financing structures and techniques. It should be noted that although Islamic banks must ensure that any proposed funding complies with *Sharia'a* principles, Islamic banks are commercial entities and so will have regard to many of the same considerations as a conventional commercial bank when evaluating whether to participate in the financing of a project.

A recent and exciting development has been the introduction of Islamic bonds (known as a *sukuk*) into the Middle East project finance market. The first *sukuk* issuance was closed by SATORP (a refinery project sponsored by Saudi Aramco and Total). The $1billion SATORP issuance was several times oversubscribed and is likely to be followed in 2013 by another larger *sukuk* issuance by the Sadara Petrochemical Project (sponsored by Saudi Aramco and Dow).

Documentation

Where a project is being financed by multiple sources, harmonising the intercreditor relationship between each lending group (who will usually rank on a *pari passu* basis) is not always an easy task, however, provided that each lending group is prepared to engage in intercreditor discussions in a collaborative manner, it is rarely a significant obstacle to a successful financing.

Most multi-sourced financings will be structured around a common terms agreement which will contain the common conditions, representations, covenants and events of defaults that will apply to the project company. Each lending group will then provide financing under a separate loan agreement (or debt instrument) which may include terms and conditions specific to that lending group. Often one of the most complicated aspects of documenting multi-sourced loans is harmonising the different requirements of each lending group and ensuring that each lending group's requirements have been met in a manner that is satisfactory not only to the sponsors but also to each lending group.

Conclusion

Although it is generally accepted that structuring a project financing that includes multiple funding sources can be complex, few of the issues presented are new and it is now commonplace for large-scale project financings to be financed by a number of different lending groups. A modern project finance lawyer is therefore required to have a degree of familiarity with a range of financial instruments, including commercial bank loans, conventional capital market instruments, domestic government-funded loans, ECA and DFI loans and guarantees and Islamic *Sharia'a*-compliant financing structures. The willingness of diverse lending groups to co-finance today's large-scale "mega-projects", coupled with the involvement of sponsors with proven track records means that, notwithstanding today's challenging financial markets, it remains possible for sponsors to finance projects of ever-increasing size and complexity.

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Oliver Irwin is an associate in the Global Project Finance Group and is based in Milbank, Tweed, Hadley & McCloy LLP's London office. Oliver specialises in advising both lenders and developers on multi-sourced international project financings involving ECAs and multilateral lenders. Oliver has a wide range of experience in a variety of industry sectors such as telecoms, satellites, manufacturing, power and water and renewables and has worked on a number of major transactions in the Middle East, Africa, Europe and Asia.
Oliver has been recognised in *Chambers UK* as an "associate to watch" who is "very impressive and with a work ethic, technical ability and client-focused attitude that cannot be faulted" and by *IFLR 1000* as a "Rising Star" in their 2013 Project Finance rankings.

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