

Project finance

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For selected project list see overleaf

Project finance transactions usually involve a number of banks, financial institutions and other providers of finance or guarantees, all of which will wish to have security in respect of their participation. This can best be achieved by using a security trustee.

Involving an independent trustee who has no other involvement in the project can offer a number of benefits, with the trustee acting as:

- impartial holder of security for the benefit of all lenders (who may have differing interests) – as opposed to vesting the security in one of the lenders;
- holder of bank accounts into which the project cashflows can be paid prior to their further distribution in a predetermined manner; and
- holder of covenants designed to protect the integrity of the security.

The trustee can fulfill a similar role where project funds are raised or refinanced through a bond or other loan capital issue.

Law Debenture is unique as an independent trustee and is not a lender to project finance transactions, nor does it have other interests in those transactions that might give rise to a conflict between its own interests and those of its beneficiaries.

Security

Law Debenture has extensive experience of holding the benefit of security over a wide range of assets on trust for project lenders, including:

- property – buildings, bridges and tunnels
- title to minerals – ore, oil, refined metals, LNG and other energy sources
- contracts – project and ancillary agreements

- financial assets – bonds, bank deposits and collateral
- intellectual property – formulae, construction designs and computer software (where the originator may be reluctant for anyone other than an independent third party to hold rights to its know-how on strictly defined terms).

Cashflow

The project cashflow can be routed through on-shore or off-shore trust accounts operated by Law Debenture which, as a third party with no other interests in the project, will invest and direct the cashflow as required by the transaction documentation. The documentation will direct the cashflow towards meeting the project operating costs, servicing debt and providing for repayment of principal.

Debt service reserves can help the project managers ride out temporary shortfalls without triggering covenants in the loan agreements.

Covenants

A covenant – usually a term of the loan or other financing agreement - can be a promise to pay, a promise not to do something (e.g. a negative pledge) or a promise to comply with certain ratios or restrictions. The trustee can be given powers to monitor the borrower's compliance with these covenants and enforce them on behalf of all lenders.

Flexibility

Using a trustee to hold the project security and covenants on behalf of all lenders from time to time enables lenders to assign or change their level of involvement in the project without jeopardising the underlying security arrangements. Such changes might otherwise be difficult to achieve without substantial and time-consuming amendments to already complex documentation.

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Some major international projects with which Law Debenture is involved:

- Chad/Cameroon
- Eurotunnel
- Gazprom
- Hub Power
- Indo-Jordan Chemicals Company
- Kasese Cobalt
- Lesotho Highlands Development Authority
- Nigeria LNG
- Qatar Liquefied Gas
- Safaricom
- Sakhalin Energy
- Société Nationale Industrielle et Minière
- Teesside Power