

Project Finance Documentation

27th Training Program of
Asian EXIM Banks Forum
on Project Finance





Road Map

- I. Overview of Project Finance
- II. Structure
- III. Factors to Consider Before Preparing Finance Documentation
- IV. Finance Documentation Issues
- V. Specific EXIM Bank / IFI Institutional Issues

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I. Overview of Project Finance

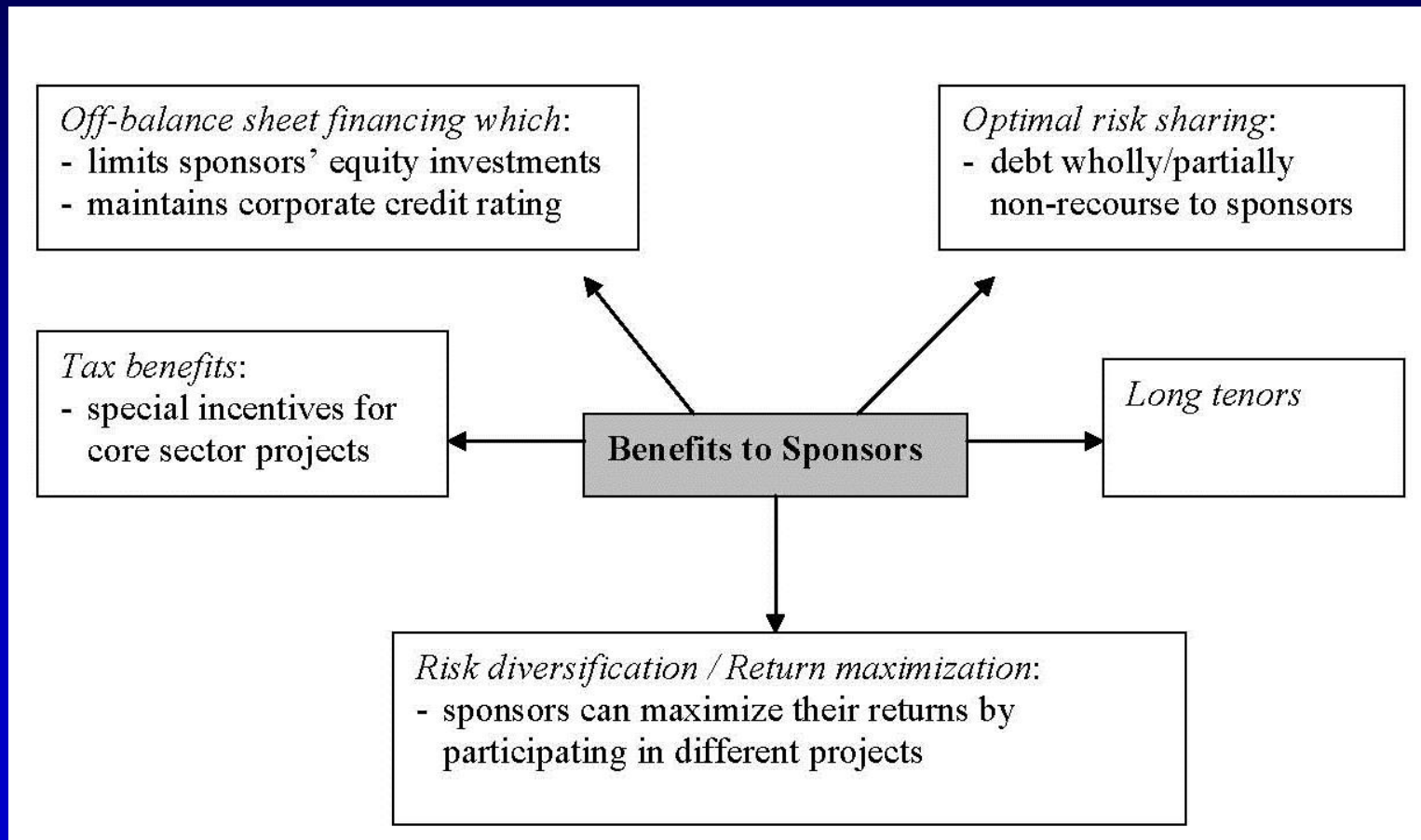
Why Use Project Finance?

“A banker is a fellow who lends you his umbrella when the sun is shining, but wants it back the minute it begins to rain”

Mark Twain (1835 – 1910)



Why Use Project Finance? (cntd)

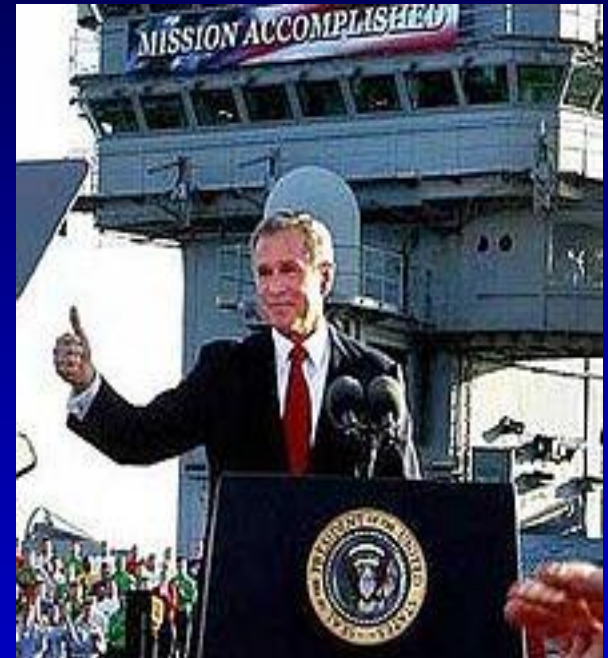


Disadvantages of Project Finance

- Cost of finance (interest, fees)
- Inflexibility (clearance from lenders)
- Timing to fruition
- Government and political risks
- Transactional costs

Target – “Mission Accomplished”

- Finance a good project
- Timely and within budget
- Financing is repaid
- Institutional goals met
- Documents to stand the test of time

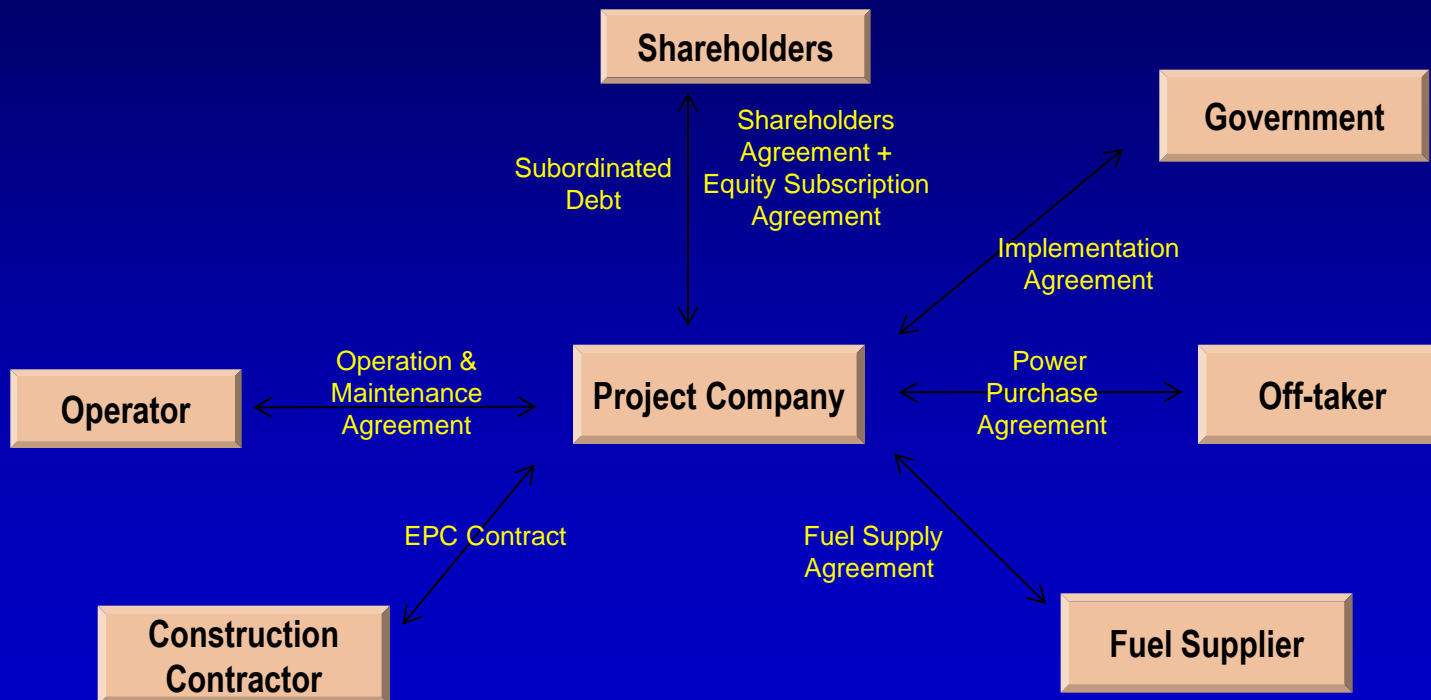


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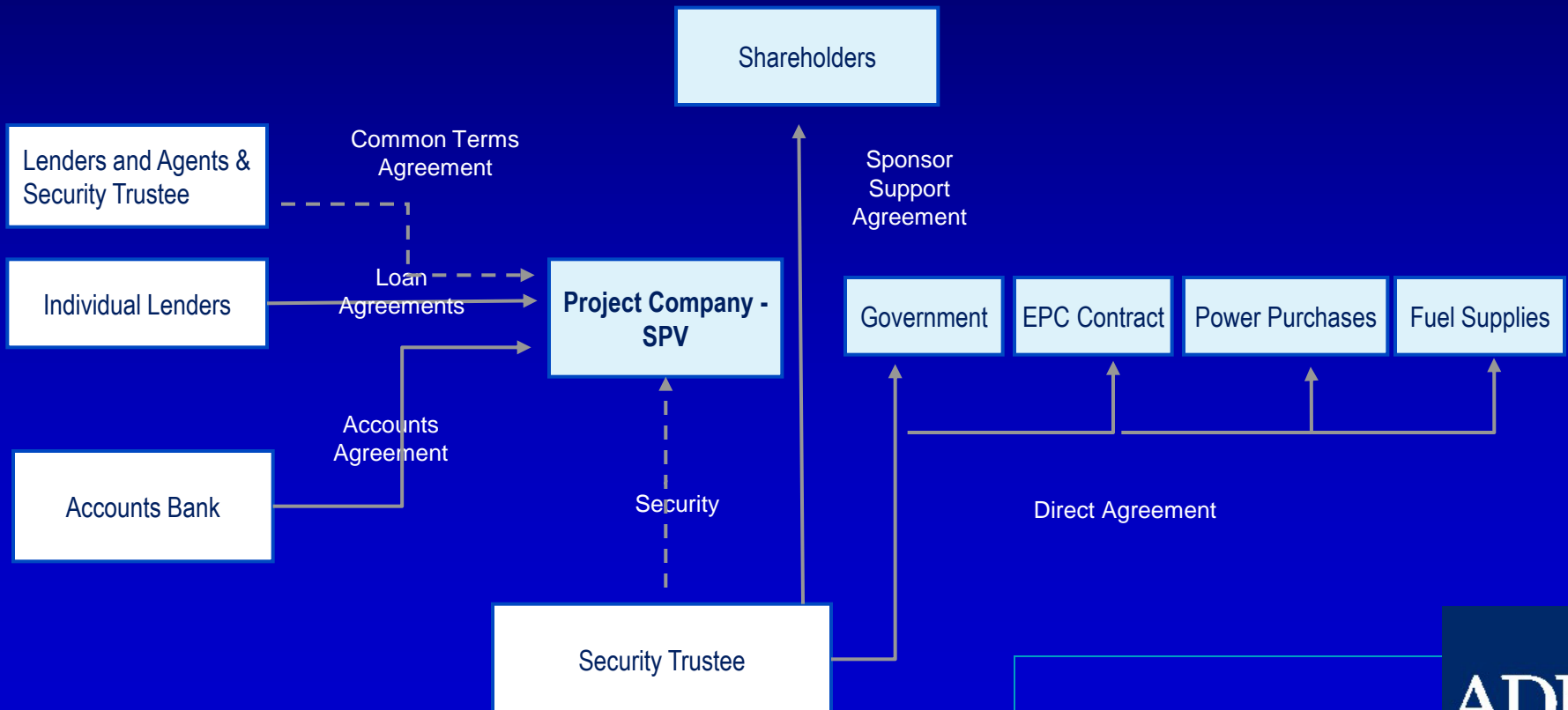
II. Structure

PF Deal

Project Documents Structure



PF Deal Finance Documentation Structure



Know Your Product (KYP)

Loans

- **Direct loan:** market-based pricing with major international and/or local currencies
- **B-loan:** ADB as Lender of Record (funded by eligible third-party financing)
- **Unfunded risk participations:** fronting arrangement with IFIs and/or commercial banks

Guarantees

- **Political Risk Guarantee:** FX restrictions, expropriation, political violence and contract dispute
- **Partial Credit Guarantee:** non-payment by the borrower of the principal and interest due

Equity Investment

- **Investment into enterprises:** common shares, preferred stock, and/or convertibles

Technical Assistance

- **Grants to assist the project preparation or capacity building**

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III. Factors to Consider When Preparing Finance Documentation

Is it viable?

Don't start drafting documentation until you know:

- ◆ Project is viable (technical, economic, political, legal, E&S)
 - ◆ Experienced management team
 - ◆ Proven technology
 - ◆ Strong economic demand
 - ◆ Social and political support
 - ◆ Excellent partners
- ◆ Other risks must be manageable
- ◆ Timetable must be defined
- ◆ Project must serve a real need!!
- ◆ Term Sheet?



The Importance of Due Diligence

- Due diligence findings translated into term sheet requirements (contingency sponsor support, additional E&S reports and safeguarding)
- Sometimes walk away from the transaction – integrity due diligence findings, allegations of corruption, major unresolvable E&S issues
- Sometimes amend underlying documents to allocate risk properly (unfair risk allocation), eg change of law / political FM risk
- Sometimes restructure the financials of the deal (introduce higher DSCRs, cash sweep mechanisms, re-leverage D:E ratio)

Key Issues in Structuring

➤ Many exist, but to name a few:

- D:E ratio – back ended equity
- Development costs/ (fee?)
- Sponsor contingent equity
- Sponsor support release date
- Cash sweeps
- Dividend blocking DSCRs
- EODs and cure periods
- EPC contingency
- LD and liability limits for contractors



Documenting the Transaction

- Form of loan agreements and finance documentation
 - AP-LMA based form
 - Traditionally not wedded to templates
 - Leaning that way now as the team grows, younger lawyers in place
 - Provides consistency in approach



“Consistency is Key”

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IV. Finance Documentation Issues

Finance Documentation - Common Terms Agreement

- What is it and why do we use it?
 - Consistency across all loans (definitions, disbursement procedures, reps & warranties, EoDs, boiler-plate, governing law)
 - Single point of contact - administrative ease

Common Terms Agreement

- **Issues arising in the CTA**
 - Disbursements – pro rata vs EXIM Banks tied financing issues
 - Mandatory Prepayments - policy issues
 - Use of proceeds – differing requirements
 - Environmental & Social Safeguards
 - Anticorruption provisions
 - Preferred Creditor Status (repatriation issues)
 - Events of Default – differing requirements
 - Governing Law

Loan Agreements

- Main terms (loan amount, interest rate, repayment schedule, fees and anything “bank” specific)
- For IFIs, includes “institutional specific” provisions (E&S, anticorruption, EoDs)
- Governing law and jurisdiction

Sponsor Support Agreement

- What this is?
- What types of sponsor support there are
 - Full completion guarantee
 - Limited cost overrun support
- Other obligations
 - Retention of shareholding
 - Ensure debt service reserve account is full



Sponsor Support Agreement (continued)

- When it falls away
 - Performance tests under EPC
 - Lender reliability tests
 - Permits and approvals
 - Ratio tests
 - All financing, project and security documents
 - No “Material Adverse Effect”
 - Absence of defaults

Accounts Agreement

- What is it? Where does it fit in?
- Account Bank (onshore and offshore)
- “Cash flow waterfall”
 - Sets out the “order” of how project moneys are “spent” and “reserved for” in order to meet all project expenses, debt service and reserve requirements
 - Dividend tests prohibit shareholder distributions unless conditions are met



Security

- Security - understanding the different types of security available for a typical project finance deal.
 - Land mortgages
 - Equity pledge
 - Security over Accounts and receivables
 - Moveables (equipment and assets)
 - Project documents
 - Insurances
- Quasi-security
 - Completion guarantee
 - Direct Agreements
- Governing law

Direct Agreements

- Direct Agreements (tri-partite) with counterparties to the project documents (Concession Agreement, PPA, EPC, O&M, etc)
- What are the objectives?
 - Consent to assign by way of security to lenders
 - Consent to assign the contract to 3rd party in case of default by the Project Company
 - Additional grace periods before terminating project document
 - Step-in rights for lenders
 - Clarifications and additional negotiated items for lenders
- Governing law

Inter-Creditor Agreement

- Voting rights based on proportion of loan size
- Voting thresholds for different decisions (waivers & amendments, acceleration, enforcement) – unanimous/supermajority/simple majority/unilateral
- Security sharing and turnover
- ADB and other IFI requirements (unilateral rights), exception to sharing - preferred creditor status



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IV. EXIM Bank / IFI Institutional Issues

Institutional Specific Requirements

- Procurement – “tied” financing
- Suspended or ceases to be a member of ADB, leads to cancellation/prepayment
- Safeguards
- Prohibited list
- Anticorruption, anti-money laundering, financing of terrorism
- Sanctions list
- GAP
- Development Monitoring Framework
- Social Protection Requirements

- Privileges and immunities

- What are they?

- No taxes or duties imposed
 - Access to hard currency
 - Freedom to repatriate

- Where from?

- Charter
 - Statutes in each member country
 - Private Sector Framework Agreement / Host Country Agreements

Thank you.