European Financial Services Round Table

April 2018

FACILITATING EUROPEAN INFRASTRUCTURE INVESTMENT

Objectives

- In 2014/2015, the EFR started an initiative to help infrastructure become a more accessible asset class for institutional sources of capital in Europe.
- Infrastructure investing is crucial for economic growth and job creation. The world currently invests USD 2.5trn a year in infrastructure. This is well below the infrastructure financing needs of USD 3.3trn per year until 2030, just to support expected economic growth rates. Institutional investors are well positioned to fill the infrastructure financing gap
- Key for increased accessibility of the asset class, particularly for institutional investors, is sufficient pipeline of investable assets made available by governments, greater transparency and harmonisation of project pipelines, structures, financing and performance.
- Likewise, it is of the utmost importance removing barriers not only on the accessibility of the asset class but also on the regulations affecting the liability side, especially for financial products based on ALM technics with a long term investment period. In this context, special attention should be paid to regulatory projects addressing the liability discount rate, taking into account that a significant part of those liabilities could be backed by infrastructure investments.
- In addition, there needs to be further availability of best practices and benchmarking / performance data to increase the supply of projects and public and private investor confidence in the sector.
- As part of its original expanded strategy paper issued in March 2015, the EFR introduced an advanced template for infrastructure loan documentation and disclosure. The topic features prominently on the G20 agenda, and Argentina's Presidency now provides a renewed focus on this subject. In addition, it remains a key priority as part of the European Capital Market Union. As such, the EFR intends to raise awareness of the current barriers to private sector infrastructure investing and provide input into the policy discussion with this updated paper.

Challenges

- Despite the continued high importance for the G20, multilateral and regional development banks, the progress in making infrastructure a standardised asset class has been muted at best. Bank loans have remained the major funding source for infrastructure debt, with capital market financing only representing about 10-20% of volumes over the past years. Moreover, the "crowding-in" of institutional investors as part of the European Commission's Investment Plan for Europe has been rather disappointing.
- It is generally acknowledged that the global economy immensely benefits from infrastructure investment as a driver of growth. However, there is a substantial funding challenge as traditional lenders are under pressure from various sides to deleverage and reduce their balance sheets. While national governments need to increase their investment, private investment and particularly long-term institutional investors could play a key role.
- Further private investment is hampered by the relative inaccessibility of the asset class due to highly technical and bespoke projects and financing structures, a lack of benchmarking and performance data, and a lack of commercially viable projects.

Call for Action

- While the economic benefits of infrastructure investment is widely acknowledged, the progress of making infrastructure a standardised asset class has been muted so far
- Private sector capital has to be crowded-in. The unprecedented amount of committed capital and dry powder in private sector funds should be mobilised and help address the growing infrastructure gap. Unfortunately, the barriers for infrastructure investments remain high due to regulatory hurdles, difficult accessibility of the assets (e.g. mainly loan-format) or the lack of bankable projects
- In addition, the market remains highly fragmented with project finance structures being very bespoke and heterogeneous across jurisdictions
- Therefore, the EFR strongly supports the key role that multilateral and regional development banks, as well as the Global Infrastructure Hub, can play. Jointly, they should work with the private sector in developing a generally-accepted best practices framework. This collaboration can be initiated with a standardised industry template for debt disclosure and reporting requirements, as provided by the EFR
- Only with the universal application of a generally-agreed template can investor rights be strengthened, public and private cooperation in project financing ensured and the supply side of the infrastructure market promoted.

Best Practices towards Standardisation and Harmonisation:

Over the past years, various efforts have been undertaken to add transparency and harmonisation into the infrastructure financing process, including several initiatives by the Global Infrastructure Hub, European Commission's WEF working groups, the World Bank's activity, Moody's research and academic initiatives (e.g. EDHEC Infrastructure Institute), or more regional efforts to promote new ways to make project finance more accessible.

Despite these very valuable and needed efforts, there is still a long way to go in Europe to develop a more standardised and harmonised infrastructure capital market. By creating a common framework for project due diligence and disclosure, or pan-regional passport, infrastructure investing will become more accessible for long-term institutional investors. Such a standardised framework should maintain flexibility, to enable different jurisdictions to impose additional requirements where necessary.

A framework for standardised infrastructure debt reporting, documentation and disclosure would need to contain the following 4 key elements:

1. Disclosure and reporting requirements:

- An industry standard template: Providing an overview of initial disclosure and reporting requirements on an initial and semi-annual basis, which should also be used for industry performance data aggregation and analysis (see Annex for an example of a framework for a standardised reporting requirement) including:
  - ➥ Event-based disclosures: Non-payment of interest or principal, breach of contractual obligations related to all involved parties (i.e. bond covenants), illegality, default of a major contract counterparty, insolvency event, but also: Regulatory/policy changes, construction delays, significant deviation from projected costs and cash flows, sudden increase in costs (e.g. related to inflation) or "force majeure" that affect the economic value of the project.
  - ➥ Public disclosure of compliance certificates.

2. Debt terms and documentation:

- Having a common governing standard for infrastructure debt (loans and bonds) would go a long way in harmonising contract terms across jurisdictions. A template prospectus/offer document should be developed with the disclosure requirements.

3. Administration and arbitration:

- Project monitoring: Information on administrative responsibilities such as creditor decision-making, cash flow and collateral management.
- Arbitration mechanism: Information on any international arbitration court, collective action clauses (CACs), and potential compensation payments related to unforeseen events (such as regulatory changes) that negatively impact the economic viability of the (project) trust.

4. Third party advisors:

- Setting out common standards for the engagement, liability and disclosure requirements for third party advisors such as technical advisors, consultants and auditors.

Policy considerations on Infrastructure Investment:

A. The public and private sectors should work toward meeting the recommendations made by the B20 to promote more, and efficient, investment in infrastructure[1]

- Reaffirm the critical importance of infrastructure in national growth plans.
- Establish, publish and deliver independently-assessed infrastructure pipelines.
- Implement leading practice procurement and approvals processes.
- Work towards greater promotion and protection of cross-border investment.
- Increase the availability of long-term financing for investment.

B. Encourage the public and private sectors to cooperate in project financing

- The use of public private partnerships should be further expanded across Member States. Levels of use vary by Member State and it would be useful for policymakers to promote effective collaborations as examples of best practice.
- Foster the complementarities (rather than competition) of the different sources of capital; Consider and identify public support measures the private sector currently needs in order to improve accessibility for infrastructure financing (i.e. credit enhancement, guarantee programmes). Member States and public entities should act to cover risks that the private sector is not willing to cover and not crowd out private capital.

C. Strengthen the role of Multilateral Development Banks (MDBs)

- MDBs are able to provide technical and financing support for infrastructure projects. Maximising their role should help to attract more private sector capital to infrastructure investment opportunities.
  - ➥ First, MDBs can design a global reporting standard together with the private sector
  - ➥ Second, MDBs should rely more on innovative private market solutions to mobilise private sector capital. For example, securitisation should be considered, similarly to the European Secured Notes concept currently developed by the European Commission. The pooling of transactions would be supportive to broader the investor space by allowing more diversification as well as free up capacity for MDBs to lend out capital for new lending.

D. Promote the supply side of the infrastructure market

- Besides improving the demand side of infrastructure investments, encouraging the creation of a sufficient infrastructure project pipeline is key in order to meet rising demand.
- Investigate the drivers of the limited launch of PPPs, especially in continental Europe, and promote the usage of different partnership models.
- Provide harmonisation of documentation and benchmarking data to policy-makers to improve public sector confidence in PPPs and provide a road-map for commercially viable and successful projects.

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[1] See the "B20 Infrastructure & Investment Taskforce Policy Summary" (July 2014) published ahead of the 2014 G-20 Brisbane Summit

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ANNEXES

Best Practices towards Standardisation and Harmonisation

ANNEX 1: Disclosure and reporting requirements

Framework for a standardised reporting requirement

THE EFR SUPPORTS THE STANDARDISING OF DISCLOSURE AND REPORTING REQUIREMENTS ACROSS EUROPE AS DOING SO WOULD INCREASE ACCESSIBILITY OF THE ASSET CLASS, PARTICULARLY FOR INSTITUTIONAL INVESTORS, AND PROVIDE GREATER TRANSPARENCY AND HARMONISATION OF PROJECT PIPELINES, STRUCTURES, FINANCING AND PERFORMANCE.

OVERVIEW FOR PROJECT DEBT	
Report Issue Date	
Reporting Period	[From/To]
Project Company	[Name]
Ownership	[]% Shareholder A []% Shareholder B *[Detail any changes to ownership]*
Issuer	*[If different from ProjectCo]*
Project Phase	[Construction or Operations]
Service Provider(s)	[X] and major subcontractors and their guarantors: [•]
Bond Trustee	[•]
Security Trustee	[•]
Paying Agent	[•]
Legal Adviser	[•]
Technical Adviser	[•]
Bond/Loan Arranger(s)	[•]
Bookrunner(s)	[•]

Rating Agency Rating Outlook Most recent report date	[Moody's] [•] [Stable] [•]	[S&P] [•] [Stable] [•]	[Fitch] [•] [Stable] [•]	
Key terms of debt Type	[Bond/Loan]	[Swap]	[Any other debt]	[Guarantees and unfunded liquidity support[2]]
Original Amount				
Current Amount Outstanding				
Currency				
Final Maturity				
Margin/ Coupon				
Tranche Identifier	[ISIN]	[Swap Provider]		[Provider]

Financial Ratios	Components of Ratio	Current Ratio	Forecast at Financial Close	Trigger level	Default level
ADSCR – Historic	[CFADS] [Debt Service]	[•]	[•]	[•]	[•]
ADSCR – projected	[CFADS] [Debt Service]	[•]	[•]	[•]	[•]
DebtLCR	[NPV of CF] [Debt O/S]	[•]	[•]	[•]	[•]

COMPLIANCE CERTIFICATION	
There [is / is not]:	Event of Default or Potential Event of Default Trigger Event or Lock-up Event [Specify details, if applicable]
All repeated representations & warranties are correct	
Compliance with covenants	
Solvency	
No material litigation	
No disputes with applicable regulators	

OPERATIONAL PERFORMANCE [3]
Summary financial results
Summary of availability/usage
Key developments (e.g. regulatory or other, any changes to the payment mechanism)
Any penalties and deductions
Material changes to construction / maintenance / lifecycle budgets
Material changes to service providers / sub-contracts
Any material claims against SPV or insurance claims
Material replacements (Swap Providers or credit support/ Project Bonds Credit Enhancement (PBCE) provider)
Variations effected
Regulatory News Service (RNS) or other market announcements made during the reporting period [attached]
Concerns/issues raised by the technical advisor (subject to TA approval of the same)

SIGNATURE
Signature: [AUTHORISED OFFICER]

[2] Including Project Bonds Credit Enhancement (PBCE)

[3] Potential to withhold disclosure of commercially sensitive information to be considered

Annex 2: Debt terms and documentation

EFR PROPOSALS RELATING TO DEBT TERMS AND DOCUMENTATION ARE INTENDED TO BE ADOPTED AS REQUIRED DRAFTING FOR PUBLICLY TENDERED INFRASTRUCTURE TRANSACTIONS. BORROWERS LEGAL COUNSEL WILL RETAIN RESPONSIBILITY FOR INCORPORATION OF THE PROPOSED DRAFTING AND BE REQUIRED TO REPRESENT AS A CONDITION PRECEDENT TO FINANCIAL CLOSE THAT EFR DRAFTING HAS BEEN ADHERED TO.

PROPOSED PRINCIPLE DRAFTING

1. DEFINITIONS

Acceleration Notice means a notice delivered by the Security Trustee pursuant to clause 5.1 (Enforcement Instructions) by which the Security Trustee declares that some or all Secured Liabilities shall be accelerated.

Account Bank means [•] (or any successor account bank appointed pursuant to the Account Bank Agreement).

Account Bank Agreement means the account bank agreement dated [•] between certain Obligors, the Account Bank and the Security Trustee.

Accrued Amounts has the meaning given to it in Clause 3.8 (Pro rata interest settlement).

Affiliate means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Agent means [•] acting as the facility agent under the Facility.

Agreement means this agreement dated [•].

Authorised Credit Facilities means [•].

Assignment Agreement means an agreement substantially in the form set out in Schedule [•] or any other form agreed between the relevant assignor and assignee.

Bonds means the €[•] [•]%Bonds due [•] issued by the Issuer on the Issue Date.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London [,•] and:

(a) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or purchase of euro) any TARGET Day.

Commitment means:

(c) in relation to an Original Lender, the amount set opposite its name under the heading Commitments in Schedule [•] and the amount of any other Commitment it acquires under this Agreement; and

(d) in relation to any other Lender, the amount of any Commitment it acquires under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

Company means [the company borrowing the facility].

Cross Currency Hedge Counterparty means [•].

Decision Period has the meaning given to it in clause 5.2 (Quorum and voting requirements in respect of an Enforcement Instruction Notice).

Enforcement Action means any action by or on behalf of Secured Creditors in respect of:

(a) demanding payment of any Liabilities after the date when such Liabilities are due and payable and following the expiry of any grace period applicable to that payment obligation or demanding payment under the Guarantee;

(b) accelerating any of the Liabilities or otherwise declaring any Liabilities prematurely due and payable or payable on demand or the premature termination or close-out of any Liabilities under a Hedging Agreement (other than a Permitted Hedge Termination);

(c) enforcing any Liabilities by attachment, set-off, execution, diligence, arrestment or otherwise;

(d) crystallising, or requiring the Security Trustee to crystallise, any floating charge in the Security Documents;

(e) enforcing, or requiring the Security Trustee to enforce, any Security Interests;

(f) initiating or supporting or taking any action or step with a view to:

(I) any insolvency, bankruptcy, liquidation, reorganisation, administration, receivership, administrative receivership, winding up, judicial composition or dissolution proceedings or any analogous proceedings in relation to any Obligor in any jurisdiction;

(II) any voluntary arrangement, scheme of arrangement or assignment for the benefit of creditors; or

(III) any similar proceedings involving any Obligor whether by petition, convening a meeting, voting for a resolution or otherwise;

(g) bringing or joining any legal proceedings against any Obligor (or any of its Subsidiaries) to recover any Liabilities; or

(h) otherwise exercising any other remedy for the recovery of any Liabilities.

Enforcement Instruction Notice has the meaning given to it in clause 5.1 (Enforcement Instructions).

Enforcement Notice means a notice delivered by the Security Trustee in accordance with clause 5.1 (Enforcement Instructions).

Equivalent Amount means [*the [euro] equivalent of any [non-euro] lending*]].

Event of Default means [an event of default under the Facility Agreement].

Excluded Tax means, in relation to any person, any Tax:

(a) imposed on or calculated by reference to the net income, profits or gains of that person, in each case excluding any deemed income, profits or gains of that person other than to the extent such deemed income, profits or gains are matched by any actual income, profits or gains of an Affiliate of that person; or

(b) that arises from the fraud, gross negligence or wilful default of the relevant person or any failure of the relevant person to make any filings within the prescribed time period (to the extent not attributable to a member of the Security Group),

in each case including any related costs, fines, penalties or interest (if any).

Existing Lender has the meaning given to it in Clause 3.1 (Assignments and transfers by the Lenders).

Facility means the [Term Facility]/[Revolving Facility].

Facility Agreement means the agreement dated [•] between [•].

Facility Office means, in respect of a Lender, the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under the Facility Agreement.

Finance Documents means [Facility Agreement, Intercreditor Agreement and other documents relevant to the financing].

Finance Parties means [the Lenders, the Agent and other relevant parties].

Group means [the Company and its Subsidiaries].

[**Guarantor** means an Original Guarantor or an Additional Guarantor unless it has ceased to be a Guarantor in accordance with Clause [•].]

Hedge Counterparty means any entity which is or has become a party to [•] as a Hedge Counterparty.

Hedging Agreement means the agreement dated [•]entered into by the Issuer and a Hedge Counterparty in accordance with the Hedging Policy and which governs the Hedging Transactions between such parties and the confirmations evidencing the Hedging Transactions entered into.

Holding Company of any other person, means a person in respect of which that other person is a Subsidiary.

Intercreditor Agreement means the agreement dated [•] between [•].

Interest Period means each period determined under this Agreement by reference to which interest on a Loan or an Unpaid Sum is calculated.

Interest Rate Hedging Agreement means [*agreement documenting interest rate hedge*].

Lender means:

(a) [an/the] Original Lender; or

(b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 3.

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

Liabilities means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceedings or other liability whatsoever (including in respect of taxes, duties, levies, imposts and other charges including, in each case, any related costs, fines, penalties or interest (if any) but excluding any Excluded Tax)) and legal fees and properly incurred expenses on a full indemnity basis.

Loan means [•].

Make-Whole Amount means any premium payable on redemption of any Senior Debt in excess of:

(a) the principal amount outstanding of such debt; plus

(b) accrued interest on such debt; plus

(c) any final payment in respect of accretions for inflation on any such debt that is index-linked.

New Lender has the meaning given to it in Clause 3.

Obligor means a Borrower [or a Guarantor].

Original Lender means [*the bank lending under the facility*].

Outstanding Principal Amount means:

(a) in respect of any Authorised Credit Facilities that are loans, the principal amount, including any accretion on index-linked debt (or the Equivalent Amount) of any drawn amounts that are outstanding under such Authorised Credit Facility;

(b) in respect of each Hedging Agreement, an amount calculated in accordance with clause [•];

(c) in respect of any other Secured Liabilities, the Equivalent Amount of the outstanding principal amount of such debt on such date in accordance with the relevant Finance Document,

as the case may be, all as most recently certified or notified to the Security Trustee, where applicable, pursuant to clause [•].

Participating Qualified Secured Creditors means the Qualifying Secured Creditors which participate in a vote on any Enforcement Instruction Notice.

Permitted Hedge Termination means the termination of a Hedging Agreement permitted in accordance with the provisions of the Hedging Policy.

Qualifying Secured Creditors means [•].

Qualifying Senior Debt means the aggregate of:

(a) [*senior debt*]; and

(b) [*hedging agreements*].

Quorum Requirement is defined in clause 5.2 (Quorum and voting requirements in respect of an Enforcement Instruction Notice).

Party means a party to this Agreement.

Receiver means any receiver, manager or administrative receiver in respect of the whole or any part of the Security.

Related Fund in relation to a fund (the **first fund**), means:

(a) a fund which is managed or advised by the same investment manager or investment adviser as the first fund; or

(b) if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

Relevant Obligations has the meaning given to it in Clause 3.5 (Procedure for assignment or transfer).

Secured Creditor Representatives means [*representative of each creditor group*].

Secured Creditors means [•].

Secured Debt means [•].

Secured Liabilities means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Secured Creditor under each Finance Document to which such Obligor is a party.

Security Agent means [*the party acting as security agent*].

Security Group means Holdco and each of its Subsidiaries.

Security Group Agent means [*the party acting as security group agent*].

Security Interest means a mortgage, charge, pledge, lien, assignment by way of security, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

Security Trustee means [•] or any successor appointed as security trustee.

Senior Debt means any financial accommodation that is to be treated as Senior Debt and includes:

(a) [*senior debt – bond and loan format, private or public and related hedging*]; and

(b) any further debt incurred which ranks pari passu with the debt specified in (a) above,

excluding any Liabilities under any Liquidity Facility.

Subsidiary means:

(a) a subsidiary within the meaning of section 1159 of the Companies Act 2006; and

(b) a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

TARGET Day means any day on which TARGET2 is open for the settlement of payments in euro.

Transaction Security means the Security Interest created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

Transaction Security Documents means each of the documents listed as being a Transaction Security Document in [•] together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

Transfer Certificate means a certificate substantially in the form set out in Schedule [•] with any amendments which the Agent may approve or reasonably require or any other form agreed between the Agent and the Company.

Transfer Date means, in relation to an assignment or a transfer, the later of:

(c) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

(d) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

Unpaid Sum means any sum due and payable but unpaid by an Obligor under the Finance Documents.

Voted Qualifying Debt means in respect of an Enforcement Instruction Notice, the Outstanding Principal Amount (in the case of Bonds, for the time being outstanding) actually voted thereon by the Qualifying Secured Creditors.

2. PREPAYMENT PROTECTION

Make Whole Fee means, in respect of any Relevant Prepayment, the excess (if any) of:

(a) the sum of the then present value of each scheduled payment of interest and principal to the extent applicable to the amount of the Called Principal during the period commencing on the day immediately following the date of that Relevant Prepayment and ending on the Final Maturity Date on the assumption that all Interest Periods in relation to that Called Principal have a duration of three Months and no repayment or prepayment is made in respect of that Called Principal; over

(b) the amount of the Called Principal,

where the present value referred to in (a) is calculated by discounting the amount each such scheduled interest and principal in accordance with accepted financial practice at the time of calculation at a discount factor (applied on the same periodic basis as that on which interest is payable) equal to the applicable Reinvestment Yield.

Reinvestment Yield means, in respect of any Loan, the sum of:

(a) the Bund Rate; and

(b) 0.[•]%

Called Principal means [•].

Final Maturity Date means [•].

Bund Rate means, with respect to a Reference Date, the rate per annum equal to the equivalent yield to maturity as at such date of the Comparable German Bund Issue, assuming a price for the Comparable German Bund Issue (expressed as a percentage of its principal amount) equal to the Comparable German Bund Price on such date of determination.

Comparable German Bund Issue means the German Bundesanleihe security selected by any Reference German Bund Dealer as having an actual or interpolated maturity comparable to the outstanding average life of the Loan that would be utilised, at the time of selection and in accordance with customary financial practice, in pricing new issues of euro-denominated corporate debt securities of such maturity in a principal amount approximately equal to the Called Principal provided, however, that if the outstanding average life is less than one year, a maturity of one year shall be used.

Comparable German Bund Price means, with respect to any relevant date, the average of all Reference German Bund Dealer Quotations for such date (which, in any event, must include at least two such quotations), after excluding the highest and lowest such Reference German Bund Dealer Quotations or, if the Agent obtains fewer than four such Reference German Bund Dealer Quotations, the average of all such quotations.

Reference Date means the date which is three Business Days prior to the date of the Relevant Prepayment.

Reference German Bund Dealer means any dealer of German Bundesanleihe securities selected by the Agent (in consultation with the Security Group Agent and the Lenders).

Reference German Bund Dealer Quotation means, with respect to each Reference German Bund Dealer and any relevant date, the average as determined by the Agent of the bid and offered prices for the Comparable German Bund Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Agent by such Reference German Bund Dealer at or about 3.30 p.m. (Frankfurt time) on the Reference Date.

Relevant Prepayment means [*all voluntary prepayments and potentially prepayments for acquisition or insurance proceeds*].

3. TRANSFERABILITY

3.1 Assignments and transfers by the Lenders

Subject to Clause 3, a Lender (**the Existing Lender**) may:

(a) assign any of its rights; or

(b) transfer by assignment and assumption any of its rights and obligations,

under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**).

3.2 Conditions of assignment or transfer

(a) An Existing Lender may make an assignment or transfer in accordance with Clause 3.1 (Assignments and transfers by the Lenders) without the prior written consent of the Company if:

(I) it has consulted with the Company for no more than five Business Days before making such intended transfer or assignment; and

(II) any New Lender is not:

(A) a market competitor of the [Company/Group]; or

(B) a vulture fund or other entity that is engaged solely in the business of acquiring distressed assets,

(III) after such assignment or transfer, the aggregate Commitments of the Existing Lender and its Affiliates immediately after that transfer or assignment is an amount at least equal to €[•] (or its equivalent in another currency) or it is assigning or transferring all its remaining Commitment

unless the assignment or transfer is:

(IV) to another Lender or an Affiliate of a Lender;

(V) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or

(VI) made at a time when an Event of Default is continuing.

(b) An assignment will only be effective on:

(I) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will, in relation to the assigned rights, assume obligations to the other Finance Parties equivalent to those it would have been under if it had been an Original Lender; and

(II) the New Lender entering into the documentation required for it to accede as a party to the [Intercreditor Agreement]; and

(III) performance by the Agent of all necessary "know your customer" checks or other similar checks under any applicable law or regulation in relation to such assignment to a New Lender, the completion of which the Agent must notify to the Existing Lender and the New Lender promptly.

(c) If the consent of the Company is required for any assignment or transfer, the Agent shall not enter into an Assignment Agreement if the Company withholds its consent (irrespective of whether it is being reasonable in withholding that consent).

(d) A transfer or assignment will only be effective if the relevant procedure set out in Clause 3.5 (Procedure for assignment or transfer) is complied with.

(e) If:

(I) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(II) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Company would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under [*clauses dealing with tax gross-up and other indemnities*],

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

(f) Each New Lender, by executing the relevant Assignment Agreement, confirms that:

(I) the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or before the date on which the transfer or assignment becomes effective in accordance with this Agreement; and

(II) it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

3.3 Assignment or transfer fee

Unless the Agent otherwise agrees, a New Lender must on or before the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account), a fee of [•].

3.4 Limitation of responsibility of Existing Lenders

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(I) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

(II) the financial condition of the Company;

(III) the performance and observance by the Company of its obligations under the Finance Documents or any other documents; or

(IV) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that :

(I) has made (and must continue to make) its own independent investigation and assessment of the financial condition and affairs of the Company and its related entities (including the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

(II) will continue to make its own independent appraisal of the creditworthiness of the Company and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

(I) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 1; or

(II) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Company of its obligations under the Finance Documents or otherwise.

3.5 Procedure for assignment or transfer

(a) Subject to the conditions set out in Clause 3.2 (Conditions of assignment or transfer) an assignment or transfer may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

(b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

(c) Subject to Clause 3.8 (Pro rata interest settlement), on the Transfer Date:

(I) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(II) the Existing Lender will be released from the obligations (the **Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(III) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Lenders may utilise procedures other than those set out in this Clause 3.5 to assign their rights under the Finance Documents and the Transaction Security **provided that** they comply with the conditions set out in Clause 3.2 (Conditions of assignment or transfer).

3.6 Copy of Assignment Agreement to the Company

The Agent must, as soon as reasonably practicable after it has executed an Assignment Agreement, send to the Company a copy of that Assignment Agreement.

3.7 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 3, each Lender may without consulting with or obtaining consent from the Company, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

(a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and

(b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security Interest will:

(I) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or

(II) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

3.8 Pro rata interest settlement

If the Agent has notified the Lenders that it is able to distribute interest payments on a **pro rata basis** to Existing Lenders and New Lenders then (in respect of any assignment or transfer pursuant to Clause 3.5 (Procedure for assignment or transfer) the Transfer Date of which, in each case, is after the date of that notification and is not on the last day of an Interest Period):

(a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time will continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and will become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

(b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that:

(I) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

(II) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 3.8 (Pro rata interest settlement), have been payable to it on that date, but after deduction of the Accrued Amounts.

(III) In this Clause 3.8 (Pro rata interest settlement) references to **Interest Periods** will be construed to include a reference to any other period for accrual of fees.

4. INTERCREDITOR ARRANGEMENTS

Simplified priority of payments:

(a) *first, pro rata* and *pari passu*, according to the respective amounts thereof in or towards satisfaction of the fees, costs, charges, liabilities, expenses and other remuneration and indemnity payments (if any) and any other amounts payable by any Obligor to the Security Trustee or any Receiver under any Finance Document;

(b) *second, pro rata* and *pari passu*, according to the respective amounts thereof in or towards satisfaction of the fees, costs, charges, liabilities, expenses and other remuneration and indemnity payments (if any) and any other amounts payable by any Obligor to the Account Bank under the Account Bank Agreement

(c) *third, pro rata* and *pari passu*, according to the respective amounts thereof, the fees, other remuneration, indemnity payments, costs, charges and expenses of [each] Agent;

(d) *fourth, pro rata* and *pari passu*, according to the respective amounts thereof, in or towards satisfaction of:

(I) all amounts of interest, underwriting and commitment commissions payable under any Facility Agreement; and

(II) all scheduled amounts (other than principal exchange amounts, termination payments, final payments on cross-currency swaps, accretion and other pay as you go payments) payable to each Hedge Counterparty under any Interest Rate Hedging Agreement;

(e) *fifth, pro rata* and *pari passu*, according to the respective amounts thereof, in each case without double counting, in or towards satisfaction of:

(I) all amounts of principal and any Make-Whole Amount due or overdue in respect of Secured Debt outstanding under any Facility Agreement; and

(II) all scheduled principal exchange amounts, termination payments, or other unscheduled sums due and payable by the Company to each Hedge Counterparty under any Interest Rate Hedging Agreement;

(f) *sixth, pro rata* and *pari passu* according to the respective amounts thereof, in or towards satisfaction of all amounts due or overdue to any Cross-Currency Hedge Counterparty under any Hedging Agreement;

(g) *eighth*, any surplus (if any) shall be available to the Company entitled thereto to deal with as it sees fit.

5. ENFORCEMENT

5.1 Enforcement Instructions

At any time at which the Security Trustee has actual notice of the occurrence of an Event of Default, it shall promptly request by notice (an **Enforcement Instruction Notice**) an instruction from the Qualifying Secured Creditors (through their Secured Creditor Representatives) as to whether the Security Trustee should:

(a) deliver an Enforcement Notice to enforce all or any part of the Transaction Security or to take any other Enforcement Action; and

(b) (after the delivery of an Enforcement Notice) or the taking of any other Enforcement Action deliver an Acceleration Notice to accelerate all of the obligations secured under the Transaction Security.

5.2 Quorum and voting requirements in respect of an Enforcement Instruction Notice

(a) the Decision Period shall be [fifteen] Business Days from the date of delivery of the Enforcement Instruction Notice;

(b) the Quorum Requirement shall be one or more Participating Qualifying Secured Creditors representing, in aggregate, at least [50][4]% of the aggregate Outstanding Principal Amount of all Qualifying Senior Debt;

(c) the majority required to pass the resolution shall be the Participating Qualifying Secured Creditors on a euro for euro basis representing at least the [66.67][5]% of the Outstanding Principal Amount of all Voted Qualifying Debt; and

(d) as soon as the Security Trustee has received votes in favour of a resolution comprised in an Enforcement Instruction Notice from the Participating Qualifying Secured Creditors representing more than the relevant majority referred to in paragraph (c) above of all Qualifying Senior Debt, no further votes will be counted by the Security Trustee or taken into account notwithstanding the fact that the Security Trustee has yet to receive votes from all Qualifying Secured Creditors (through their Secured Creditor Representatives) in respect of the relevant Qualifying Senior Debt.

5.3 Enforcement through Security Agent only

The Secured Creditors shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Transaction Security Documents except through the Security Trustee.

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[4] Level may be stepped down over time from occurrence of Event of Default.

[5] Level may be stepped down over time from occurrence of Event of Default.

Annex 3: Administration and arbitration

THE NEED FOR A GLOBAL INFRASTRUCTURE ASSET CLASS: HARMONISING DISPUTE RESOLUTION AND TRUST ADMINISTRATION.

Aligning the interests of key stakeholders within a project finance transaction is crucial in order to minimise the risk of contract breaches, government interferences or operational issues. However, should a dispute still evolve, a sensible resolution mechanism and transparent ex-ante disclosure thereof is needed.

1. BEST PRACTICES

A. Dispute Resolution

- It is recommended to move towards a standardised dispute resolution practice across EU Member States (e.g. having a dedicated European court for appeal)
- International arbitration can be recommended – not only for disputes taking place on concession level, but also between lenders and other contractors, including the government
- The inclusion of a standardised dispute resolution clause into the infrastructure debt terms can be recommended in order to provide sufficient transparency to debt holders
- The broad establishment of Bilateral Investment Treaties (BITs) can be recommended to protect investors against government interference. In Europe, BITs have to be aligned with EU law, thus making them compatible with the EU single market idea

B. Administration of the Trust and legal/institutional environment

The role of a project finance trustee (i.e. the Agent acting on behalf of the Lenders) should be outlined in a standardised format in the financing agreements and focus on:

- Security: Harmonised disclosure to infrastructure debt investors on security/collateral management. Recourse on current and future income streams as a standard, potential recourse to government-possessed assets, bank accounts etc. Disclosure on trustee role related to hedging activity
- Guarantees: Harmonised disclosure of any form of government guarantees. Ex-ante definition of the distribution of risks (and involvement of the trustee) in case of unforeseen events such as regulatory changes
- Administration: i) distributing information provided by the borrower, external consultants, ii) managing storage of project documentation, iii) coordinate decision making processes (e.g. consent requirement, amendments to the indenture etc.), iv) sourcing the funds for interest and principal payment, responsibilities in event of default and v) operation of project accounts

2. THE NEED FOR STANDARDISED REPORTING ON DISPUTE RESOLUTION MECHANISM

The exposure of infrastructure investors to unexpected circumstances, legal systems, government interference, complex contractual agreements, a broad range of different parties involved and regulatory regimes makes them prone to arising disputes. Initially, aligning the interests of all involved parties provides the best protection against such risks. However, should a dispute still evolve, a sensible resolution mechanism and transparent disclosure thereof is needed.

Dispute resolution can relate to the various contracts (and breeches thereof) between the involved parties, but also to sudden changes in government taxes or tariffs that significantly impact the future cash flows of a specific project. Moreover, disputes can also arise out of involved insurance contacts, such as political risk insurance[6].

As such, having transparent, simple and standardised disclosure requirements for a sensible Dispute Resolution Mechanism (DRM) would improve transparency for investors.
A range of dispute resolution mechanisms exist:

I) National court system
II) Arbitration: Domestic or international
III) High level negotiations
IV) Mediation
V) Amicable settlement, mediation and conciliation (trust and partnership)
VI) Independent Expert determination

[6] See Kantor, quoted in NYU Journal of Law & Business, 2013, *Multi-party arbitration issues in international project finance arbitration.* Quote: "First, it is market practice in political risk insurance policies and guarantees to provide the disputes between the insurer and the insured are resolved through arbitration."

A related form of risk mitigation against government interference that results in a weakening of investor rights are Bilateral Investment Treaties (BITs). Those "require the host state to accord foreign investments [...] fair and equitable treatment, and to pay compensation in the event of expropriation. Crucially, BITs provide that the investor may bring independent international arbitration against the host state for violation of its BIT obligations."[7] Currently, there are around 190 intra-EU BITs[8]. It is thus of crucial importance to make them compatible with EU legislation and thus the single market idea.

Harmonising disclosure practice on dispute resolution with clarity around existing BITs, the place of any possible dispute negotiation, the selection process of involved parties (i.e. judges or arbitrators) and the governing law would be needed[9] to move towards an infrastructure asset class for both developed and emerging countries. The dispute resolution mechanism here refers to the operational phase of infrastructure projects (where most institutional investors are interested in), and not to the initial stage of procurement where projects might be challenged before start of construction (e.g. land acquisition, environmental clearance etc.).

In Europe, a standardised EU-wide dispute resolution practice could be based on a dedicated European court for appeal.

See annex A. for a dispute resolution clause template to be included into the documentation.

3. ARBITRATION

Though arbitration has not typically been used by investors (rather NY or English courts), it has become more and more important. In developing countries, arbitration has been particularly important for the underlying commercial contracts (i.e. the concession agreement) within the project structure.

Arbitration can be defined as follows (source World Bank):

"It is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons (the 'arbitrators' or 'arbitral tribunal'), by whose decision (the 'award') they agree to be bound."

International arbitration can provide unbiased decisions if other forms of dispute resolution like mediation, independent expert determination or high-level negotiations do not lead to a meaningful result. Specifically in developing markets where there is often not much clarity about national jurisdiction processes, international arbitration can be superior to decisions taken by judges. This would go hand in hand with infrastructure debt working under international law, preventing disputes to be resolved within the host country. Because it brings the risk of local courts overruling or refusing the enforcement of a foreign arbitral award, it is crucial to bind the debt securities to New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (CREFAA) as the convention requires the enforcement of foreign arbitration.

The advantages of international arbitration for global investors have been well recognised[10]:

- Given the global nature of infrastructure as an asset class, international arbitration is a suitable form of dispute resolution process
- Neutral and better assurance of fair and competent decisions. Also, it is a private process
- Transparent and more predictable
- Better enforcement thanks to CREFAA or EC Convention on Jurisdiction and the Enforcement of Judgment in Civil and Commercial Matters
- Flexibility as to multi-party disputes
- Quicker than judge decisions

4. ADMINISTRATION OF THE TRUST AND LEGAL/INSTITUTIONAL ENVIRONMENT

The role of a project finance trustee (i.e. the Agent acting on behalf of the Lenders) and the legal/institutional environment should be outlined in a standardised format in the financing agreements and focus on:

- **Description of the Trustee role:**
  - Description of project documentation storage
  - Description of information distribution from borrower, external consultants etc.
  - Description of the trust account and reinvestment of proceeds from debt security sale
  - Sources of funds for payment of interest and net principal
  - Trustee coordination for decision making (e.g. amendments to the indenture, required consent, responsibility in event of default)
  - Trustee swap agreements or hedging activities

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[7] See Mbeng Mezui and Hundal, African Development Bank 2013, *Structured Finance – conditions for Infrastructure Project Bonds in African Markets*, pp. 178-179

[8] Source: European Commission, October 2014

[9] E.g. see Harisankar & Sreeparvathy, 2013, "Rethinking dispute resolution in public-private partnerships for infrastructure development in India"

[10] E.g. see Dugue, 2000, "Dispute resolution in international project finance transactions", or World Bank, http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-environment/dispute-resolution

- **Legal and institutional enabling environment**
  - Security: Recourse on assets, current and future income streams, bank accounts, shares, insurance policies etc.
  - Step-in rights: Ability of investors to step in when a project is in trouble, agreements between lenders and contractors etc.
  - Form of government guarantees
  - Process upon unforeseen events. Potential compensation payments or insurance agreements related to unforeseen events [such as regulatory changes] that negatively impact the economic viability of the project trust

See Annex B. for a reporting template example.

ANNEX[11]

A. Dispute Resolution

A standardised template for an effective "dispute resolution clause" should include, but not be restricted to, the following elements[12]:

- The agreement is governed by [] law
- Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by judicial dispute resolution [national or international court: ...] or arbitration under the [LCIA or ICSID[13]] Rules.
- The place of dispute resolution shall be [city, country].
- The language of the dispute resolution shall be English.
- There shall be [#] judge[s] or arbitrator[s].
- In case of arbitration the selection of the arbitrators shall be as follows []

B. Administration of the trust and legal/institutional environment

The following example can serve as a template[14]:

- The issuer of the infrastructure debt will enter into the indenture, dated as of the initial issuance date, with [...] as indenture Trustee
- Under the indenture, the issuer will assign and pledge to the indenture trustee for the benefit of the debt holder all of the issuer's right, title, interest and benefit in, to and under:
  - The administration agreement
  - ....
- The issuer will irrevocably deposit the proceeds from the sale of infrastructure debt series into a separate Trust Account [regulated by ...]. The principal portion of the assets held in each Trust Account will be invested in permitted investments in accordance with the terms of the respective trust agreement and be available solely to satisfy any obligations of the issuer to make payments under the indenture in respect of the net principal amount of the respective infrastructure debt class and to [other]
- A notes payment account will be established and maintained with [...]
- The indenture trustee and the paying agent may deduct their own costs, fees and expenses that they may incur upon an event of default under the indenture
- The issuer's sources of funds for the payment of interest will be [...]
- The issuer's sources of funds for the payment of net principal amount will be [...]
- Payment of the net principal amount is effectively senior or subordinated to [...]
- The indenture specifies certain events of default, including:
  - ...
- The issuer and the indenture trustee may also, with the consent of debt holders representing not less than a majority of the net principal amount, by act of such debt holders delivered to the issuer and the indenture trustee, enter into an indenture or supplemental indenture for the purpose of adding any provisions to, or changing any manner or eliminating any of the provisions of, the indenture or modifying in any manner the rights of the debt holders under the indenture; provided that [...]

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[11] Note: The following examples serve for illustration purposes only

[12] E.g. see Pieper, 2014, "Drafting arbitration clauses" or Dugue, 2000, "Dispute resolution in international project finance transactions"

[13] London Court of International Arbitration and International Centre for Settlement of Investment Disputes

[14] Note, existing documents (e.g. infrastructure loan or catastrophe bond) have served as a basis for this example

Annex 4: Third party advisors:

In this section we review our requirements for the due diligence carried out by third party advisors. We focus on four main areas split out into subgroups corresponding to the main risk factors in infrastructure projects. While we aim to provide a general and comprehensive framework we acknowledge that the relevance of the risk factors is project dependent.

1. TECHNICAL DUE DILIGENCE

Subgroup "Construction"

- Summary of the project. What exactly is being built?
- Opinion on the complexity of the construction.
- How many parties are capable carrying out the construction?
- How is the construction organised? How many parties involved in the project company, and if several entities are they joint & several?
- How difficult it is to replace contractors?
- Geological risk assessment.
- Archaeological risk assessment.
- Existing infrastructure assessment (if applicable).
- Land acquisition / expropriation assessment.
- Contractor payment mechanism (milestones, retention etc.).
- Comment on the liquidity damages and the contractor liability cap.

Subgroup "Construction Timeline"

- Is the planned timeline realistic?
- Critical path, key milestones.
- How much room is left for delays? What are the buffers before the project company can terminate the construction contract and before the Authority can terminate the underlying contract / licence / permit?
- What is the consequence of a delay?
- What are the extra costs?
- Are there bottlenecks (i.e. elements where a relatively small delay can lead to significant project delay)?

Subgroup "Costs (Construction and Operation & Maintenance)"

- Feasibility of cost estimates. Not only point estimates but also ranges and/or confidence intervals.
- Historical comparables.
- Breakeven points, i.e. how far can the project exceed budget before financial distress. How likely is this to happen in the opinion of the Technical Advisor?
- What are the most cost sensitive elements? Which elements can possibly jeopardise budget?
- What are the costs of replacing contractors?
- Mitigation measures: reserve account, contingent funding, buffer in cost estimates.

Subgroup "Technology"

- Are there technically challenging elements, unique structures or prototypes?
- How well-established is the technology used? E.g. is it industry standard or the specialty of the contractor? How many contractors can work with this this technology?
- Is there any specific license to use this technology? Is the technology protected by a specific pattern? Is this transferable in case of change of contractor?

- For how long has this technology been used? How many projects are currently operational based on this technology? (Obviously, no exact number is needed for broadly used technology.)
- What is the expected future life of the technology? How likely is it to become obsolete during the lifetime of the project? How quickly does technology change in the given industry?
- How quickly does cost efficiency of the technology used change? I.e. is it to be expected that within a few years the technology used will be considered expensive.
- How can the technology risk impact the project (construction delay, construction cost overrun, lifecycle costs, operation costs, operation revenues...)?
- How is the technology risk mitigated?

Subgroup "Environment"

- Environment risk assessment: existing soil contamination, project impact (air, water, soil, protected / endangered species etc.).
- Impact on local communities, consultation of local communities and their agreement to the project if relevant.
- Is the project compliant with health and safety standards.
- Does the project have all the necessary permits, licences and authorisations.

Subgroup "Operation & Maintenance"

- Comment on the Operation & Maintenance organisation: O&M sub-contractors, is O&M performed by the project company in whole or in part, mandatory sub-contractors etc.
- Comment on the performance risk: penalty regime, threshold for events of default and termination, mitigation etc..
- Interface risk assessment (Construction Contractor and O&M Operator, and among Operators if several of them).
- Assessment of the maintenance reserve account requirement: size and funding mechanism.
- Supply risk assessment: energy, raw material etc.
- Regular O&M and lifecyle risk assessment.
- Sensitivities and breakeven tests.
- Capacity of the project to replace O&M contractors.

Subgroup "Volume and Tariff"

- How do the project revenues depend on the volume of the traffic, passengers, wind etc?
- Are part or all of the project revenues secured by a long term contract ("off-take")?
- How are tariffs defined: regulation, market (merchant projects), contract etc.?
- Does the project benefit from a favourable regulation (e.g. renewable energies)?
- Assessment of the regulation risk.
- What are the estimates for these volumes? Are they realistic/in line with historical performance of comparable projects?
- Key risk factors.
- Sensitivities and breakeven points.
- Can the technology used cope with the expected volumes? Is it the most efficient technology for the expected use?
- What impact does usage have on maintenance costs?
- What impact does usage have on the project's income (i.e. higher volume = higher revenues but also higher maintenance)?

2. LEGAL DUE DILIGENCE

Subgroup "Contractual Framework / Regulation"

- Present and comment on the legal framework applicable to the project: regulation, contractual framework and procurement process.
- Comment on the regulatory risk.
- Does the project have all the necessary permits?
- Comment on [public] procurement law and third party challenge rights.

Subgroup "Financing Structure"

- Present and comment on the financing structure highlighting the unusual features and potential issues (e.g. intercreditor issues, subordination, privileged creditors etc.).
- Tax memorandum.

Subgroup "Covenants/Event of Default"

- What are the main covenants in favour of the debt holders (e.g. min DSCR, LLCR, max gearing, make whole, dividend holdback, put option etc.)?
- What are the most important features in favour of the sponsors (e.g. prepayment option, additional debt issuance, asset sales etc.)?
- What are the EoDs? Are they industry standard? Is there a market standard EoD missing?
- What are the triggers for change of control?

Subgroup "Revenue generation"

- How is the project revenue generated?
- What kind of contracts ensure that the expected revenues are paid if the project performs properly (i.e. government guarantee, off-taker contract, feed-in tariffs etc.)?
- Are the contractual obligations legally sounds? Who is responsible for payments and what are the consequences of non-payment?
- Can the involved parties be replaced?
- Is there any collateral, project bond or other enhancement included in the contracts?

Subgroup "Risk pass through"

- Which risks are passed back-to-back to contractors? E.g. construction, maintenance, operation etc.?
- Which risks are not covered by these contracts?
- Is there a pledge or collateral provided under these contracts and if so, is it market standard?
- Are there any jurisdiction-specific issues that must be taken into account?

Subgroup "Legal Opinions"

- Legal advisors to provide legal opinions as regards validity and enforceability of the various contracts, as well as capacity of the parties / signatories.

3. INSURANCE DUE DILIGENCE

Subgroup "Construction Insurance"

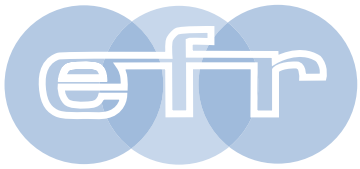
- Comment on the proposed Construction insurance programme for the Construction Contractor and the project company (insured amount, deductibles, exclusions, premium, insurance providers etc.) considering the project characteristics, the regulation and the insurance market.

Subgroup "Operation & Maintenance Insurance"

- Comment the proposed Operation & Maintenance insurance programme for the O&M Contractor and the project company (insured amount, deductibles, exclusions, premium, renewal risk, insurance providers etc.) considering the project characteristics, the regulation and the insurance market.

4. FINANCIAL MODEL AUDIT AND TAX AND ACCOUNTING DUE DILIGENCE

- Confirm the logical integrity, the internal consistency and the arithmetic accuracy of the financial model.
- Confirm compliance of the financial model with the contractual framework and project assumptions.
- Confirm compliance of the project and financial model with applicable accounting and tax standards.



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