Ergun Publication Series: Global Legal Guides

GLOBAL PROJECT FINANCE GUIDE

2026

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Contents

Foreword

In recent years, the global project finance arena has witnessed a notable expansion, with an increasing number of stakeholders -both public and private- entering the market from all corners of the world. This growth has made it ever more essential for professionals to have a solid understanding of international project finance frameworks and practices.

Following the enthusiastic reception of the previous editions of the Global Project Finance Guide, we are pleased to present the third edition of the Guide, which provides the practitioners with a reliable comparative resource covering the legal and regulatory aspects of project finance across jurisdictions.

This new edition maintains the foundational structure of the previous versions, featuring a standardized questionnaire developed by the editorial team and answered by leading legal experts in project finance worldwide. It delivers a clear and structured overview of key legal considerations, including regulatory regimes, security packages, local restrictions, and available incentives in each jurisdiction. Furthermore, building on the success of our previous editions and based on the feedback we have received from our clients, we are proud to have included several new jurisdictions.

Additionally, this edition continues to explore important adjacent topics such as tax implications, environmental regulations, and insurance requirements, each of which plays a pivotal role in the structuring and execution of project finance transactions. Readers will also find detailed sections on PPP frameworks, sovereign immunity issues, and dispute resolution mechanisms, along with insights into current trends and what lies ahead for global project finance markets.

We are sincerely grateful to our contributing authors, whose depth of knowledge and practical experience have been instrumental in producing this edition. Their work ensures that this Guide remains a practical and insightful reference for financiers, sponsors, legal counsel and policy-makers.

We hope this 2026 edition proves to be a valuable companion for all those engaged in the increasingly complex and dynamic world of international project finance.

Dr. Çağdaş Evrim Ergün
Ankara, 2026

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Following are the major legislations:

- The Foreign Exchange Regulation Act, 1947, read with the Guideline for Foreign Exchange Transactions, 2018, regulates the foreign exchange aspects of foreign borrowing;
- The Transfer of Property Act regulates security creation and enforcement issues;
- The Registration Act relates to the perfection of security; and
- The Contract Act in general regulates the rights of the parties to a contract
- The Stamp Act relates to the stamp duty payable on all financial documents, including security.

Following are the relevant treaties to which Bangladesh is a party:

- The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States; and
- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The government of Bangladesh traditionally finances its projects through sovereign loans. However, where a project is implemented through a special project vehicle ("**SPV**"), it may also utilise non-recourse, semi-recourse or recourse financing, as it is allowed by regulation to issue sovereign guarantees to the extent of its shareholding in the SPV. A private finance initiative (PFI) model is adopted for most government projects.

The government has also started to encourage project implementation through the public-private partnership model, whereby the government transfers significant risk to a private company, which must secure recourse or semi-recourse project financing without the government committing to any sovereign obligation to repay the debt. In addition, in appropriate cases, the government also finances projects through either loans issued by government institutions, viability gap financing or transaction advisory assistance.

In the private sector, project finance takes the form of either recourse or non-recourse financing. However, in large projects, lenders will insist on recourse financing where they seek a guarantee from the sponsors.

The local project finance market remains underdeveloped. On a number of occasions, local banks and government institutions such as the Infrastructure Development Company Limited and the Bangladesh Infrastructure Finance Fund Limited have provided debt financing under syndication; but the amounts provided are modest, ranging between USD 100 million and USD 200 million.

However, several multilateral development banks, foreign export-import banks and international commercial banks are active in providing project finance in Bangladesh.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The followings are the most commonly used security types in project financings in Bangladesh:

- Mortgages: These are most commonly used for immovable assets such as land and buildings.
- Fixed and floating charges: Fixed charges grant control over the assets, whereas floating charges allow the charge creator to continue to deal with the assets until crystallisation. Floating charges may be created over a class of assets, including future receivables, inventories or bank accounts.
- Pledge: Movable items and especially shares of the company may be pledged by the shareholders in favour of the lenders.
- Corporate guarantees from shareholders and third parties: Approval from the central bank of Bangladesh is not required when these are issued against foreign borrowing approved by the Bangladesh Investment Development Authority.
- Bank guarantee: This requires separate approval from the central bank.
- Standby letter of credit: These are also issued as security in certain cases.
- Liens: Liens are *stricti juris* and are governed by relevant statutes and ratified conventions. A general lien comprises a property of the debtor in the possession or under the control of the service provider without the right to sell or dispose of that property.
- Demand promissory note: This is an unconditional payment obligation upon demand.
- Assignment of contractual rights: This is very common with the assignment of concession rights.

Mortgages, charges, pledge, sponsor guarantees and assignment of contractual rights are common types of security in project financings in Bangladesh. A second-ranking mortgage can be created under Bangladesh law. The concept of a security trustee is recognised and is commonly adopted in case of syndicated financing involving multiple lenders.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Shares of a company may be pledged as a security to the benefit of lenders as long as specific conditions, if any, incorporated in the Articles of the Company are complied with. There are no further perfection requirements but it is a practice in Bangladesh to obtain standby resolutions from the target company approving the transfer, executed and legalized share transfer instruments and sellers' affidavits along with the deposit of share transfer.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Private sale is recognized as a valid method for the enforcement of share pledge. Generally, the share transfer instrument is deposited without any endorsement but the pledge is recorded in the company statutory share books and a resolution acknowledging the pledge and future transfer upon event of default is issued.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Security interest can be established over future assets, rights and receivables of the borrower by way of executing a floating charge over such future assets of the borrower.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Security agreements are required to be governed by Bangladesh law in order for such security to be eligible for self-help remedies, summary judgment, possession, foreclosure, sale, and priority on insolvency. Self-help remedies may be exercised in the following cases:

- The mortgagee (beneficiary) has the power to sell the mortgaged property where the mortgage is an English mortgage (i.e., where the title is transferred as security with a provision to buy back);
- A power of sale without court intervention is expressly conferred on the mortgagee by the mortgage deed and the mortgagee is the government or a scheduled bank; or
- A power of sale without court intervention is expressly conferred on the mortgagee by the mortgage deed and the mortgaged property.

In addition, as a contingency plan, lenders obtain an irrevocable power of attorney from the borrower to take possession over the secured asset on default without court intervention. Some of these rights are granted to banks and thus banks are frequently engaged as security agents to enforce such securities. The mortgagee or chargee may, at a time after the mortgage money has become due, exercise a foreclosure right to obtain from the court a decree for foreclosure. In addition, the mortgagee may sue the mortgagor if:

- the mortgaged property is wholly or partially destroyed; or
- the security is rendered insufficient and the mortgagee has given the mortgagor a reasonable opportunity to provide further security sufficient to render the whole security sufficient, and the mortgagor has failed to do so.

As stated above, local law governed security agreements such as mortgages, assignment agreements and charges enable the creditor to possess and foreclose the secured asset on its own as far as those rights are granted in the security agreements. Notwithstanding the foregoing, for bank lenders and local financial institution lenders, such self-help remedies have been expressly conferred under the Money Loan Court Act 2003.

Alternatively, a summary procedure may be instituted for foreclosure under the Code of Civil Procedure and the Money Loans Court Act 2003 (only applicable for local banks / financial institutes, foreign banks and multilaterals). The Money Loans Court is a specialized court which deals with borrowers with defaults in repaying loans and the court provides for the summary procedure with otherwise prescribed time frames. In the case of insolvency, secured creditors would always have the first priority among creditors.

As long as there is a claim and such claim is secured, the creditor can exercise self-help remedies or go to courts to bring action under the Civil Procedure Court and / or Money Loan Court Act to enforce the security. If the debtor is a company, it is also possible to bring a winding up suit at the Original Company Jurisdiction of the High Court if the debtor is unable to settle the payment within 21 days of a statutory notice issued under the Companies Act 1994.

Guarantees are required to be filed before either the local courts or nominated arbitral tribunal and thereafter the judgement / award for enforcement is required to be filed with the District Court as the Court of First Instance. The initial lawsuit allows the attachment of assets in relevant cases and administers suit against the guarantor in such a way as if the guarantor is the principal debtor. If there is any underlying dispute, such dispute must be resolved first as per the dispute resolution clause.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Yes, the security trustee concept is enforceable in Bangladesh and such arrangement is frequently adopted.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

In addition, the Government has granted certain incentives and preferential policies to industries considered to be thrust sectors in Bangladesh in form of tax holidays and tax exemptions. Tax holidays are allowed for industrial undertakings and physical infrastructure facilities established between July 1, 2019 and June 30, 2024 in the thrust sector. The thrust sector refers to industries/ industrial sub-sectors that have been able to successfully contribute to the country's industrialisation. In Bangladesh, it is based on developed and underdeveloped areas (*see below*).

Thrust industrial sectors subject to exemption include active pharmaceuticals ingredient, radio pharmaceuticals, automobile manufacturing, barrier contraceptive, rubber latex, chemicals or dyes, basic ingredients of electronic, bi-cycle, bio-fertilizer, biotechnology, boilers, brick made of automatic hybrid Hoffmann kiln or Tunnel Kiln technology, compressors, computer hardware, energy efficient appliances, insecticide or pesticide, petrochemicals, pharmaceuticals, processing of locally produced fruits and vegetables, radio-active application, textile machinery, tissue grafting and tyre manufacturing industries.

Physical infrastructures subject to exemption include deep sea port, elevated expressway, export processing zone,

flyover, gas pipeline, Hi-tech park, ICT village or software technology zone, IT park, large water treatment plant and supply through pipeline, LNG terminal and transmission line, mono-rail, rapid transit, renewable energy, sea or river port, toll road or bridge, underground rail and waste treatment plant.

Industries set up in EPZs and other IPAs are also subject to certain tax holidays as follows:

For independent power plants ("**IPPs**") commencing production before 2023, a tax exemption on income tax is available for 15 years. For independent power plants achieving Commercial Operation Date ("**COD")** after January 1, 2023 (other than coal fired IPPs) there is a:

- 100% tax exemption during the first 5 (five) years.
- 50% exemption during the next 3 (three) years.

Year	Thrust Industries (Developed Areas - Dhaka and Chittagong divisions, excluding Dhaka city, Narayanganj, Gazipur, Chittagong city, Rangamati, Bandarban and Khagrachari districts)	Thrust Industries (Underdeveloped Areas - Rajshahi, Khulna, Sylhet and Brisal and Rangpur divisons and Rangamati, Bandarban and Khagrachari districts)	Physical Infrastructure	Industries set up in EPZ (Dhaka and Chittagong Division excluding hill districts)	Industries set up in EPZ (Other areas)	Developers of Economic Zone (BEZA) and Hi-Tech Park	Industries in BEZA and Hi-Tech Park (subject to paragraph 2.2.4)
1st	90%	90%	90%	100%	100%	100%	100%
2nd	80%	90%	90%	100%	100%	100%	100%
3rd	60%	80%	80%	50%	100%	100%	100%
4th	40%	70%	70%	50%	50%	100%	80%
5th	20%	60%	60%	25%	50%	100%	70%
6th		50%	50%		50%	100%	60%
7th		40%	40%		25%	100%	50%
8th		30%	30%			100%	40%
9thh		20%	20%			100%	30%
10th		10%	10%			100%	30%
11th						70%	
12th						30%	

- 25% exemption during the next 2 (two) years.

For coal fired IPPs contracting with the government before June 30, 2020 and achieving COD before June 30, 2023, there is a 100% tax exemption for the first 15 years. For power projects, no import duty is charged with regard to capital machinery and spares. Also, there is an exemption over registration fees and stamp duty required to be paid for the perfection of any security or immovable property title. Shareholders are exempted from paying capital gain tax from the divestment of their shares in power projects.

Effective from July 2017 the Government has declared a tax exemption for 10 (ten) years for PPP projects for the development of National Highways or Expressways and related Service Roads, Flyovers, Elevated and At-Grade Expressways, River Bridges, Tunnels, River port, Seaport, Airport, Subway, Monorail, Railway, Bus Terminals, Bus Depots, Elderly care home. For selected PPP projects, no import duty is charged in case of capital machinery and spares. Furthermore, all receivables by construction contractors, suppliers, legal service providers and consultancy / supervisory firms attributable to PPP projects have been exempted from paying any VAT. In addition to the above such physical industry is also eligible to the following tax exemptions:

- Tax exemption over tax on capital gain from transfer of shares in such projects for first 10 (ten) years
- Tax exemption over royalties / technical assistance fees for first 10 (ten) years
- Foreign technicians are entitled to get 50% income tax exemption from income tax for the 3 (three) years until fifth anniversary of the **COD** of the project.

Other exemptions include the following:

- **Accelerated depreciation.** Industrial undertakings not enjoying a tax holiday benefit from an accelerated depreciation allowance.
- **Concessionary duty on imported capital machinery.** Import duty, at the rate of 3%, is payable on the value of capital machinery and spares imported for initial installation in the existing industries.
- **Incentives to export oriented industries.** These include:

- businesses exporting 80% or more of goods or services qualify for duty free import of capital machinery and spares, and bonded warehousing;
- bonded warehouse and back-to-back letter of credit facilities;
- 90% loans against letters of credit and funds for export promotion;
- they are allowed domestic market sales of up to 20%;
- cash incentives and export subsidies are granted on the free on-board value (this includes inland freight, export duty and other expenses, but not ocean freight, insurance and consular fees) in the form of drawbacks and rebates on import and excise duties paid on direct inputs and so on;
- for 100% export-oriented industries, no import duty is charged on raw materials.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

In general income tax over interest earning for foreign lenders is exempted for financing in any industrial project or public projects.

- Incentives to foreign investors include:

- 100% foreign ownership and repatriation of invested capital, profit, and dividends;
- re-investment of repatriable dividends as a new investment;
- royalties and technical know-how fees are tax exempted for thrust sectors (*see above, Tax holidays*);
- interest on foreign loans is tax exempted under certain conditions;
- double taxation can be avoided;
- foreign technicians in certain industries are exempted from tax for up to 3 (three) years;
- private sector power generation companies are tax exempted for 15 years;
- capital gains from the transfer of shares of public limited companies are tax exempted;
- new investors are granted 6 (six) month multiple entry visas;
- citizenship by investing USD 500,000 or by transferring USD 1 million (non-repatriable);
- permanent residency by investing USD 75,000 (non-repatriable).

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

All proposals for borrowing from abroad by private sector industrial enterprises (including the concessionaire or the project company) in Bangladesh (including supplier's credits, financial loans from institutions or individuals and debt issues in capital markets abroad) shall require prior authorisation of Bangladesh Investment Development Authority ("**BIDA**"). Accordingly, if the concessionaire or project company wishes to borrow from abroad, the prior authorization of BIDA will be required. In our experience, BIDA approval is always granted for major infrastructure projects supported by the Government and in practice takes about 2 (two) months under normal circumstances.

Applications for foreign loan should comply with the Procedure and Guidelines for Approval of Foreign Private Borrowing ("**Foreign Private Borrowing Guidelines**") issued by Bangladesh Bank and BIDA which set out the eligibility criteria and procedure for obtaining foreign loan. Pursuant to the Foreign Private Borrowing Guidelines, industrial enterprises in the private sector incorporated under the Companies Act 1994 and registered with BIDA are eligible for obtaining foreign borrowing from recognized lenders subject to the approval of Foreign Borrowing Scrutiny Committee. Foreign borrowings refer to commercial loans including financial loans, bank loans, buyer's credit, supplier's credit from institutions or individuals and debt issues in the capital market abroad, etc. The Foreign Private Borrowing Guidelines provide that the borrowers can raise the foreign borrowings from internationally recognized sources

12. Are there any restrictions for foreign investments in your jurisdiction?

In general, there are no restrictions on foreign investors incorporating or acquiring the shares of a company in Bangladesh. The major policy related to foreign investment in Bangladesh is the Bangladesh industrial policy 2016. Foreign and domestic private entities can establish and own, operate, and dispose of interests in most types of business enterprises. Four sectors, however, are reserved for government investment:

- Arms and ammunition and other defense equipment and machinery;
- Forest plantation and mechanized extraction within the bounds of reserved forests;
- Production of nuclear energy; and
- Security printing.

In addition to the four sectors reserved for government investment, there are 17 controlled sectors that require prior clearance/ permission from the respective line ministries/authorities (by way of public procurement or licensing or public private partnership) and indirectly this is being used for a few sectors to maintain Government monopoly such as power (electricity) transmission and distribution. These are:

- Fishing in the deep sea
- Bank/financial institutions in the private sector
- Insurance companies in the private sector
- Generation, supply, and distribution of power in the private sector
- Exploration, extraction, and supply of natural gas/oil
- Exploration, extraction, and supply of coal
- Exploration, extraction, and supply of other mineral resources
- Large-scale infrastructure projects (e.g., flyover, elevated expressway, monorail, economic zone, inland container depot/ container freight station)
- Crude oil refinery (recycling/refining of lube oil used as fuel)
- Medium and large industries using natural gas/condensate and other minerals as raw material
- Telecommunications service (mobile/ cellular and land phone)
- Satellite channels
- Cargo/passenger aviation
- Sea-bound ship transport
- Seaports/deep seaports
- VOIP/IP telephone
- Industries using heavy minerals accumulated from sea beaches

While discrimination against foreign investors is not widespread, the government frequently promotes local industries and some discriminatory policies and regulations exist. For example, the government requires majority or more than majority local ownership of new shipping, logistics, freight forwarding, banking and insurance etc. companies, albeit with exemptions for existing foreign-owned firms, following a prime ministerial directive.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

The debt-equity ratio of the borrowing enterprise should reflect sufficient equity stake of the entrepreneurs, with moderate rather than high leveraging and also that while relatively higher debt levels may be warranted for long gestation infrastructure projects, total debt including the proposed borrowing should not breach 70:30 debt equity ratio even for these projects (In some concession agreements it has been raised to 80:20 based on clearance from Bangladesh Bank).

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In the foreign borrowing approval provided by the issuing authorities such as BIDA, it is a precondition to file the executed finance documents with such authorities within 30 days of execution followed by regular reporting of the disbursements and repayment position to such authority and the central bank. In addition, below are the perfection requirements for the underlying securities:

Security Name	Eligible Assets	Statutory requirements	Perfection
Mortgage	Real Assets	▪ Created under Chapter IV of the Transfer of Property Act 1882 by way of executing a mortgage deed along with an Irrevocable General Power of Attorney ("IGPOA"). ▪ Must be governed by Bangladesh law to be treated as security to have the right of foreclosure and statutory priority over company assets upon liquidation ▪ Self-help remedies available only if expressly provided in the mortgage deed	▪ Payment of stamp duty[1] ▪ Payment of registration fees (0.1% of secured value) and registration with Office of Sub-Registrar within 90 days of execution ▪ In case of company mortgagor, perfection as a charge with Registrar of Joint Stock Companies and firms within 21 days by paying the applicable registration fees[2]
Hypothecation	Movable assets (present and future) (including bank accounts)	▪ Created under Section 159 of the Companies Act 1994 by way of executing a deed of hypothecation (can be fixed or floating, or both) along with a IGPOA ▪ Must be governed by Bangladesh law to be treated as security to have the right of foreclosure and statutory priority over company assets upon liquidation ▪ Self-help remedies available only if expressly provided in the deed	▪ Payment of stamp duty of BDT300, ▪ In case of a company mortgagor, perfection as a charge with Registrar of Joint Stock Companies and firms within 21 days by paying registration fees[3]
Assignment Agreement	Contractual rights / receivables	▪ Created under Section 8 of the Transfer of Property Act 1882 by way of executing an Assignment Agreement with an IGPOA ▪ Must be governed by Bangladesh law to be treated as security to have the right of foreclosure and statutory priority over company assets upon liquidation ▪ Self-help remedies available only if expressly provided in the agreement	▪ Payment of stamp duty [4] ▪ No other perfection formalities other than acknowledgment from the contract counterparty ▪ Registration is optional but recommended

1 5000 Taka for the first One crore Taka and for the remainder of the loan amount an additional duty at the rate of 0.1% of the remainder amount but not exceeding 5 (Five) crore Taka.

2 Secured Amount up to BDT5,00,000.00 registration fee is BDT250.00, additional for every BDT5,00,000.00 or part after the first BDT5,00,000.00 up to 50,00,000.00 – BDT 200.00. Additional for every BDT5,00,000.00 or part after the first 50,00,000.00 – BDT100.

3 Secured Amount up to BDT5,00,000.00 registration fee is BDT250.00, additional for every BDT5,00,000.00 or part after the first BDT5,00,000.00 up to 50,00,000.00 – BDT 200.00. Additional for every BDT5,00,000.00 or part after the first 50,00,000.00 – BDT100.

4 5000 Taka for the first One crore Taka and for the remainder of the loan amount an additional duty at the rate of 0.1% of the remainder amount but not exceeding 5 (Five) crore Taka.

Security Name	Eligible Assets	Statutory requirements	Perfection
Pledge (bailment of goods can also be done in form of lien in favour of bankers, lawyers and so on)	Movables or valuables when possession is delivered	▪ Created under Section 172 of the Contract Act 1872 by way of executing a pledge agreement along with an IGPOA ▪ Must be governed by Bangladesh law to be treated as security to have the right of foreclosure and statutory priority over company assets upon liquidation ▪ Self-help remedies available only if expressly provided in the deed	▪ Payment of stamp duty ▪ Marketable Securities (shares / bonds / debentures etc.) – exempted ▪ Other title deeds and movable assets – 0.5% of secured value ▪ No other perfection formalities ▪ Registration is optional but recommended
Guarantee	Unconditional promise to pay	▪ Created under Chapter VIII of the Contract Act 1872 by way of executing a guarantee agreement.	▪ Payment of stamp duty of BDT300 ▪ No other perfection formalities ▪ Registration is optional but recommended
Demand Promissory Note ("DPN")	Negotiable instrument	▪ Created under Section 4 of the Negotiable Instruments Act 1881 by way of executing a DPN.	▪ Payment of stamp duty of BDT50 ▪ No other perfection formalities

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Local insurance policies are required to be governed by Bangladesh laws.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Insurance proceeds under the insurance and reinsurance policies may be assigned to the benefit of the lenders as long as such borrowing is as per the borrowing guidelines and appropriate approval, as relevant.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

Insurances must be obtained from local insurers as long as relevant insurance products are available in Bangladesh. However, for public properties insurance must be obtained from state owned insurance companies which is shared between state owned and other group of local insurers 50:50 basis.

The Insurance Corporations Act, 2019 defines "public property" as:

(a) any kind of moveable or immoveable property which belongs to direct control or protection of the Government and the legal responsibility of maintenance which is to the Government;

(b) property vested to the Government or any local authority;

(c) any company, firm, institution, organisation, enterprise or any other establishment which is managed or controlled by the Government or a local authority, or in which the Government,

by itself or jointly with a local authority or a company, holds a financial share or interest or any company guaranteed by the Government to finance;

(d) any project operated by the foreign loan or financial aid guaranteed by the Government; or

(e) any other property determined by the Government.

However, reinsurance by foreign insurers is allowed.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, PPP is a permitted method of developing projects in Bangladesh as per the PPP Act, 2015 and a number of PPP projects have been developed in energy, toll road, LNG terminal and port sector.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between the public authorities and the Lenders are permissible under the local law and are commonly seen in the project finance market in Bangladesh for large scale infrastructure projects.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Unless the project company is fully or partially owned by the government, no such government supports (including treasury guarantee, debt assumption etc.) are available in Bangladesh. Government only issues guarantee in favor of lenders in proportion to its shareholding in the project company.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Political risk events usually under the responsibility of the public party and the risk is shared between the public and private parties under the PPP agreements.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Yes, PPP Agreements in Bangladesh include protection against change in laws passed subsequent to the signing of the relevant concession agreement.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is not specifically regulated under the local legislation; however, it is somehow covered within the terms related to "impossibility to perform a contract" under the Contract Act, 1872. PPP Agreements in Bangladesh include protection against force majeure under relevant concession agreement.

24. What are the general environmental and social requirements in project financings?

There are no express general environmental and social requirements in project financings in Bangladesh. However, industries in Bangladesh need to obtain environmental clearances from Department of Environmental of Bangladesh. The environmental laws of Bangladesh consist of the Environmental Policy, 1992 and the Bangladesh Environment Conservation

Act, 1995 ("**ECA**") read in conjunction with the Environment Conservation Rules, 1997 (**ECR**). Department of Environment ("**DOE**") is empowered to (i) formulate the environmental quality standards and pollutant discharge standards of Bangladesh; and (ii) issue an environmental clearance certificate. The local government authorities have been empowered with the function to issue no objection certificates, based on their own evaluations, which are prerequisites to obtain the final environmental clearances from the DOE. The Environmental Policy, 1992 sets out policies for various sectors including the industrial sector. Under the ECA, an industrial unit or project cannot be established or undertaken without obtaining an Environmental Clearance Certificate ("**ECC**") from the DOE. Accordingly, any industrial project (including power projects) must obtain an ECC from the DOE prior to the commencement of construction of its project.

Acquisition & Requisition of Immovable Property Act, 2017 ("**ARIP**"). ARIP requires that compensation be paid for (i) land and assets permanently acquired (including standing crops, trees, houses); (ii) any other damages over property or earnings caused by such acquisition, (iii) any other damages due to partition of any property caused by such acquisition and (iv) reasonable cost to move residence or business. However, ARIP does not deal with social and economic impacts as a consequence of land acquisition directly. For instance, it does not cover project-displaced persons without titles such as informal settlers (squatters), occupiers, and informal tenants and leaseholders (without registration documents). However, ARIP without any express mechanism, allows for the resettlement of affected households and businesses or any assistance for restoration of livelihoods of the displaced persons.

Generally, the acquiring entity under such circumstances forms a Rehabilitation Action Plan (**RAP**) to work with local non-governmental organizations to perform such rehabilitation.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Bangladesh courts uphold a choice of foreign law and party autonomy as agreed between the parties when entering into the contract. It was decided in PLD 1964 Dacca 637, that when the intention of the parties to a contract is expressed in words, this express intention determines the proper law of the contract and overrides every presumption. A share purchase agreement can provide for a foreign governing law if the parties agree to it. In practice, if all the parties to the agreement are Bangladeshi, Bangladesh law is adopted as the governing law. Waiver of immunity provisions are enforceable in Bangladesh.

26. Can financing documents provide for arbitration clauses?

Yes, arbitration clauses are legally permissible and generally included in financing documents. Bangladesh arbitration law permits enforcement of foreign arbitral awards in Bangladesh. Parties can also agree to waive certain rights under the Arbitration Act.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

Currently, most foreign direct investment is targeted at power and infrastructure projects. Infrastructure development is now at its peak as Bangladesh transitions towards becoming a developing economy.

This means that increasing numbers of investment and project finance opportunities should become available in the market.

The local regulatory regime is quite lender friendly and the trends show an increase in the number and value of transactions.

28. Are any significant development or change expected in the near future in the project finance market?

The project financing regime in Bangladesh seems stable and there have not been any recent changes or developments in project financing market. No new developments are anticipated in the next 12 months.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

The alternative reference interest rates which are being commonly used in Bangladesh during the LIBOR transition period is SOFR.

BOSNIA AND HERZEGOVINA

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The main laws pertaining to the procedures of project financing are:

- The Law on Financing the Institutions of Bosnia and Herzegovina;
- Public Procurement Law of Bosnia and Herzegovina ("**BH**");
- The Law on the Political Aspects of Foreign Investments of BH;
- The Law on Foreign Investments of Republika Srpska ("**RS**");
- The Law on Foreign Investments of Federation of Bosnia and Herzegovina ("**FBH**")
- Company Law RS;
- Company Law FBH;

The said laws are compatible with the following EU directives: 77/62/EEC, 80/767/EEC, 88/295/EEC, 93/36/EEC, 71/305/EEC, 89/440/EEC, 93/37/EEC, 92/50/EEC, 89/665/EEC, 2007/66/EC, 90/531/EEC, 93/38/EEC, 98/4/EC, 2004/18/EC, 97/52/EC, 25/2014/EU, 24/2014/EU

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The finance market is growing and it attained a considerable degree of maturity. Some of the more prominent projects include: Wind Parks Slovinj of 130 MW and Dzeva of 46 MW and Railway Track Overhaul, with a joint value of almost 200 million EUR.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

There are 3 (three) types of security used by financial institutions when financing a debtor: pledge, mortgage and bill of exchange.

a) A pledge is valid and enforceable if it has been duly registered with the electronic Pledge Register of Bosnia and Herzegovina, based on a valid pledge agreement defining the claim, and if the pledge debtor has been duly informed of the pledge establishment by delivery of the registration certificate within 8 days upon the pledge registration. The legal nature of the pledge is such that it serves well as an executive title for claim enforcement. Namely, the certificate of pledge registration issued by the Pledge Register is an executive title on its own, under the condition that it is accompanied with a valid pledge agreement, and evidence of the debtor's default, such as a simple statement of the creditor. Based on these documents, an executive proceeding can be initiated over the pledged assets.

b) Mortgage represents a classical security instrument in rem, establishing an enforcement title over a property, regardless of its owner. The first and foremost condition for the legal validity of a mortgage is its due registration with the locally competent land register, whereby the decision on mortgage registration is constitutive by its virtue. A mortgage does not legally exist before its entry into the burden section of the respective land register sheet. Such mortgage registration is possible only based on a mortgage agreement, processed in the form of a notarial deed by a Bosnia notary public or a lawyer, in local language. The sole exception to this formal rule is the so-called legal mortgage, i.e., a mortgage established in favour of the tax authorities, securing a tax or social contribution debt, based on an administrative decision of the respective taxing authority. The mortgage agreement, and the mortgage entry itself, must contain at least these 3 (three) elements: the secured party (mortgagee), the amount of the secured claim (at least an indicative or maximum amount) and the legal basis of the secured claim (such as a loan agreement). Financial institutions usually also include the details of the charged interest (interest rate, calculation mechanism, etc.) as well as the maturity date. As a general rule, mortgages are registered by the temporal order of the submission of their respective registration applications, meaning that multiple mortgages may be registered on the same day, whereby their priority depends on the exact hour and minute of the application having been filed. However, parties are entitled to dispose with the mortgage ranking, whereby two creditors may agree to swap their ranking positions. If there are other creditors of lower ranking, their consent is required for such a swap. In any case, the consent of the debtor (mortgagor) is also required.

c) A bill of exchange is not a formal security instrument, but merely a payment instrument, constituting a payment order of the issuer in favour of the holder or recipient. However, in practice bills of exchange are commonly used as a de facto security instrument, usually in the form of a blank (bianco) bill of exchange. In this respect, there are two kinds of bill of exchange which are most often used in practice: the said blank bill of exchange and the common bill of exchange. Both types of bills of exchange are similar in content, because, in the end, they must have all the required elements in order to be legally valid as an instrument of insurance or payment.

The common, out-of-court collection of the bill of exchanges starts by submitting a request to the commercial bank for payment with whom the issuer has a bank account. If the issuer of the bill of exchange disposes with sufficient funds, the bank will perform the payment in accordance with the bill of exchange, and the collection process is successfully completed. However, if the issuer does not dispose with sufficient funds, which is more common, the issuer will be unable to effectuate the collection, and will have to submit a protest to the competent court. There is an obligation of the creditor to protest the bill of exchange with the competent court before starting the enforcement procedure, whereby this must be done within 2 (two) working days from the maturity date.

A protested bill of exchange represents a direct enforcement title and the legal basis to initiate an enforcement proceeding against the issuer, over any and all of its assets.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

A debtor may pledge its shares in a limited liability company using the Pledge Register of Bosnia and Herzegovina, whereby it is recommendable to conclude such a share pledge agreement in the form of a notarial deed processed by a local notary public due to differing practice of Bosnian courts regarding the form of the share pledge agreement.

The procedure for establishing a pledge on shares in a limited liability company is possible and it is quite simplified considering that the Register of Pledges of Bosnia and Herzegovina has enabled online registration. According to the Framework Law on Pledges, a pledge on shares in a limited liability company occurs when the following conditions are met, regardless of the order in which they are met:

- that there is a registration in the Pledge Register that specifically refers to that pledge
- that the parties have concluded a pledge agreement
- that the pledgor is the owner of the thing pledged for the purpose of insurance
- that the pledgee, or third party in accordance with the pledge agreement, has given or is obliged to give credit to the pledgor

In terms of performing the registration of a pledge, this can be performed by any person with access to the electronic Pledge Register, while the fees related to the registration are charged immediately to the user account of the person performing the registration based on a fixed fee tariff of the Ministry of Justice of Bosnia and Herzegovina. The registration itself can be made for a limited period of time, such as 3 (three) or 5 (five) years, or without time limitation. Any and all potential changes to the pledge registration, including its erasure, can only be performed by the person who has performed the original registration in the first place.

If the pledge is being established over stocks in a joint stock company, such a pledge must be duly registered with the locally competent Securities Register, based on a stock pledge agreement executed in the form of a notarial deed processed by a local notary public, in local language.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

The share pledge does not grant the creditor (the pledgee) the right to directly take over the ownership over such share. Also, the private sale is not possible as a method of the enforcement of the share pledge. Instead, the sale of the pledged shares or stocks is performed through court, in an enforcement proceeding, and through either a public auction (for shares in an LLC) or a licensed stock market broker (for stocks in a JSC).

All restrictions over disposal and the rights pertaining to the shares are inscribed into the Book of Shares (for limited liability companies) or Securities Registry (for joint stock companies).

6. Can security interest be established over future assets, rights and receivables of the borrower?

In addition to movable and immovable assets, the pledge can also be established on claims/receivables and rights of the borrower. In order to acquire a pledge on a receivable, the debtor must be notified in writing of the concluded pledge agreement, and the pledgor is obliged to hand over to the pledgee a document on the pledged receivable. In addition to receivables, other rights can also be pledged, such as copyright, patent rights, license rights, etc. These rights must have a property character, must be independent and transferable to a third party and therefore, personal property rights cannot be pledged.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Under the provisions of bankruptcy laws, upon the instituting of bankruptcy proceeding creditors are no longer authorized to request enforcement or security over the bankruptcy mass of the debtor, whereby all enforcement proceedings that have been ongoing at the moment of instituting bankruptcy shall be terminated. However, registered pledgees are entitled to request and/or continue the enforcement over pledged assets, which are separated from the rest of the bankruptcy mass.

It is also important to note that, under the aforementioned provisions, the court may suspend further enforcement even over pledged assets, if the bankruptcy administrator *"ensures the appropriate protection of the pledgee's claim"*, whereby the appropriate protection is defined as *"the protection recognized by the court, with the value of the guarantee being sufficient so that the suspension of enforcement does not create damage to the creditor in any way"*. The court practice in relation to this unclear legal provision is sometimes abusive, preventing the pledgees from collecting their claim, while at the same time not having any real use for the guarantee of the pledgor, as the bankruptcy proceedings usually take several years (sometimes more than 10 (ten)) to complete.

One important consequence of a bankruptcy proceeding being instituted over the pledgor is that all pledges established over the assets of the company undergoing bankruptcy during the last 60 days (in FBH) or 90 days (in RS) prior to the application for bankruptcy, cease to exist, i.e., are void. Therefore, it is always recommendable to perform a legal and financial due diligence of the pledgor, prior to entering into the pledge agreement.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The concept of a security trustee is not regulated by the laws of Bosnia and

Herzegovina, however, in practice so far, we have encountered the above-mentioned concept, which did not cause any legal obstacles.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Please refer to the answer to question 10.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Incentives and exemptions are provided for in the context of foreign investments. The main incentives for foreign investors relate to tax exemptions. Therefore, foreign investment will be exempted from paying import taxes. Foreign investment also may be exempted from other tax dues in line with the principle of equal treatment of domestic and foreign investors and of stimulating foreign investments.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

The general restriction is that only local currency (BAM) can be used in internal payment transactions. Under B&H financial regulation, foreign currency shareholder loans are defined as credit agreements. Crediting in foreign currency is allowed in the B&H, but under the condition that the both payment and collection transactions are being made in local currency.

12. Are there any restrictions for foreign investments in your jurisdiction?

There are certain sectors where foreign investments are restricted. In RS, those sectors include ammunition, weapons, explosives for military use and military equipment and media. Investments in the said sectors shall be carried out only with the consent of the competent ministries. Also, foreign investor's share in the companies that produce weapons, ammunition, explosives for military use, military equipment and provide media support must not exceed 49%. In FBH, only the latter restriction applies.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

The minimum equity requirement in a general sense is not prescribed (in laws or bylaws), but minimal financial requirements may be set on a case-by-case basis.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

Registration and filing for finance documents follow the same procedure as all other types of documentation. The exact finance documents that ought to be submitted will be prescribed on a case-by-case basis.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Yes, under certain terms and conditions stipulated by the local insurance laws. The applicable law applicable to insurance contracts covering risks located in B&H is determined in accordance with the following legal provisions:

a. when the domicile or seat of the insured is in Bosnia and Herzegovina, the applicable law for insurance contracts is the law of Bosnia and Herzegovina. Exceptionally, when this law allows it, the parties will be able to choose the law of another country;

b. when the insured does not have a place of residence or registered office in B&H, the parties to the insurance contract may choose to apply the law of the country where the insured has a place of residence or registered office;

c. when the insured is engaged in a commercial or industrial activity or performs a professional activity independently and when the contract covers two or more risks related to those activities and located in B&H and other countries, the freedom to choose the law governing the contract extends to the rights of those countries, depending on where the insured has his residence or headquarters;

d. the fact that in the above-mentioned cases, the contracting parties have chosen a law that is not the law of B&H, does not exclude the application of the mandatory legal regulations of B&H or its entities when all other factors relevant to the situation at the time of choosing the applicable law are related to them;

e. the choice of applicable law must be expressed or shown with certainty in the terms of the contract or the circumstances of the case. If this is not the case or if no choice is made, the contract is applied by Bosnia and Herzegovina or the country with which the contract is most closely related, taking into account the above rules. Exceptionally, the law of that country can exceptionally be applied to a special part of the contract that is more closely related to another country. There is a rebuttable presumption that the contract is most closely related to the country in which the risk is located.

The choice of applicable law cannot limit the application in any way mandatory provisions of B&H law, regardless of the law applicable to the contract.

In the case of concluding an insurance contract for compulsory insurance provided for by B&H law, that contract is always subject to B&H law.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes. When approving long-term loans, it can be used as collateral and binding of an insurance policy, i.e., automatically concluding an insurance contract with the loan agreement, where the borrower pays the insurance together with the loan instalment. This way of approving the loan has the result that the lender (e.g., bank), when concluding the loan agreement, ensures that the loan will be properly repaid even in the event of an unplanned adverse event.

The binding of the insurance policy is the assignment of the right to pay the insurance amount to the lender (e.g., bank), in the event of damage, that is, the insured event. This means that, if the insured event occurs, the insurance company will pay the insurance amount to the lender instead of the insured or policyholder. Binding of the insurance policy is done in the case when the insurance policy is an insurance instrument for loan collection.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

It is difficult to determine any complications, concerns or other issues in relation to the insurance provisions since they depend on the concrete project financing documentation. Since project financing documentation can be very complex, it is recommendable to review it prior to determination of the potential specific issues, if any.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, we have adopted Law on PPP on different administrative levels in Bosnia & Herzegovina. On entity level, Law on PPP is adopted in RS. In FBH, which is comprised of 10 cantons as separate administrative units, law on PPP is adopted separately on cantonal level. Lastly, there is a PPP Law for Brčko District, as a separate administrative unit from two entities in BH.

There are more than a few projects in the pipeline for realisation, but to our knowledge, there are no finished PPP projects in BH.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

It is not forbidden by the law and could be a valuable possibility for financing public authorities.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Two type of contracts under PPP in B&H legislation are:

- Contract on PPP which is based on financing private company from public funds, and
- Contract on PPP with the element of concession is based on financing private company from the final users by operating and managing the project after it's finished.

Public guaranties for Lenders should be negotiated and contracted with the public authorities in the best interest of the Lenders and the signing of such contract by the public authority is legally binding for repaying the loan.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Strictly by the letter of the law, this should not concern private party, but in practice, this could arise as an issue.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Yes, retroactive application of the law is prohibited in Bosnia and Herzegovina.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is regulated by the Law on Obligations in BH.

24. What are the general environmental and social requirements in project financings?

Environmental and social requirements cannot be generalised, and will primarily depend on the location of the project, as requirements are differently regulated by different administrative authority's provisions.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

A submission to a foreign material law is enforceable, however, as a rule, a Bosnian court will always be using domestic

procedural law. However, there are mandatory principles of the local law which will apply even if another legal system has been (effectively) agreed between the parties (e.g., inscription in the Land Registry, enforcement proceedings on assets in Bosnia and Herzegovina, bankruptcy and liquidation proceedings etc.).

Judicial immunity is mentioned in the Article 25 of the Law on civil procedure and it is defined as the right or privilege of certain foreigners, foreign states and international organizations to be exempted so that civil proceedings cannot be conducted against them before a domestic court. Heads of diplomatic missions and other representatives of diplomatic status also have immunity, except in cases provided by the Vienna Convention on Diplomatic Relations. Immunity does not apply if the authorized representative waives it. Such waiver is irrevocable and enforceable.

26. Can financing documents provide for arbitration clauses?

The disputes will be resolved in a form of arbitration if the parties agreed to the jurisdiction in form of a written agreement /contract, in respect of a dispute, or in respect of future disputes that may arise from a contract concluded among them. The contract shall be deemed concluded also through an exchange of letters, telegrams and faxes, as well as when the arbitral jurisdiction clause is contained in the general conditions of the contract which are an integral part of the contract. Therefore, financing documents can provide for arbitration clauses, if all legally set conditions have been met.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The fastest growing investment trend in Bosnia and Herzegovina is investment in renewable energy. Foreign investors are increasingly more interested in vast energy potential of B&H. This especially applies for wind and solar projects as investments in hydro projects are increasingly disillusioned by ecological concerns. Taking into consideration the energy crisis triggered by the war in Ukraine and the already existing trend in B&H of exporting electricity, this trend is likely to grow even further.

28. Are any significant development or change expected in the near future in the project finance market?

The post-covid economy is expanding, recovering, and growing to surpass the 2019 figures. However, there are no new legal reforms or amending procedures that could further benefit the project finance market.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

EURIBOR benchmark rates are already the most commonly used basis or reference rate in B&H. Some variable rate loans can use the official consumers' price index.

BRASIL

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

There are no specific rules or international treaties on project financing in Brazil. Transactions rely on general rules affecting either project documents (construction, offtake, operation and maintenance, charter, etc.) or financing documents (security interests, loans, capital markets instruments and securities, etc.), either in the domestic or cross-border context (when private international law rules and principles become relevant).

Mostly, contracts, financial instruments and security interests will be governed by private law in general (like the Brazilian Civil Code – Law 10,406/2002 – or specific laws on certain types of security interests – such as Law 4,728/1965 for fiduciary transfer), while debt capital markets instruments will be governed by corporate and securities laws (like the Brazilian Corporations Law (Law 6,404/1976), the Brazilian Securities Act (Law 6,385/1976) and regulations from the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*), such as the Resolution 160/2022. Local infrastructure project bonds or international infrastructure project bonds and green bonds or green securitization transactions enjoying tax benefits are governed by Law 12,431/2011, Law 14,801/2024 and related regulations, including specific rules from each applicable Ministry on considering certain projects a matter of public priority for enjoying tax benefits.

Cross-border transactions take into account conflicts of laws rules (such as Decree 4,657/1942 and international procedural aspects in the Civil Procedure Code), as well as laws governing foreign direct investment, registration of cross-border

financing transactions, foreign exchange transactions and the ability to have USD-denominated contracts (especially Law 14,286/2021). Question 25 discusses the ability to use non-Brazilian law in contracts. On the public international law context, Brazil has signed various bilateral investment treaties (BITs) and its own model of Agreements for Cooperation and Facilitation of Investments (ACFIs) but not ratified most of them[5], this typically not being a relevant aspect for project financing in Brazil. Brazil is not a party to the treaty on ICSID – International Centre for Settlement of Investment Disputes, despite having signed and ratified all other World Bank treaties (IFC, MIGA, AID and IBRD).

Finally, a substantial portion of infrastructure projects financed through project financing structures are subject to governmental authorizations and/or involve public entities. Laws governing concessions (Law 8,987/1995), public-private partnerships – PPPs (Law 11,079/2004), public works and bids (Law 14,133/2021) and state-owned enterprises (Law 13,303/2016) are relevant in such contexts. Also, such projects needs to consider the specific laws for the applicable sector and need to comply with regulations from the applicable agency, for example, National Telecommunications Agency (*Agência Nacional de Telecomunicações* – ANATEL), Brazilian Electricity Regulatory Agency (*Agência Nacional de Energia Elétrica* – ANEEL), Brazilian National Agency of Petroleum, Natural Gas and Biofuels (*Agência Nacional do Petróleo, Gás Natural e Biocombustíveis do Brasil* – ANP), National Land Transportation Agency (*Agência Nacional de Transportes Terrestres* – ANTT), National Waterway Transport Agency (*Agência Nacional de Transportes Aquaviários* – ANTAQ), National Civil Aviation Agency of Brazil (*Agência Nacional de Aviação Civil* – ANAC), National Water and Basic Sanitation Agency (*Agência Nacional de Águas e Saneamento Básico* – ANA), etc. Environmental licensing and regulations are a critical element in project development. The National Environmental Policy Law (Law 6,938/1981) and regulations from the National Environmental Council (CONAMA, such as Resolution 237/1997 and Resolution 01/1986) are the main federal rules. According to the project characteristics, the licensing will be conducted by the competent environmental agency (municipal, state, or federal authority – IBAMA –(*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*).

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

Project finance is consolidated in Brazil. This type of transaction has been used since the mid-1990s to finance investments in Brazilian infrastructure. Many infrastructure projects in place were only made possible by project finance structures, including oil and gas fields, energy power plants, energy transmission lines, toll road projects, ports, airports, etc.

Significant recent examples in Brazil include:

- *Yinson Maria Quitéria FPSO Financing* – A USD 1.168 billion project bond issued by Dutch SPV Yinson Bergenia, the owner and charterer of FPSO Maria Quitéria and an SPV controlled by Yinson Production Offshore, the largest of its kind in Brazil. The issuance repaid an existing medium-term bank project financing for the FPSO. The transaction was structured as a senior secured

5 The list can be seen at UNCTAD: https://investmentpolicy.unctad.org/international-investment-agreements/countries/27/brazil

144A/Reg S international project bond offering, secured by the FPSO and the revenues generated from its charter with Petrobras. It builds upon the success of the refinancing of FPSO Anna Nery, demonstrating the continued feasibility of financing and chartering non-pre-salt FPSOs for Petrobras through the project bond market.

- *Portocem Financing* - Financing of the construction and development of thermal power plants at the Portocem complex, involving both a senior and a mezzanine financing. This financing supported one of the most technically and financially complex LNG-to-power developments ever executed in Latin America, marking a transformative moment for large-scale energy infrastructure in the region. Designed as a landmark financing to enable the development of this next-generation power asset, it set a new benchmark for bankability by showcasing how innovative risk allocation and tailored financial engineering can unlock capital for projects of unprecedented scale and complexity in the Latin American power sector. The senior financing portion of this deal won **Power Financing of the Year** with LatinFinance in 2025.
- *RioSP Toll Road Concession* - This project finance is notable as it represents the largest road-sector project financing ever executed in Brazil, underpinning the 30-year RioSP toll road concession connecting São Paulo and Rio de Janeiro. CCR RioSP secured a BRL 10.75 billion non-recourse financing package to support the modernization, expansion, and operation of 626 km of highways, including the Via Dutra and Rio–Santos corridors, two of the country's most strategic transport links. The transaction combined BRL 9.4 billion in long-term incentivized debentures (the largest such issuance in Brazil to date) with BRL 1.34 billion in direct BNDES financing, featuring a highly structured, phased drawdown profile aligned with construction milestones. A key innovation was the inclusion of BRL 500 million in sustainability-linked "transition debentures", tied to carbon-reduction measures such as recycled asphalt use and smart LED lighting. Recognized by LatinFinance as Road Financing of the Year 2025, the deal set a new benchmark for scale, sophistication, and ESG integration in Brazilian highway financing.
- *Luiz Carlos Project* – This project finance is notable as it represents the first issuance of incentivized green debentures under the rules of Decree No. 11,964/2024, which issued a revised framework for incentivized infrastructure and green project bonds. Atlas Renewable Energy, through a SPV created to commercialize energy from this project, secured a BRL 2.135 billion financing for the 800 MWp Luiz Carlos Solar Complex in Paracatu, Minas Gerais. This project was sponsored by Votorantim Cimentos and ArcelorMittal. The transaction included BRL 750 million in long-term incentivized debentures (the first issued under the new regulations) and BRL 845 million in commercial notes, and BRL 500 million in debentures for equity bridge financing. A 15-year PPA was signed with Votorantim Cimentos (one of the largest worldwide cement producers) for 100 average MW under a self-production structure. The debentures were certified green by Sustainable Fitch, highlighting the project's ESG commitment. Recognized as a priority project by Brazil's Ministry of Mines and Energy (MME), this transaction sets a benchmark for renewable energy financing in Brazil. This transaction also won **Renewable Energy Financing of the Year** with LatinFinance in 2025.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

There are two main types of security interests available. On one hand, pledges (moveable assets) and mortgages (real estate, vessels and aircraft), in which title to the asset remains with the debtor and creditor has an *in-rem* lien over the asset. On the other hand, fiduciary transfers (fiduciary assignment in the case of rights, fiduciary property in the case of goods), in which title to the asset is transferred to the creditor while the debtor remains in possession of the asset for as long as a default has not occurred.

The main differences between these types of interest regard priority/rights in an insolvency and remedies outside an insolvency scenario. Pledges and mortgages are fully subject to the stay in restructuring filings and enjoy priority as secured creditors in bankruptcy liquidations. As fiduciary transfers remove ownership rights from the debtor, these interests are only limitedly subject to the restructuring stay (they cannot be removed for a certain period of time if necessary for the continuation of the business/recovery of the company) and are not part of the bankrupt state, enjoying a *de facto* super-priority ability to seize the assets and use proceeds from the sale to repay the loan. As such creditors are not subject to the restructuring plan/bankruptcy liquidation priority rules, they also do not participate in the approval process of a restructuring plan.

Outside of an insolvency scenario, fiduciary transfers enjoy quicker procedural remedies to repossess the relevant asset. The law allows creditors to proceed with consolidation of the property before the competent Registry of Titles and Documents, instead of beginning a judicial procedure. For such to occur, the security agreement must provide for such form of enforcement. In case the extrajudicial proceedings partially or totally fail, the creditor retains the right to file for enforcement before courts to collect the outstanding debt.

In certain cases, there are concerns that holding the fiduciary title to a certain asset might result in liabilities that would otherwise not affect a secured creditor, chiefly, environmental liabilities. Although there are no statutory safe havens for secured creditors on this regard, there are no precedents of such type of secured creditors being held liable for debtors' liabilities while they held a secured creditor role. Once seizure of the asset occurs, regardless of the type of security interest, then creditors must ensure compliance with applicable legal requirements to one holding the possession.

In the context of concessions of public services, usually developed by concessionaires that are specific purpose vehicles, the Brazilian Concession Law (Law 8,987/1995) and the PPP Law (Law 11,079/2004) provide for step-in-rights, which allows lenders to take temporary control over the concessionaire in case of non-payment, towards making its financial restructuring and ensuring the continuity of services. In this case, lenders are exempted from demonstrating technical and financial qualification requirements that would apply in an ordinary change in control. The Concession Law grants a safe haven for lenders in this scenario, explicitly protecting them from liabilities that could apply regarding taxes, penalties, and obligations with third parties (including the government and employees).

Security interests can be established over a variety of debtor's rights or assets, and common collateral includes: (i) concession interests, covering not only receivables but also allowing lenders to forcefully assign

the concession (contractual position) to a third party, provided that the necessary regulatory approvals are obtained; (ii) equity interests (shares or quotas, depending on the type of corporate entity), which may also include temporary step-in rights as detailed above; (iii) receivables from third parties; (iv) bank accounts and its investments; (v) equipment and other physical goods, including the assets produced in an extractive project (such as oil, gas, minerals); (vi) real estate in which a project is developed, etc.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, equity interests can be granted as security to the benefit of lenders. Certain perfection requirements apply. The security document shall provide for: (i) the estimated or maximum credit value; (ii) the maturity date; (iii) the interest rate, if any; and (iv) the description and specifications of the equity interest. The lien must be annotated in the corporate share registry book (in the case of corporations). In the case of limited liability companies, it is common practice that an amendment to the company's articles of association be entered to annotate the lien, and the security document must be registered with the competent Registry of Titles and Documents for perfection purposes. As to corporations, it is common that the lien encompasses not only shares but also other rights and, thus, that it also must be registered with the competent Registry of Titles and Documents as a consequence.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Yes, a share pledge may be enforced by means of a private sale (out-of-court sale), provided that (i) the agreement allows the private sale or (ii) the creditor obtains the debtor's express consent. The sale must not be made at a price of less than 50% of the asset's valuation (*preço vil*). It is advisable that out-of-court enforcement adopts certain minimum publicity and/or sales effort procedures, to prevent any potential creditor's negligence claim. The security contract may be drafted to address some of those concerns beforehand. *Pactum commissorium* is not allowed in Brazil and, thus, except in exceptional circumstances mentioned in question 7, sale of the collateral is mandatory following enforcement. The proceeds from the realization of the collateral constitute a separate estate from that of the collateral agent and must be paid to the creditors within 10 business days.

Transfer of title to the shares is effected by annotating the new owner in the company's corporate books. Should the company refuse, a court order may be obtained for this purpose.

Share certificates are unusual in Brazil, and typically only used in the context of units and depositary receipts markets. Brazilian companies cannot issue bearer shares.

A lien over shares may also establish restrictions to voting rights.

6. Can security interest be established over future assets, rights and receivables of the borrower?

A security interest can be established over future assets, rights and receivables, provided that these can be described – for instance, future receivables to arise from a contract. Brazilian Law 10,931/2004 (article 31) explicitly allows a lien over future assets to secure a Bank Credit Bill (*Cédula de Crédito Bancário* – CCB), which is a common financing instrument used by local financing institutions.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Foreclosure of security interests may be judicial or extrajudicial (also known as out-of-court or private), provided that the debtor has authorized the extrajudicial foreclosure. Security interests over real property can also be enforced either in the out-of-court manner or by means of judicial public auctions.

Brazilian Law allows the execution of more than one fiduciary lien, over the same real estate property, by different creditors. The first registered fiduciary lien shall hold priority over the 'supervenient fiduciary lien', which shall only be deemed to be in effect following the cancellation of the previous lien and paid only if there are excess proceeds. The 'supervenient fiduciary lien' holder can, however, anticipate the payment of the prior claim to secure a priority position. Regardless of the number of fiduciary liens, the asset shall remain in the debtor's possession.

Additionally, if a creditor holds more than one fiduciary lien over the same asset and one of the debtor's obligations is not met, cross-default of the remaining obligations is not met, cross-default of the remaining obligations is permitted if expressly provided for in the first registered fiduciary lien instrument or in the collateral extension agreement.

Further, the existence of other in rem liens over the asset (e.g., mortgage) does not prevent the enforcement of the fiduciary lien. Additionally, if more than one asset is provided as collateral, the creditor may enforce the security interests simultaneously or successively, as necessary for the full satisfaction of the claim, provided that the debt installments are not contractually allocated to a specific matter.

Foreclosure procedures vary by the type of collateral and security interest. In general, secured creditors may privately dispose of the assets upon default if the contract so provides. It is advisable that out-of-court enforcement processes adopt minimum publicity and/ or sales effort standards to prevent any potential claims of creditor negligence by a debtor. The security agreement may be drafted in advance to address such concerns. Sale proceeds must be applied to the secured obligation, and any excess must be returned to the debtor, as pactum commissorium is not permitted in Brazil. There are limited circumstances in which the lender may retain the collateral in payment, in particular: (i) when, after default, debtor and creditor agree on the delivery of the asset as payment-in-kind for its appraised value, provided that: (a) the parties are equal on terms; (b) any excess amount over the debt is returned to the debtor; and (ii) in enforcement proceedings, if no bids are submitted at the auctions, in which case the value of the asset is applied against the outstanding balance.

Regarding mortgage foreclosures, which may follow an extrajudicial procedure (provided that the agreement was entered into after the enactment of Law No. 14,711/23), if there are no interested bidders in the first auction at the appraised price, the asset may be sold at a second auction to a bidder offering an amount equal to or greater than the secured debt, plus any amounts necessary to cover expenses related to the asset (e.g., taxes, registry office, etc.). If no bids reach such amount, the creditor may accept bids corresponding to at least 50% of the asset's appraised value. If the requirements for sale at the second auction are not met, the creditor may either appropriate the property in payment of the debt or within 180 days of the last auction, proceed with a direct sale of the asset to a third party.

If a debtor seeks insolvency protection by means of relief prior to the filing of a restructuring proceeding, or a restructuring proceeding itself, ongoing enforcement claims and seizures against the debtor are suspended if certain requirements are met by debtor (stay period). The stay period is 180 days and may be extended once for an equal period in exceptional circumstances. The stay period applies to claims existing prior to the filing, with certain exceptions, including specific forward foreign exchange transactions related to exports and fiduciary lien holders. During stay period, creditors may not initiate new claims or continue pending lawsuits. However, restrictions on the disposal of essential capital assets may apply even to creditors that are not subject to the restructuring proceeding if the asset is deemed essential for the debtor's business in the context of a restructuring proceeding. If approved, the restructuring will result in a plan establishing new payment terms, thereby novating the prior obligations. Security interests may not be voided as a result of a restructuring plan without the secured creditor's consent. Subjecting the asset to an independent third-party appraisal is highly advisable. Setoff is not permitted in a judicial restructuring scenario, except where expressly provided for in the reorganization plan or in cases involving swap arrangements.

Distressed companies that meet the statutory requirements to file for judicial reorganization may obtain urgent precautionary relief to suspend enforcement proceedings against them for a period of up to 60 days. This period is intended to allow the debtor to seek a consensual restructuring with its creditors through mediation or conciliation proceedings.

If the debtor subsequently files for judicial or extrajudicial reorganization, the 60-day suspension period granted under the precautionary measure will be deducted from the 180-day stay period.

In the event of a bankruptcy liquidation, only the trustee (no longer the debtor's officers) may represent the debtor's estate in judicial and extrajudicial matters, including arbitral proceedings. The trustee may not negotiate with the creditors to reduce outstanding debt or the order of payments.

Bankruptcy proceedings are undertaken to: (i) establish the general list of creditors; and (ii) liquidate the debtor's assets to pay the creditors. Once the general list of creditors is established and the assets are sold, creditors are paid in accordance with the priority of their respective classes.

Secured claims, up to the value of the collateral, rank third in priority, after (i) super-priority or extra-bankruptcy claims (such as court costs and amounts owed to the bankruptcy trustee), and (ii) labor claims up to 150 times the Brazilian minimum monthly wage (currently BRL 243,000 or approximately USD 45,000)) per creditor. They have priority over, among others, tax claims, unsecured claims and subordinated claims.

Super-priority claims also include creditors secured by assets transferred under fiduciary arrangements and financial institutions that have entered certain forward foreign exchange transactions related to exports. Fiduciary creditors are not subject to the stay period during restructuring proceedings and may be repossess and sell the asset (save limited exceptions in which essential collateral, subject to limited exceptions where the assets are deemed essential for the business, as explained above. Setoff of claims existing prior to the bankruptcy liquidation decree is permitted.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

In October 2023, Brazilian law established the concept of collateral agent, expressly

providing that any collateral may be created, registered, managed and enforced by a collateral agent duly appointed by the relevant creditors. Such collateral agent shall act in their own name and for the benefit of the creditors, including in legal actions involving discussions on the existence, validity or effectiveness of the legal act of the guaranteed claim. Thus, Brazilian law now provides for the possibility of the collateral agent to execute, register, and enforce a security on its own benefit or for the benefit of others, extrajudicially or within a judicial proceeding, including in lawsuits involving discussions about the existence, validity and effectiveness of the referred security. The proceeds of the security enforcement shall be kept separate from the collateral agent's property while distribution of proceeds among creditors is pending. In restructurings and bankruptcies, it is not uncommon to have secured creditor groups listed by reference to a collateral agent.

The collateral agent may proceed with extrajudicial enforcement proceedings if allowed for the type of security upon which their management role applies. Furthermore, the collateral agent shall have a fiduciary duty in relation to creditors and may be replaced at any time. However, such replacement will only be effective if made public in the same manner as the security interest was made public.

The proceeds resulting from the enforcement of the security interest, while not transferred to the secured creditors, shall be deemed as separate estate from that which belongs to the collateral agent. Therefore, such proceeds shall not be available to satisfy the collateral agent's obligations for a period up to 180 days counted from the date in which they were received by the collateral agent. Furthermore, after receipt of the enforcement proceeds, the collateral agent will have up to 10 business days to transfer such amounts to the secured creditors.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Brazil has various tax incentives for investments in the infrastructure sector, commonly financed by project finance. These incentives including, among others:

- REIDI, a special tax regime for infrastructure development. It benefits transportation, ports, energy, basic sanitation and irrigation projects by suspending and eliminating certain federal taxes levied on the importation and local purchase of fixed assets for such projects.
- REPORTO, a special tax regime applicable to investments in the modernization of ports. It suspends and eliminates certain federal taxes levied on the importation of fixed assets used in port activities, which will remain valid until December 31, 2028.
- REPETRO-SPED, a special customs regime applicable to the import of goods used in the oil and gas activities. It suspends all federal taxes and social contributions related to the importation of such equipment and allows reduction of state taxes due on the import.

Law 14,801/2024 provides a second type of local incentivized infrastructure project bonds aiming to promote more attractive interest payment rates to issuers, thereby fostering the private funding capacity for infrastructure projects in the country. Unlike the local infrastructure project bond issued under Law 12,431/2011, which provide tax benefits for the investors/financiers as described below, the local infrastructure project bonds issued according to Law 14,801/2024 provide tax benefits to the issuer of the respective

bond, which may: (i) when calculating the net profit, deduct the amount related to paid or accrued interest; (ii) exclude, in the determination of taxable income and the basis for calculating CSLL (Social Contribution on Net Income), the amount corresponding to 30% of the sum of interest paid in such fiscal year. With the reduction of the tax burden (Corporate Income Tax and Social Contribution on Net Income) for issuers, the goal is to encourage companies to offer more attractive interest rates and attract investors/financiers that do not benefit from the local infrastructure project bonds issued according to Law 12,431/2011. Among other requirements, these bonds must have (a) a weighted average duration of more than 4 (four) years, (b) predetermined fixed interest plus monetary adjustment based on the price index or the Reference Rate - TR, with any agreement for floating interest rates based on market indexes not permitted, and (c) the proceeds thereof must be used in certain investment projects deemed as priorities by the Federal Government. Also, these bonds may be issued until December 31, 2030. This law was recently regulated by Decree 11,964/2024 which established the criteria and conditions for the classification and monitoring of investment projects as priority projects in the infrastructure sector or in economic production activities that are intensive in research, development and innovation.

Finally, Brazil has approved a constitutional amendment that aims to simplify the existing Brazilian consumption tax framework (Tax Reform). The main goal is that five existing consumption taxes be fully replaced until December 2032 for a dual value-added tax framework (CBS and IBS). In this tax reform, the abovementioned tax incentives (REIDI, REPORTO, and REPETRO) have been preserved in accordance with Complementary Law 214/2025, however, with some changes (new requirements or different benefits).

Changes to the income tax framework are also being implemented. At the end of 2025, Law No. 15,270 was enacted, introducing a 10% withholding income tax on dividends remitted abroad. In addition, Complementary Law No. 224/2025 increased the income tax rate applicable to interest on net equity (JCP) payments and reduced certain tax incentives granted by the Federal Tax Authorities in connection with PIS, COFINS, IPI, corporate income tax (CIT), import taxes, and payroll taxes. This reduction encompasses, among others, the REIDI and REPORTO tax incentive regimes. In principle, the REPETRO-SPED tax incentive is not affected.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Focusing on foreign investors/financiers, we highlight two relevant tax provisions:

- Law 12,431/2011 provides foreign investors and other local investors (such as natural persons) holding such bonds benefit from 0% withholding tax (except if the beneficiary is located in a tax haven jurisdiction). Such tax-exempt bonds are a common mechanism in Brazil to use debt capital markets to finance infrastructure investments. Among other requirements, the bonds must have (a) a weighted average duration of more than 4 (four) years, (b) predetermined fixed interest plus monetary adjustment based on the price index or the Reference Rate - TR, with any agreement for floating interest rates based on market indexes not permitted and (c) the proceeds thereof must be used in certain investment projects deemed as priorities by the Federal Government.
- Bonds issued abroad for infrastructure projects: any interest paid to abroad in

connection with international bonds which resources are used to foster infrastructure projects (approved by the government) are tax exempt, provided that certain requirements are met.

- Brazilian Law 9,481/1997 provides that international charter payments are subject to a 0% withholding tax rate (except if the beneficiary is located in a tax haven jurisdiction). Most offshore oil assets and ship financing structures are designed to benefit from this advantage, coupled with REPETRO-SPED.
- Law 14,801 authorizes funds to be raised for priority projects (as so defined by the Brazilian Government) by means of the issuance of bonds, backed by Law 12,431/2024 in the international market and provides that investors/financiers holding such bonds benefit from 0% withholding tax (except if the beneficiary is located in a tax haven jurisdiction and interest paid or credited by a source in Brazil to an individual or legal entity connected, resident, or domiciled offshore, even if not established in tax haven jurisdiction, in which case a 30% rate will apply).

Other incentives may be available depending on the type and location of the project.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Foreign capital must be treated in the same manner as Brazilian capital under same conditions.

Accordingly, cross-border financial transactions (both in local and foreign currency) are allowed in Brazil.

Such transactions must, in general, be reported to the Central Bank.

Reporting of cross-border financial transactions is mandatory in the following cases: (i) USD 1,000,000 (or more), or the equivalent in other currencies, for cross-border loans, financings, issues of debt instruments in international market or issues of debt instruments privately in Brazil; (ii) USD 500,000 (or more), or the equivalent in other currencies, for financing for goods or services with payment terms exceeding 180 days, or (iii) USD 1,000,000 (or more), or the equivalent in other currencies, for export prepayment and foreign financial leasing each with payment terms exceeding 360 days. These thresholds do not apply to transactions entered into with entities of the Brazilian Direct or Indirect Public Administration, in which case reporting is required regardless of the transaction amount.

The reporting process is carried out by the debtor by means of the SCE-Crédito, the Central Bank's system for reporting cross-border financial transactions. The process is declaratory in nature, meaning that there is no authorization or licensing required, although the reporting debtor is liable for any incorrect or false information provided to the Central Bank. Its purpose is to (i) provide the Central Bank with information on the exchange movements of foreign capital, and (ii) gather statistics on total foreign assets and liabilities of the Brazilian economy, in order to evaluate the degree of internationalization.

The funds remitted in foreign currency to Brazil must be converted into Brazilian Reais and the funds remitted from Brazil must be converted into an elected foreign currency. Such conversion is executed by entering into foreign exchange (FX) transactions (*operações de câmbio*). These FX transactions must be entered into with local institutions authorized by the Central Bank to operate in the foreign exchange market (e.g., a bank holding such authorization) (FX Agent). The exchange

rate is freely negotiated between the parties to a FX transaction.

Companies may enter into any FX transactions that are legal, based on economic reasons, supported by documented obligations and in accordance with the applicable regulatory requirements. The entity responsible for the remittance or the receipt of funds must classify FX transactions according to the legal nature/code of the underlying transaction and provide such classification to the FX Agent.

Cross-border financial transactions subject to reporting are informed in the currency elected by the Parties under the agreement (either Brazilian Reais or any given foreign currency). Remittance of principal and interests takes into account the amount reported in the elected currency.

Below are certain general tax considerations.

Interest payments in shareholder loans are subject to thin capitalization rules (Law 12,249/2010, regulated by Federal Revenue Normative Instruction 1,154/2011). If not complied, such interests are not deductible in the calculation of the local entity's corporate income taxes, but this does not affect the ability to remit principal and interests. As a rule, the debt equity ratio is of 2:1, which means that the indebtedness cannot exceed two times the equity held by such shareholder. Any interest payable to abroad should also observe Brazilian transfer pricing rules (Law No. 14,956/2023).

We note that, if the related party is located in a low tax jurisdiction or in a privileged tax regime, the interest paid abroad will be tax deductible only if the total indebtedness with related parties located in low tax jurisdictions or privileged tax regimes do not exceed 30% of the net equity of Brazilian borrower

Foreign exchange transactions are subject to the Tax on Financial Operations (IOF Tax), levied in accordance with the type of underlying transaction.

Currently, IOF is generally levied at a rate of 0.38% on inbound funds and 3.5% on outbound funds. However, the legislation provides several exceptions. For cross-border loan transactions (foreign lender), IOF is imposed at a 3.5% when the loan term is up to 364 days, and at a zero percent when the maturity exceeds this threshold. In addition, IOF is also subject to a zero percent rate in other situations, including, for example: (i) transactions intended for investment in fixed-income funds; (ii) interbank transactions carried out between foreign financial institutions and banks authorized to operate in foreign exchange in Brazil; (iii) transactions related to the export of goods and services.

Interest paid on cross-border loans are subject to withholding taxes (typically at a 15% rate, when non-tax heaven jurisdictions are involved, and 25% in such cases).

12. Are there any restrictions for foreign investments in your jurisdiction?

Foreign direct investments (**FDI**) and returns on them are allowed in Brazil.

As a rule, FDI, like other cross-border financial transactions, must be reported to the Central Bank.

The reporting is triggered upon the occurrence of any of the following: (i) individual FDI event or transaction (e.g. capitalizations or dividend payments), only when the amount involved is equivalent to USD 100,000 (or more), or the equivalent in other currencies; or (ii) due date for filing quarterly, annual or five-year reporting obligations; such quarterly reporting is triggered when an invested company in Brazil has BRL 300 million (or more) in total assets, while annual reporting is triggered when an invested company reaches BRL 100 million (or more) in total assets; the

five-year reporting is triggered by total assets corresponding to BRL 100,000.

FDI reporting (when applicable) must be completed by the invested company in Brazil by means of the *SCE-IED*, the Central Bank's system for reporting foreign direct investment transactions. This system follows the same basic principles as SCE-Crédito, referenced above for financial transactions, including its declaratory nature.

No minimum stay period for foreign investments is required from a Central Bank regulatory perspective.

Foreign investors may, at any time, dispose of their equity in Brazilian companies and repatriate the invested capital, provided that it is supported by documentation of the transaction and that the remittance has economic grounds.

Nowadays, there are very few restrictions on the participation of foreign capital in certain economic sectors. These restrictions typically involve a state monopoly over certain activities or prohibitions with respect to ownership or control by non-Brazilians of certain Brazilian assets.

For instance, in the aerospace industry[6], foreign direct investment is generally permitted; however, restrictions may arise in connection with activities classified as strategic for national defense. Also, the relevant licenses may only be granted to Brazilian companies, but foreign investors may hold equity interests in such companies.

In the telecommunications sector, foreign direct investment is permitted without specific ownership limitations. Licenses for the provision of telecommunications services may only be granted to Brazilian companies, but foreign investors may hold equity interests in such companies.

On the other hand, postal services are provided by the Federal Union, and are therefore not open to private capital, whether national or foreign. Also, the broadcasting sector (radio and television), foreign ownership is limited to 30% of the total and voting capital.

Below are some general tax considerations.

Repatriation of FDI may be subject to capital gains tax. Brazilian companies may pay interest on its equity to their shareholders, and such payments to foreign shareholders are subject to withholding tax.

As of January 1, 2026, dividends paid by the same legal entity to individuals resident in Brazil will be subject to withholding tax at a rate of 10 percent when the total monthly amount exceeds BRL 50,000, pursuant to Law No. 15,270, of November 26, 2025. This legal provision does not address dividend payments to non-residents.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There are no specific minimum equity requirements due to the use of project financing structures. However, in infrastructure sectors (eg., energy, oil and gas, transportation), regulators will typically require minimum equity and/or financial robustness from shareholders as a condition to grant a concession. For financial and business reasons, banks will typically require a minimum sponsor equity commitment when structuring project financing transactions.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

6 The aerospace industry is the set of activities related to access to airspace and outer space and to the full life cycle of aircraft, space vehicles, and space objects.

Brazilian collateral documents must be registered to be perfected. Thus, once executed, the security agreement must be registered with the competent public registry, depending on the type of collateral and its location (e.g., Real Estate Registry for real property and pledge over equipment and machinery, Registry of Titles and Deeds for security interests over most moveable goods, Maritime Court for Brazilian ships). Security agreements related to certain assets (e.g., real property and ships) require public form – i.e., the parties' representatives shall be present before a public official who will write down the agreement as a public deed. Security interest over credit rights require notification or, if required by the underlying agreements, consent of the debtor. Notarization of signatures is possible but not mandatory (and its use has reduced after the adoption of certified eletronic signatures).

Security agreements must be registered in the domicile of (i) of all parties, when they reside in the same territorial jurisdiction; (ii) of one of debtors or guarantors, when the territorial jurisdictions of the parties are different; and (iii) of one of the parties, when there is no guarantor or debtor. Further, security agreements are deemed to be effective from the date registration is completed.

As general rule, foreign documents do not require specific measures to be valid and enforceable in Brazil. However: (i) the presentation to courts of documents in a language other than Portuguese requires that the documents be translated by a sworn translator registered as such in Brazil; (ii) foreign documents must be registered with the Registry of Titles and Deeds to be presented as evidence before Brazilian authorities; however, in practical terms, Brazilian courts will typically only require the sworn translation; (iii) notarization of foreigh documents and/or of their signatures is not mandatory, but foreign notarizations and foreign public documents must be legalized, either pursuant the Hague Apostille Convention of October 5, 1961 (Brazil is a party thereto and it shall apply if the country of origin is also) or by authentication by a consular official of Brazil in the relevant jurisdiction.

In terms of local fees, fee values are set at state level. Notarization is charged per signature certified and immaterial (about USD 2.00 per signature). Registration fees are generally charged based on: (i) the number of pages and other quantitative aspects of the document; or (ii) the transaction amount, but subject to a cap (typically around USD 17,000 in Registries of Titles and Deeds, but higher amounts in Real Estate Registries). Fees related to public deeds (due to the notary office preparing the deed) are charged based on the underlying asset value and also subject to caps, and vary state-by-state.

There are no stamp duties in Brazil, i.e., mandatory taxes that are owed to ascertain the validity of the underlying transaction.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

No. Local insurance policies must be governed by Brazilian law. Law No. 15,040/2024 – the Brazilian Insurance Law, which entered into force on 11 December 2025 –provides that Brazilian law applies exclusively to: (i) insurance contracts entered into by insurers authorized to operate in Brazil; (ii) situations in which the insured or the proposer has residence or domicile in Brazil; or (iii) situations in which the assets relating to the insured interests are located in Brazil. Further, such law also provides that Brazilian courts have absolute jurisdiction over disputes relating to insurance contracts subject to the statute.

Brazilian entities are generally not permitted to hire insurance abroad, except in limited cases recognized under the Brazilian reinsurance framework, such as (i) where there is no insurance available in Brazil for a given risk, provided such hiring does not violate current law; (ii) coverage of risks abroad in which the insured is a natural person residing in Brazil, for which the term of the insurance contracted is restricted exclusively to the period in which the insured is abroad; (iii) insurance that is the subject of international agreements endorsed by the Brazilian Congress; and (iv) insurance that, according to the legislation in force, on the date of publication of the aforementioned Law, had already been contracted abroad. Further, legal entities may contract insurance abroad to cover risks abroad, informing this contracting to the Brazilian insurance supervisory body (SUSEP) pursuant to the terms and conditions set out by such body.

For example, Circular SUSEP 683/2022 requires that certain permitted foreign placements (including for risks located abroad) be reported to SUSEP within 60 days from the commencement of risk coverage.

In addition, a relevant 2025 regulatory development should be monitored. In December 2025, SUSEP opened Public Consultation Notice No. 14/2025 regarding a draft CNSP resolution intended to overhaul parts of the framework governing reinsurance and related matters, including placements of insurance abroad, with the stated intent of replacing CNSP Resolution 451/2022 and subsequently updating the operational rules currently set out in Circular SUSEP 683/2022. While the consultation is not yet binding law, the draft (as discussed in market analyses) signals a possible shift toward requiring the exclusive application of Brazilian law even to insurance contracts executed abroad whenever the insured or proposer is domiciled or resident in Brazil. This could reduce legal certainty for foreign-law-governed offshore placements connected to Brazilian insureds and potentially encourage greater use of Brazilian-law structures (such as local issuance combined with reinsurance) in cross-border project finance insurance packages.

Finally, we note that Brazilian shipping companies are authorized to hire P&I – protection and indemnity and H&M – hull and machinery insurance coverage internationally.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes. Local and foreign secured creditors may be designated as third-party beneficiaries or co-insured parties under insurance and reinsurance policies, and/or may create a security interest over the relevant policy.

Under the Brazilian Insurance Law, insurance may be stipulated in favor of third parties when it secures the interest of a party other than the stipulator, whether determined or determinable, with the beneficiary being identified by law, by an act of will prior to the occurrence of the loss, or by ownership of the secured interest.

Assignment of the right to indemnity requires mere communication to the insurer in order to prevent payments being made to a putative creditor, which facilitates the creation of security interests over insurance receivables for the benefit of lenders.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

The Brazilian Insurance Law provides that the insurer is subrogated to the rights of the insured for indemnities paid under damage insurance. Further, any act by the insured that diminishes or extinguishes the subrogation is ineffective. The insured is also obliged to cooperate with the exercise of rights derived from subrogation. Such law also establishes that the insurer shall have no direct action or action derived from subrogation when the loss results from non-serious fault of, among others, employees or persons under the responsibility of the insured. When the party at fault for the loss is covered by civil liability insurance, the exercise of the right excluded by this provision is permitted against the insurer that covers them.

These provisions mean that waivers of subrogation frequently sought in project financing documentation (to protect related parties and contractors) should be assessed carefully, as the statute expressly limits the effectiveness of acts that reduce or extinguish subrogation (subject to the statutory carve-outs described above).

The inclusion of a third party in an insurance policy generally requires insurance endorsement, and parties should liaise in advance with the insurance company. The use of third-party beneficiary or co-insured party clauses is more frequent than the creation of security interests over policies. Although typically more effective vis-à-vis insurance companies, these alternatives do not create in rem rights, which would provide protection from third parties seeking to attach such receivables.

The Brazilian Insurance Law establishes that the competent forum for insurance actions is the domicile of the insured or beneficiary, unless they file the action opting for any domicile of the insurer or its agent. Also, Brazilian courts have absolute jurisdiction for disputes relating to insurance contracts subject to the Law.

Insurers, reinsurers, and retrocessionaires, for actions and arbitrations brought amongst themselves in which conflicts are discussed that may directly interfere with the execution of insurance contracts subject to this Law, shall respond in the forum of their domicile in Brazil. This may pose challenges in the international reinsurance market (e.g., where London or other hubs are typically used), potentially increasing costs and logistical complexities.

The law also permits the parties to agree, through an instrument signed by them, to resolve disputes by alternative means, including arbitration, provided that it is conducted in Brazil and subject to the rules of Brazilian law. The Law also provides that the regulatory authority shall regulate mandatory disclosure of conflicts and decisions (without personal identifications) in an accessible repository..

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, the PPP is a permitted method of developing projects in Brazil. The PPP Law (Law 11,079/2004) defines them as a relationship established between public authorities and private partners to develop infrastructure projects. PPPs are distinguished from ordinary concessions to the extent that concessions do not enjoy public funding but only payments made by the users of the services.

There are two different types of PPPs in Brazil: (i) Administrative PPP, in which the public authority will pay the private partner to implement and execute the services inherent to the activity; and (ii) Sponsored PPP, in which the public authority will pay up to 70% of the provision of services (a payment higher than 70% requires specific legislative approval) and the remaining will

be obtained by payments made by users of the services (public funding coexists with user payments).

PPPs were implemented by Brazilian states and municipalities in several sectors, such as water and sewage treatment, highways, subway transport systems, sport stadiums, hospitals, urban mobility projects, public hospitals, schools, prisons and public lighting.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

They are possible but uncommon. As an example, the State of São Paulo used them in concessions for toll roads: São Paulo Midwest Roads; Calçados Road; Rodoanel Norte; and Piraciaba-Panorama Road. Additionally, they have been utilized in urban mobility projects, including Line 05 "*Lilás*" and Line 17 "*Ouro*" of the Metro (Monorail), Line 15 "*Prata*" of the Metro, and the Intercity Train – "*TIC Norte*", connecting São Paulo to Campinas as well as the administrative concession of non-pedagogical services for 33 state schools in the state of São Paulo ("PPP Educação - Novas Escolas"). Similarly, the Federal Government, through the Investment Partnership Program (PPI), has applied this approach in road concession projects, such as the Road System of the State of Paraná (Lots 1 and 2), the Rio de Janeiro (RJ) - Governador Valadares (MG) Road System, and the Federal Highways BR-163/230/MT/PA, BR-153/414/080/TO/GO and BR-040/MG.

They are referred as "Triparty Agreements", whereby the concessionaire, the creditors, and the public administration will be parties and adjust its rights and obligations regarding an event of default. The direct agreement was, however, optional.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The PPP Law (Law 11,079/2004) provides for a federal PPP Guarantee Fund, in the value up to R$ 6 billion with the aim of guaranteeing the debts assumed by the public partner in the PPP. Nevertheless, such Guarantee Fund has never been used. In 2014, a new fund, named "*Fundo Garantidor de Infraestrutura*" – FGIE, was established. FGIE is managed by Agência Brasileira Gestora de Fundos Garantidores e Garantias S/A – ABGF, a company controlled by the federal government, and, among other purposes, FGIE can grant guarantees in favor of concessionaires of PPP projects in Brazil. Within the scope of the new Growth Acceleration Program (Novo PAC), the Federal Government has regulated the "*Fundo Garantidor de Investimento* – FGI" for the provision of guarantees to projects in the heavy construction sector for infrastructure but the use of its funds to secure PPPs projects are still under discussion.

Recently, the government has launched new initiatives to create funds aimed at supporting PPPs and other high-cost projects. The Sustainable Regional Infrastructure Development Fund (FDIRS) is a federal investment fund created to support public entities in the structuring and development of concession and public-private partnership (PPP) projects. With BRL 1 billion in net assets, it is the first Brazilian federal equity fund with private and discretionary management aimed at accelerating the preparation and implementation of strategic infrastructure projects, including environmental, financial, legal, and engineering structuring.

Another example is the Social Infrastructure Investment Fund (FIIS) is a financial fund aimed at securing resources to finance

investments in social infrastructure in Brazil. Its funds support projects in education, healthcare, and public security, including the construction of facilities and the acquisition of equipment and vehicles to improve public services, especially in vulnerable regions. FIIS is managed by the FIIS Management Committee (CGFIIS) and, in 2026, it will provide BRL 28.5 billion in federal funding through repayable financial support, with BNDES responsible for disbursing the resources to the selected entities.

States and municipalities have also created their own PPP guarantee funds, in addition to other tools, in order to provide guarantees under PPP agreements. Finally, PPP arrangements usually establish specific financial guarantees. For instance: (i) the State of Minas Gerais used a creditworthy separate public company (CODEMIG) as guarantor in the toll road MG-050, (ii) the State of Bahia used tax receivables mandatorily transferred from the Federal Union to the State as collateral to its PPPs, (iii) municipalities often use public lighting taxes, collected by local energy distribution companies, as collateral in public lighting PPPs.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

The allocation of risks must be verified in each PPP agreement, as specific risk matrixes are prepared for each project and risk sharing is an essential element in PPPs. "Political risk" is a vague concept, but typically seems to encompass electoral aspects, social demonstrations, socio-political stability, payments from the public partner and the ability to have cross-border payments.

Depending on how these risks are manifested, their allocation may be to the public or private party. Most of what is deemed "political risk" is commonly allocated to the public partner.

For instance, payment default from the public partner would be a breach of contract, subject to court remedies. Reduction of income due to a reduction in the use of the service following social demonstrations may have been allocated to the private or public partner. Risks that materialize due to a change in law and affect the economic balance of the contract would allow for a rearrangement of the economic-financial balance of the contract.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

While provisions "freezing" the laws to the moment of signing are not valid, investors and lenders are protected from certain changes in law both as a result of the constitutional protection to vested rights and of the economic-financial balance clause in contracts with the public administration (public works, concessions or PPPs). In addition, the Concessions Law establishes that, with exception of income taxes, a change in tax laws gives cause to the rebalance of agreements. If *factum principis* affects the economic balance of a contract with the public administration, the private party is allowed to claim contractual changes to reestablish the original contract balance (except if the relevant agreement expressly allocates such risk to the private party).

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure is regulated by Brazilian Civil Code as "*the necessary fact, whose effects could not be avoided or prevented*". Scholars and court precedents further interpret this definition to require that some requisites are present so that a force

majeure event may be characterized: (i) the event must have been inevitable and unavoidable for the party to be released from his obligations; (ii) the event must be out of the ordinary course of business and prevent the party from performing its obligations; (iii) there must be a direct connection between the event and the inability to perform; and (iv) the party shall not have contributed to the occurrence of the event. The characterization of an event of force majeure is determined on a case-by-case analysis.

Notwithstanding the legal definition, parties are free to adjust in their contracts whether certain events will or not be characterized as force majeure, as well as to decide on their risk allocation.

24. What are the general environmental and social requirements in project financings?

Environmental licensing is required for infrastructure projects in Brazil. Entrepreneurs are required to present environmental impact studies and assessments to start the licensing proceeding before federal, state or municipal agencies. The environmental studies required and the definition of the competent agency to conduct the licensing proceeding depends on the activity, its location and impacts.

The licensing proceeding usually comprises 3 (three) licenses: (i) previous license – states the environmental feasibility and viability of the project and establishes preliminary compensations and limitations for the project; (ii) installation license – authorizes the construction of the project and establishes compensatory, mitigation, and control measures, as well as limitations applicable to construction-related impacts; and (iii) operation license – authorizes the operation of the project and establishes compensatory, mitigation, and control measures, as well as limitations applicable to operational impacts. Each license is valid for a specific term and may contain environmental conditions that require the implementation of ongoing environmental programs with specified deadlines. These must be fulfilled for the license to remain valid and for subsequent licenses to be issued.

Considering the specific social and environmental impacts of the project, other licenses and authorizations may be required (i.e. authorization for removal of vegetation and vegetation suppression; authorization for interference in areas of cultural and historical relevance; water grant; effluent discharge grant and others).

Federal Law 9,985/2000, which established the National System of Conservation Units (SNUC), requires entrepreneurs to support the implementation and maintenance of a Conservation Unit when a project is considered to have significant environmental impact. During the project's environmental licensing procedure and based on the environmental study required, the environmental agency will determine if the project has or has not a significant environmental impact. The amount to be allocated as Environmental Compensation can reach significant amounts due to is established based on a percentage of the total estimated cost of the project's implementation. After the environmental agency establishes the compensation total amount and its destination, the entrepreneur is notified to sign a Commitment Term with the agency.

When the intended project impacts protected areas such as Conservation Units, areas of cultural and historical relevance, indigenous and quilombola lands, other bodies such as ICMBio, IPHAN, FUNAI and INCRA may be involved and consulted during the licensing procedure. Those bodies cannot prevent the project from moving forward, but may establish specific conditions and limitations, as well as mitigatory and compensatory measures.

Especially regarding indigenous and quilombola communities, ILO Convention No. 169 establishes that traditional communities must be consulted prior to the issuance of each license. It is necessary to conduct studies on the impact of the projects on those communities and to establish specific conditions and limitations, as well as mitigatory and compensatory measures.

Finally, certain regulated sectors have additional licensing requirements, such as seismic and drilling activities. Depending on the type of activity to be performed by the project company, health and safety, and other laws will apply.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Although not explicit in the Brazilian conflicts of law rules and without court precedents confirming it, most international financing practitioners agree that the Brazilian law allows the choice of law in cross-border agreements involving contractual obligations of private parties (including mixed capital companies, such as Petrobras). This consensus was reinforced after the Economic Freedom Act (Law 13,874/2019). Submission to foreign courts is also valid between private companies, except in situations in which Brazilian courts have exclusive jurisdiction (for example, lawsuits regarding real estate located in Brazil). Security agreements over assets located in Brazil (i.e., the creation of *in rem* rights) and concession agreements are mandatorily governed by Brazilian laws.

Recent amendments to the Brazilian Civil Procedure Code have choice of forum clauses by requiring that the place be connected to either (i) the location of one of the parties (domicile or residence), or (ii) the place where the obligation is to be performed. They also allowed a court to dismiss jurisdiction *ex officio* if the lawsuit is filed in a jurisdiction that does not have a connection with the parties or the legal transaction. These changes were passed to avoid domestic abusive forum selections and there is a degree of uncertainty to what extent they will apply to foreign law-governed contracts: if deemed rules governing the choice of forum arrangement, they should apply only to contracts governed by Brazilian law; however, if deemed a general procedural law, they would apply to disputes governing any types of contracts, including foreign law-governed ones. If the latter view prevails, these changes would make difficult to choose traditional jurisdictions specialized in certain types of disputes—such as New York for financial disputes, Delaware for corporate disputes, or London for maritime and insurance disputes—if they are unrelated to the location of the parties or of the legal transaction.

Except in connection with acts of commercial nature, public entities require prior legislative approval to submit themselves to foreign jurisdiction or to waive immunity provisions. Mixed capital companies do not have immunity based solely on their subjective characteristics. However, assets that may be necessary for the continuation of the provision of public services or that are reversible (i.e., they are transferred to the government at the end of the concession period) are immune from attachment and seizure.

26. Can financing documents provide for arbitration clauses?

Yes. Under Brazilian law, financing documents may validly include arbitration clauses. Arbitration seated in Brazil is governed by Law No. 9,307/1996 (Brazilian Arbitration Law), while Brazil's international arbitration framework is reinforced by its adherence to the New York Convention on the Recognition and Enforcement of

Foreign Arbitral Awards and the MERCOSUL International Commercial Arbitration Agreement.

Foreign arbitral awards are enforceable in Brazil, subject to prior recognition by the Brazilian Superior Court of Justice (STJ), pursuant to Article 105, I, "i", of the Federal Constitution and in compliance with the requirements established under the New York Convention.

From a market-practice perspective, arbitration clauses are not customary in standard loan agreements governed by Brazilian law. This is largely because disputes in such agreements typically arise from straightforward payment defaults, and creditors tend to favor judicial proceedings, which allow for faster enforcement mechanisms and direct asset attachment. Arbitration clauses are more commonly found in complex or structured financing transactions, particularly those involving cross-border elements, multiple parties, sophisticated contractual architectures, where there are relevant concerns regarding neutrality, confidentiality, and technical adjudication.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

In terms of financings, four main trends can be noticed:

Asset-acquisition financing. Sponsors continue to use ring fenced cash flows and asset backed security packages to leverage acquisitions of operating energy and infrastructure assets. Such approach has proved its worth in prior Petrobras asset sales (refining and E&P clusters) and power portfolios, and remains relevant as portfolio rotation persists and Petrobras focuses CAPEX on core E&P while pruning lower priority assets. Petrobras's 2026–2030 plan emphasizes capital discipline and a tighter investment envelope (US$109bn), amplifying room for private operators to buy mature assets and refinance with PF style structures anchored in contracted revenues.

Green and sustainability-linked financings. The local sustainable debt market deepened again. ANBIMA data show incentivized debentures hit a record R$178bn in 2025, with energy, transport/logistics and sanitation leading. Issuers capture, in some cases, a "greenium", i.e. lower interest rates. Data indicate sustained growth in labeled debt (green, social, sustainability and SLB), with Brazil leading Latin America in the issuance of green bonds. Far ahead of Mexico and Chile, where sovereign issuances reign, Brazil sets itself apart by the diversity of transactions and strong corporate action. Further, large banks in Brazil have taken on the role of distributors and structurers of such issuances, as well as of investors. At the sunset of 2025, the first infrastructure debentures issuance closed – R$ 1bn issued by Eldorado Brasil Celulose, coordinated and subscribed by the Brazilian National Development Bank (BNDES), for purposes of financing the construction of a 86,7 km railway for the outflow of their cellulose production.

Increase in multilateral participation. Projections indicate that infrastructure investment in Brazil may reach R$ 300bn in 2026. Aware of this, Brazilian public banks have sought credit lines with multilateral development banks, such as International Bank for Reconstruction and Development (IBRD). BNDES, Caixa Econômica Federal, the Bank of Amazonia and the Northeast Bank (BNB) negotiated such credit lines with IBRD. Meanwhile, the International Finance Corporation (IFC) has made available loans to the Equatorial Group for purposes of modernizing and expanding distribution services provided by subsidiaries of the group.

The BNDES + capital markets model and the role of public banks. Rather than "crowding out," BNDES increasingly anchors public offerings of debentures (including infrastructure debentures), shares risk with private buyers, and subscribes up to 100% to ensure execution in some cases, later selling down as the book builds. This reinforces project bankability and tenor, especially in sanitation, logistics and power. It has been reported that BNDES's participation in debenture operations surged from R$90m (2020) to R$27bn (2024), marking a structural pivot from classic FINEM to market based project financing funding.

In terms of economic sectors, energy and oil and gas are, historically, sectors with high volumes of funding with project financing structures. Currently, however, the sanitation sector remains the standout user of project finance. Incentivized debentures have become essential for private sanitation funding in Brazil, and the BNDES pipeline still shows strong demand for long term capital in the segment.

PF activity remains high across renewables and transmission. Further, 2026 brings the **first national capacity auction for battery energy storage (BESS)**, following MME's 2025 consultation for the 2026 Reserve Capacity Auction. In the short term, toll roads and other transportation projects are expected as well – for example, Brazilian government expects to conduct 44 toll roads auctions by the end of 2026, totaling R$161 billion in projected investments.

Telecommunications sector has not historically been a core user of project finance structures. However, this has been changing in recent years, as significant investments are required for the deployment of 5G infrastructure and the expansion of fiber-optic networks. The commitments arising from the 5G spectrum auction held in 2021, which exceeded BRL 47 billion, have driven demand for long-term financing solutions to support the deployment and expansion of mobile networks.

Looking ahead, the continued growth in data traffic, cloud services and digital connectivity is expected to sustain investments in data centers, submarine cable systems and satellite infrastructure. In this context, digital infrastructure has increasingly been viewed as a sector in which project finance structures may be used, depending on the characteristics of the assets and the applicable revenue arrangements.

28. Are any significant development or change expected in the near future in the project finance market?

The Brazilian project finance market is in constant development. Even during the Covid-19 pandemic, several projects remained under development. Brazilian new Public Works and Bidding Law (Law 14,133 of 2021) updated several rules and reduced bureaucracy on this regard. Law 14,286, which came into force on December 31, 2022, simplified rules on foreign exchange, foreign direct investment registration and expanded the situations in which contracts can be USD-pegged.

In fact, as a result of the new foreign exchange law authorizing USD-pegged power purchase contracts when the offtaker is an exporter, it is expected that the energy sector will benefit from an influx of foreign financing – the fact that revenues were BRL denominated created foreign exchange risks that shunned away foreign financiers.

In 2025, Brazil's infrastructure investment environment was strongly shaped by the implementation phase of Law 14,801/2024 as a result of enactment of Decree No. 11,964/2024, which continued into 2025 and effectively operated as the country's new legal backbone for infrastructure financing. The Decree regulated both

incentivized and infrastructure debentures, removed prior ministerial approvals for most sectors, and, as a result, new regulatory ordinances were issued by Ministries linked to infrastructure development, establishing clear guidelines for classification of specific projects.

BNDES continued retaking a greater role as financier of infrastructure in the country.

In the telecommunications sector, the Ministry of Communications (*Ministério das Comunicações* – MCom) enacted Ordinance No. 6,197/2022, which establishes the procedures, criteria, and requirements for the classification and approval of investment projects considered priorities in the telecommunications sector for purposes of raising funds with tax incentives under Law 12,431/2011.

This regulatory framework is currently under review to establish clearer parameters for project classification and enhance regulatory predictability. Once finalized, the updated regulations should provide companies with strategic opportunities to access tax-incentivized funding for priority projects, potentially reducing capital costs and facilitating infrastructure expansion and modernization.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR Libor (London Interbank Offered Rate) transition period?

LIBOR (London Interbank Offered Rate) is not anymore used as a reference by the Brazilian Federal Revenue.

BULGARIA

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

While there is a well-established market practice in Bulgaria for project finance, it is not governed by a dedicated set of legislative acts. Instead, project finance transactions are structured within the framework of general contract, security and insolvency law, alongside the specific regulatory regime applicable to the underlying project structure, assets and business (such as energy, other sector-specific construction, concessions or public procurement legislation).

The main Bulgarian legislative framework applicable to finance transactions, which is relevant also to project finance, includes:

- the Law on Obligations and Contracts which provides for the general contractual framework with key legal rules for lending, guaranteeing and securing debt;
- the Commerce Act which envisages certain special commercial transaction rules and provides the statutory framework for insolvency proceedings and creditors' rights;
- the Law on Registered Pledges (the "**LRP**") which established the rules for the creation and enforcement of registered (non-possessory) pledges. The LRP has a central role in the structuring of security packages in Bulgarian project finance transactions, in particular, in relation to intragroup receivables, project cashflows, bank accounts and other movable and non-real estate assets, as well as SPV shares, forming the economic backbone of the project;
- other relevant general finance-related legislation includes the Law on Financial Collateral Arrangements and

Close-Out Netting, the Law on Public Offering of Securities and the Currency Act, which together address financial collateral structures, dematerialised securities and certain cross-border and foreign investment aspects relevant to financing transactions.

Project finance transactions are significantly influenced by legislation establishing the regulatory regime applicable to the financed project and its underlying assets. Such sector-specific legislation includes:

- the Energy Act and related secondary legislation, regulating the development, licensing and operation of energy generation, transmission and distribution projects;
- the Electronic Communications Networks and Physical Infrastructure Act and the Electronic Communications Act, regulating the deployment, access to and shared use of electronic communications networks and physical infrastructure, including rights of way and statutory easements in favour of operators;
- the Concessions Act and the Public Procurement Act which may be particularly relevant in public-private partnerships or public works projects;
- the Investment Promotion Act which provides for certain investment incentives and also details the local foreign direct investment (FDI) screening framework, as well as other national and EU-level public support and grant frameworks that may be relevant to project structuring and bankability.

Other relevant sector-specific legislation may have an impact, such as laws and secondary legislation governing land zoning, environmental protection and water-related legislation, which together regulate land development, permitting, environmental compliance and water and other resources use, depending on the nature of the financed project.

There is no single key international treaty related to project financing in Bulgaria. However, there are multiple international instruments which may be applicable depending on the particularities of the respective project finance transaction, including bilateral investment treaties, double taxation treaties and international instruments related to recognition and enforcement of foreign judgments.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in Bulgaria began developing in the early 1990s which marked Bulgaria's transition from centralized to market economy. In recent years, the project finance market in Bulgaria can be characterized as rapidly growing driven mostly by renewable energy and network infrastructure projects.

One of the most significant transactions closed in July 2025 was the €315 million portfolio-based financing for Renalfa IPP, a leading renewable energy developer in Central and Eastern Europe. The structure is notable for the CEE market as it was arranged at group level across a portfolio of projects, enabling subsequent expansion through local project-specific financings as individual assets reach development or construction stage. The transaction forms part of a broader investment programme reportedly valued at approximately €1.2 billion, with anticipated delivery of around 1.6 GW of generation capacity and approximately 3.3 GWh of battery energy storage systems (BESS) across Bulgaria, Hungary, Romania and North Macedonia.

Battery energy storage systems (BESS) have emerged as a notable focus of project finance activity over the past year, reflecting increasing demand for grid stability and revenue diversification. Bulgarian and international lenders have been involved in multiple project financings for utility-scale standalone BESS projects in the past 12 to 18 months. A notable transaction recently closed involved the provision of senior financing by DSK Bank for a 202 MW/500 MWh standalone BESS facility by ContourGlobal at the Maritsa Iztok 3 coal powered plant site in the Stara Zagora region, one of the largest operational storage assets in South Eastern Europe.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The most commonly used security package for a project financing in Bulgaria includes:

- mortgage over project real estate assets when real estate is key for the project;
- registered pledge over the entire going concern (enterprise) of the project company, including specific individualization of material real estate assets, movables and receivables of the project company;
- registered pledge over material movables of the project company;
- registered pledge over material receivables of the project company (including bank account receivables, insurance receivables, and key project document receivables);
- registered pledge over shareholder and other intragroup receivables arising from intragroup financing extended to the project company;
- pledge over the shares of the project company.

The exact security package that will be preferred by the parties depends on the nature of the key assets of the project company and the lender's desired level of flexibility in terms of enforcement.

Additionally, it is worth noting that while direct agreements are a standard feature of project finance transactions in other jurisdictions and multilateral lenders expect to see then in the transaction documents, they are not commonly used in Bulgaria. Their enforceability may be limited by the governing law and by the fact that, in insolvency, neither the court nor the bankruptcy trustee is necessarily bound by such arrangements. Crucially, step-in rights cannot be achieved unilaterally through a direct agreement. Instead, lenders could rely on actions under the Bulgarian security instruments, such as enforcement of a going-concern pledge to obtain operational control over the project company and assets by appointing a special manager.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

The shares of the project company can and are customarily pledged to the benefit of the lenders. The exact procedure to be followed for the creation of the pledge depends on the type of the project company whose shares are being pledged. The most common types of companies in Bulgaria are the limited liability companies (LLC) and the joint-stock companies (JSC).

The key steps for the creation of a pledge over the shares of an LLC are (1) execution of a pledge agreement with notary certified signatures; and (2) registration of the pledge with the Bulgarian Commercial

Registry and Registry for Non-Profit Entities based on the pledge agreement and certain additional standard documents, including a notary certified consent from the pledgor.

The formalities for the creation of a pledge over the shares of a JSC differ depending on whether the JSC has issued materialized or dematerialized shares. For the purposes of creating a pledge over materialized shares (1) the parties should enter into a pledge agreement which is usually in a written form; (2) the pledgor should endorse the shares in pledge to the secured creditor and should deliver the pledged share certificates to the secured creditor; (3) the pledge should be registered with the JSC's shareholders book. For the purposes of creating a pledge over dematerialized shares the parties should (1) enter into a written share pledge agreement; and (2) register the pledge with the Central Depository based on the pledge agreement and certain additional standard documents, including certain notary certified consents and declarations from the pledgor.

5. Is private sale a recognized method for the enforcement of share pledge? What are the endorsement types typically used for the share certificates?

Whether a private sale is available as a method for the enforcement of a share pledge again depends on the type of company whose shares are pledged. For instance, in an enforcement scenario, the pledgee cannot sell the pledged shares in an LLC and essentially could only rely on proceeds from a formal liquidation of the company. Enforcement of a pledge over shares in an LLC is less straightforward, involving judicial proceedings and commercial registry filings, with limited statutory guidance on certain procedural aspects. Conversely, once perfected, the registered pledge over dematerialized shares of a JSC entitles the secured creditor to commence out-of-court foreclosure and sell the shares privately. In the case of materialised shares in a JSC, the Commerce Act permits the inclusion of a private sale mechanism in the pledge agreement, provided that out-of-court enforcement is expressly agreed and certain formal requirements are met, including execution of the agreement in written form with an authenticated date. Thus, if the parties to a pledge agreement over materialized shares would like to benefit from this out-of-court enforcement option they should follow these formalities in addition to the general pledge creation steps discussed in Section 4 above.

Another key structural aspect of Bulgarian share pledges is that they do not give the secured creditor any right to appropriate the shares, take control over the company, replace directors, or exercise step-in rights. Accordingly, where lenders require certain stepin or similar protections, these could be supported through the going concern pledge under Bulgarian law and appointment of a special manager in an enforcement scenario as discussed in Section 3 above.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Generally, Bulgarian law allows for the creation of a pledge over future assets, rights and receivables of the borrower. This is explicitly regulated in relation to registered pledges where Article 4 (2) of the LRP provides that the pledged assets can be future.

Caution should be exercised in relation to the creation of a mortgage over future real estate assets. This is not allowed in relation to future land plots, but it is generally considered permissible to create a mortgage over future buildings as long as the location and characteristics of the

future building is described in a sufficiently precise manner (usually this includes references to construction permits and approved construction designs).

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

The enforcement steps differ depending on whether enforcement is started outside insolvency proceedings or following the filing for opening of insolvency proceedings against the borrower.

Out-of-insolvency scenario

In case the borrower fails to pay the secured obligations when they fall due, the lenders may commence enforcement:

- through private sale procedures if the lenders are entitled to such out-of-court enforcement depending on the security interest they hold. Out-of-court enforcement is usually available for lenders having a registered pledged under the LRP (with the exception of a pledge over LLC shares discussed in Section 5 above), a financial arrangement in the form of a pledge under the LFCA or a possessory pledge over movables or securities under Article 311 of the Commerce Act; or
- court enforcement. For the purposes of initiating court enforcement, the lenders need to first obtain a writ of execution against the borrower or the third-party security provider and then appoint a bailiff. A writ of execution is usually obtained based on an entered into force court or arbitration decision or an order for payment. Bulgarian law offers fast track procedure for obtaining an order for immediate payment and a writ of execution for certain lenders, including (without limitation) banks and lenders secured through mortgage.

Insolvency scenario

Article 618 of the Commerce Act provides that the commencement of insolvency proceedings does not affect the secured creditors' rights stemming from security interests created prior to the opening of such insolvency proceedings. Also, a general rules, Article 638 of the Commerce Act provides that once insolvency proceedings are opened in relation to the debtor, the creditors may no longer initiate individual enforcement proceedings and any pending enforcement proceedings against the borrower are automatically suspended with the idea that all enforcement actions should be focused in the single bankruptcy process. There are multiple exceptions to this rule, including:

- If the secured creditor benefits from a financial collateral arrangement, the secured creditor may proceed with out-of-court enforcement notwithstanding the opening of insolvency proceedings in relation to the borrower.
- If the secured creditor is a holder of a registered pledge, the commencement of insolvency proceedings will not automatically suspend the out-of-court enforcement which is initiated by the creditor in compliance with the LRP prior to the opening of the insolvency proceedings. However, if the secured creditor has not commenced out-of-court enforcement under the LRP prior to the opening of the bankruptcy proceedings, the secured creditor will need to follow the enforcement rules in the insolvency proceedings, i.e. although the creditor will continue to benefit from the security interest and preferential ranking of the registered pledge, the creditor will not be able to initiate private sale of the pledged asset.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Under Bulgarian law security can be created only for an actual debt owed to the secured creditor, i.e. the concept of security held on trust or by a security agent is not recognized. When the lenders would like to appoint a security agent to act as a secured creditor on record for Bulgarian law governed security documents, the parties would rely on a parallel debt arrangement. When examining whether this structure is a viable option, the parties should always consider if the parallel debt arrangement is valid under the law governing the primary finance documents (e.g. the credit facility agreement or the intercreditor agreement where such parallel debt arrangements are usually incorporated). Under this arrangement all debtors in essence undertake to pay the security agent a sum equal to any outstanding obligations to the lenders – this ensures that the security agent is a creditor in its own right for the full amount of the outstanding obligations and thus can be validly secured under the Bulgarian law governed security documents.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Under the Investment Promotion Act investors in Bulgaria may apply for investment certificates in three main classes – Class A, Class B and Priority Class, offering different incentive packages. The investment class is determined primarily based on the value of the investment (either in terms of value of fixed assets or number of new job openings). The incentives offer under the Priority Class certificate include:

- shorter administrative deadlines;
- options for preferential acquisition of state or municipality owned real estate;
- financial incentives for vocational training;
- social security cash back;
- individual services aimed to facilitate the coordination with governmental authorities;
- grants for priority investment projects in the processing industry, as well as in education and scientific research.

In addition, the flat 10% corporate tax rate and the options for further tax reductions for investments in economically disadvantaged areas or in research and development are generally considered important incentives for investments in Bulgaria.

Other than the Investment Promotion Act, sector-specific incentive regimes and public support mechanisms may be available depending on the nature of the project. These include national and EU funded grant schemes, recovery and resilience instruments, energy-transition support programmes and targeted infrastructure funding initiatives. In the energy sector, targeted support mechanisms have recently been introduced to facilitate investments in utility-scale BESS, including grants that are typically combined with commercial debt.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

The are no incentives targeting foreign investors specifically in relation to project finance. Substantial foreign investors may in certain cases benefit from fast-track residence permit/citizenship procedures.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Bulgarian law does not impose any general restrictions for borrowing bank loans and shareholder loans from abroad or in a foreign currency. It should be noted that:

- The interest on loans from foreign banks or foreign shareholders may in certain cases be subject to 10% local withholding tax. The applicability of this tax should be analysed on a case-by-case basis, including considering any applicable double taxation treaties.
- Local borrowers are obliged to declare their indebtedness towards foreign lenders before the Bulgarian National Bank for statistical purposes.

12. Are there any restrictions for foreign investments in your jurisdiction?

Bulgarian law does not provide for any general restrictions on foreign investments in Bulgaria. The Investment Promotion Law envisages mandatory foreign direct investment (FDI) screening mechanism in certain cases, including (without limitation) where:

- the potential investor will acquire 10% of the issued share capital of an enterprise in Bulgaria; or
- the investment's value exceeds EUR 2 million; or
- the investment is related to assets, activities or enterprises engaged in activities regulated by the Law on Administrative Regulation of the Economic Activities Related to Oil and Petroleum Products; or
- the investor is from the Russian Federation of the Republic of Belarus.

If the transaction falls within the scope of the FDI screening requirements, the parties should apply for and obtain the permission of a special Interagency Screening Council.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

Bulgarian law does not provide for specific minimum equity requirements for project financing. In practice, in project financing transactions where the lenders are banks, the minimum equity requirement is usually within 30-45% of total project costs depending on the nature of the project, the overall financial condition of the borrower and the sponsor and other parameters of the financing (incl. margin levels, applicable grace periods, sponsor support, public grants, etc.). The equity participation thresholds may be significantly lower in project finance transactions where the main lenders are not credit institutions.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

The primary project finance documents (such as the credit facilities agreement or the intercreditor agreement) are generally not subject to local registration and filing requirements. As mentioned in Section 11 above, local borrowers are obliged to declare their indebtedness towards foreign lenders before the Bulgarian National Bank for statistical purposes only.

Depending on their type, security documents may be subject to registration with different local registries. For instance, Bulgarian law governed mortgages become effective only once the mortgage deed is registered with the Real Estate Registry office for the territory where the mortgaged plots are located. Similarly, Bulgarian law governed registered (non-possessory) pledges under the LRP are created by

way of registration with the competent registry – the Central Pledges Registry (for pledges over movables and receivables), the Commercial Registry (for pledges over going concerns or certain types of shares), the Central Depository (for pledges over dematerialized shares), the Patent Office (for pledges over trademarks and other industrial property rights), etc.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

As a matter principle, insurance policies covering project assets located in Bulgaria can be governed by a foreign law and we typically see this whenever project assets located in Bulgaria are covered by wider group insurance policies purchased by the sponsor abroad. Local insurance providers may hypothetically offer insurance policies governed by foreign law, but we rarely see this in practice. In either case, the choice of law clause should be in line with the restrictions contained in Article 7 of the Rome I Regulation (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations) in relation to the law which the parties may choose to govern an insurance contract.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Bulgarian law does not formally recognize the option of assignment by way of security. If the lenders under a Bulgarian law governed insurance would like to benefit from the insurance proceeds they should:

- either be named as third party beneficiaries (loss payees) under the respective insurance policy; or
- obtain a registered pledge over the future receivables of the borrower related to insurance proceeds.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

There are no Bulgarian law specific issues or concerns in relation to insurance provisions in project finance documentation. Whenever the parties envisage that the lenders should be named as loss payees under the respective insurance policies, the parties should make sure that the project finance documentation includes language specifying the lenders' rights in relation to any such received insurance payments (e.g. to apply them for mandatory prepayment within a certain deadline or to release the funds to the borrower for carrying out repair works if certain conditions are met).

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

PPPs are legally permitted in Bulgaria. The main framework is the Concessions Act. In addition to this general framework, several sector-specific laws expressly allow for concession-type arrangements. The Maritime Space, Inland Waterways and Ports of the Republic of Bulgaria Act enables concessions for port infrastructure and services. The Underground Resources Act provides for concessions for prospecting, exploration and extraction of underground resources and the Civil Aviation Act contemplates concession arrangements in relation to airport operations and fee collection.

PPP-type cooperation is mainly implemented through works and services concessions where the private partner bears the operational risk. Since 2018 Bulgaria has implemented a number of

concession projects, particularly in airports, ports and water infrastructure, but overall PPP activity remains relatively limited. As of today, over 1,400 concession procedures have been registered in the National Concessions Register, reflecting both historical and ongoing PPPtype activity across multiple sectors.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Bulgarian law does not expressly regulate direct agreements between public authorities and lenders in concessions projects. Such arrangements are not expressly prohibited, but their permissibility depends on whether they can be justified within the authority's statutory powers and concession framework.

In practice, lender protections are more often addressed within the concession contract itself (e.g., consent and substitution mechanisms) rather than through standalone direct agreements. Given this legal context direct agreements between public authorities and lenders are not yet standard practice.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Government support mechanisms are not comprehensively regulated in PPP legislation – there is no exhaustive statutory list of support instruments. The Concessions Act requires that any possible measure of public support must comply with state aid rules so as not to distort competition, which redirects the assessment of any public support to the broader EU state aid framework.

Therefore, support may be structured under general public finance and state-aid frameworks, including state guarantees or other financial support compliant with EU rules. This may include instruments under the Investment Promotion Act (save for sectors excluded from its application, such as concessions relating to underground resource extraction) and EU funds programmes administered under national and EU instruments, as long as the PPP project is eligible. The support must be in compliance with EU competition and state aid law.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Political risk allocation is not predetermined by concession legislation and is instead defined contractually. Consistent with the nature of concessions, the private partner bears the operational risk, while political and regulatory risks are allocated based on negotiations and project specifics.

In practice, concession contracts provide balanced mechanisms enabling the private partner to obtain compensation or financial adjustment in the event of political risk occurrences (such as changes in law, regulatory interference, etc.). One commonly used method for addressing political risk is reducing the concession remuneration to restore the economic balance of the contract following the occurrence of such an event.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Bulgarian concession legislation does not automatically protect private investors or lenders from adverse changes in law occurring after the concession contract is signed. Any such protection must be incorporated in the contract itself.

It is standard practice to include "change in law" provisions that allow for financial adjustments or extension of deadlines where regulatory changes materially affect the economics of the project. This approach follows recognized PPP best practices and is consistent with international project-finance standards.

Any adjustments, implemented through amendments or additional agreements to the concession contract, must comply with the EU and national framework on permissible concession contract modifications, ensuring both legal certainty for investors and protection of competition.

23. Is force majeure specifically regulated under the local legislation?

Bulgarian concession legislation does not establish a bespoke PPP statutory force majeure regime separate from the general civil and commercial law principles, which define force majeure as an unforeseen or unavoidable event of an extraordinary nature occurring after the conclusion of the contract. Accordingly, concession contracts typically include project-specific force majeure clauses, tailored to the specifics of the PPP and supplemented by general provisions setting out the relevant events qualifying as force majeure, the relevant procedures to be followed by the parties and legal consequences.

24. What are the general environmental and social requirements in project financings?

The environmental and social requirements for project financing depend on (1) the specifics of the project which determine the applicable legal framework and (2) the requirements of the financing institution.

All companies operating in the territory of Bulgaria must comply with the national environmental, labor and consumer protection laws, including applicable permitting processes (such as obtaining environmental impact assessment), respect for human rights and anti-money laundering and anticorruption framework. Additionally, under the auspices of the EU Green Deal, the environmental, social and governance (ESG) legislation started to play a bigger role in the local corporate environment, including by requiring the publishing of sustainability reports and integration of social and environmental concerns in the business operations of companies.

In addition, financial institutions have been incentivized to identify and mitigate ESG risks and impacts. Thus, lenders incorporate these requirements into the credit process, e.g. through conducting a robust E&S due diligence, assessing the project's (potential) impact on the environment and society, including E&S clauses in the facility agreements and linking E&S compliance with the pricing parameters of the financing.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Choice of foreign law and waiver of immunity clauses are generally enforceable in Bulgaria. It should be noted, however, that in line with the provisions of Articles 3 and 9 of Rome I Regulation, a choice of foreign law clause in financing arrangements will not limit the Bulgarian courts' ability to apply (1) mandatory provisions of Bulgarian law where all other elements relevant to the situation at the time of the choice of the foreign law are located in Bulgaria and (2) overriding mandatory provisions of Bulgarian law (to the extent relevant).

26. Can financing documents provide for arbitration clauses?

Yes, commercial financing documents can provide for an arbitration clause. Pursuant to Article 19, para 2 of the Bulgarian Civil Procedure Code the arbitration may have its seat abroad only if one of the parties has its habitual residence, registered office or place of effective management abroad. The enforcement in Bulgaria of arbitral awards delivered by an arbitration court seated abroad is subject to an exequatur procedure, i.e. a procedure for recognition and enforcement in Bulgaria. This is obtained through judicial proceedings which are adversarial and whose outcome is subject to appeal as of right and further open to discretionary cassation review.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The trends that we are currently witnessing on the project financing market in Bulgaria are in two main directions:

- emphasis on renewable projects – both greenfield and energy transition projects, mostly in the PV and BESS industries;
- substantial increase of loan tickets and more regular implementation of loan syndication structures.

28. Are any significant development or change expected in the near future in the project finance market?

Bulgaria officially joined the Eurozone on 1 January 2026. This is expected to further increase the investors' interest in developing new projects in Bulgaria (and seeking project financing opportunities) based on the rising confidence in the local market and improved financing conditions.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

In practice, project finance transactions in Bulgaria are predominantly denominated in Euro and have traditionally referenced EURIBOR as the applicable benchmark rate. As a result, the LIBOR transition had limited direct impact on the local project finance market. No specific local legal or regulatory adjustments have been required in connection with the LIBOR transition beyond alignment with broader market developments.

CROATIA

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Project financing as such is not regulated in Croatia. Croatia does however regulate areas closely related to project financing such as public private relationships and concessions. The main relevant regulations include:

- the Public Private Partnership Act,
- the Concessions Act,
- the Act on Strategic Investment Projects of the Republic of Croatia, and
- the Investment Promotion Act.

Additionally, sector-specific areas in which project financing typically takes place such as energy, real estate and infrastructure are also all mostly regulated in Croatia.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in Croatia started in the mid-1990s and early 2000s when the first major public private partnership projects for the construction of Croatian motorways began. These included the construction of the motorway in the north-west of Croatia connecting Pula with Rijeka and the Slovenian border (the so-called "Istrian Y" highway - the construction of which continues today) and the highway connecting Zagreb and Macelj. Both these projects were based on the establishment of concessions rights over the constructed highways.

The first Public Private Partnership Act in Croatia entered into force in 2008. It was later superseded by a new Public Private Partnership Act adopted in 2012, which underwent amendments in 2014 and 2018.

All major project finance-based investments in Croatia (except for the Zagreb Airport which was developed in the period from 2012 to 2017) date from the period before the economic crisis that started in 2008. This negative trend continued, and there have been no new major project financing arrangements closed in the last 12 months. Of note however, is the continuing construction of the "Istrian Y" highway with an overall project value of more than EUR 600 million. Completion is expected in 2027.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The most commonly used security types in project financing in Croatia are:

- pledge over shares, movables, bank accounts, rights or receivables,
- mortgage over real estate,
- floating charge over movables, and
- guarantees.

Another Croatia-specific security instrument used in project financing is a debenture note (in Croatian: *zadužnica*). A debenture note allows for a direct collection of funds from the security provider's bank accounts.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, company shares can be pledged as security in favor of lenders. In order to establish a valid security over shares, a title instrument and an act of perfection are required.

Project financing projects in Croatian typically involved limited liability companies, and for the pledge of their shares, it is specifically required that (i) a share pledge agreement is executed before a Croatian public notary in the form of a Croatian notarial deed, and (ii) the pledge is registered with the book of shares of the company and the Croatian Registry of Judicial and Notarial Security (in Croatian: *Upisnik sudskih i javnobilježničkih osiguranja*) held with the Croatian Financial Agency (in Croatian: *Financijska agencija*).

The establishment of a pledge over the shares (stocks) of a joint stock company only slightly differs from the process of establishment of a pledge over the shares of a limited liability company. A pledge agreement aiming to create a pledge over stocks of a joint stock company generally does not need to be executed in the form of a notarial deed. However, as a standard Croatian market practice also pledge agreements creating pledges over stocks are regularly concluded in form of notarial deeds as such form allows the creditor to pursue direct enforcement of the pledge through enforcement proceedings based on the pledge agreement only (without the need to go through judicial proceedings first for obtaining an enforceable document). In terms of perfection, the pledge over stocks needs to be registered with the Croatian Central Clearing and Depositary Company (in Croatian: *Središnje klirinško i depozitarno društvo*).

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Private sale is recognized as a method of enforcement of the share pledge in Croatia. The private sale option is regularly provided for in share pledge agreements, but the option is very rarely exercised in practice.

The reason for that is that the regulation of enforcement *via* the private sale of shares is very vague, and the option is rarely used in practice. As a result, the regulation and practice in relation to it are extremely scarce, leaving room for uncertainties, which thus generally discourages creditors from pursuing such an option.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Security interest in Croatia may not be established over the future property of the borrower, but rather any object of a security interest must be owned by the borrower at the moment of establishment of the security interest.

With regards to the creation of security over receivables specifically, there is a well-established market practice that future (undue) receivables may be pledged under the condition that at least the creditor, debtor and legal basis from which such receivables will be arising are determined at the moment of establishment of the pledge.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

In case the borrower becomes insolvent (while official insolvency proceedings have not yet been opened against the debtor), a lender may formally initiate regular enforcement proceedings against the borrower under the condition that the lender's claim became due. In case a security agreement has been entered into in the form of a notarial deed, the lender will be entitled to initiate direct enforcement proceedings based on such security agreement. The direct enforcement proceedings involve the following steps:

- the lender must obtain an enforcement confirmation on the relevant security agreement from the public notary. The conditions for obtaining an enforcement confirmation are set by the security agreement, and typically only a statement of the lender confirming that a claim became due is considered as sufficient,
- an enforcement request must be filed by the creditor with the court requesting enforcement over the relevant security based on the security agreement with the enforcement confirmation,
- the enforcement proceedings take place before the court and, unless successfully challenged by the borrower, the enforcement should end by the sale of the relevant collateral by the court and distribution of the sale proceeds to the lender.

In case official insolvency proceedings are opened against the debtor, generally any enforcement proceedings initiated against the debtor before the opening of the insolvency proceedings will be suspended and the enforcement will continue as part of the insolvency proceedings.

In case a lender should not have initiated enforcement proceedings before official insolvency proceedings have been opened, all of the claims of the lender against the debtor would be considered due as of the moment of the opening of the insolvency proceedings, and the lender will be entitled to pursue its claim within insolvency.

In terms of enforcement of security within insolvency proceedings (whether enforcement has been initiated before the opening of the insolvency proceedings or not), a secured lender that has security over the debtor's assets will be entitled to a separate settlement. Enforcement within

insolvency is generally processed as regular enforcement, meaning that the asset subject to security will be sold and the sale proceeds will be directed to the secured lender for the satisfaction of its claim (and only if there should be any proceeds left after the lender's claim has been satisfied in full, this will be distributed among other creditors).

The enforcement process is different in case a security agreement is not concluded in the form of a notarial deed. In such a case, the enforcement process must start with a lawsuit that must be filed by the creditor against the borrower. As a result of such proceedings, the creditor's claim should be established by way of a court decision with which the lender may then proceed to enforcement proceedings. In case official insolvency proceedings are started, the secured creditor will also be generally entitled to a separate settlement, but the debtor, the other creditors and the insolvency trustee will be allowed to challenge its claim, and in such case, the lender will again need to prove the existence of its claim through civil proceedings. For all of these reasons, it is recommended, and it is standard market practice for lenders to have the security agreements concluded in form of a notarial deed.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Croatian law does not recognize the concept of a security trustee. This is typically solved through a parallel debt structure, whereby the parties to an agreement agree that the security agent shall be the joint and several creditors of each and every obligation of the borrower towards each finance party (other than the security agent).

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Incentive measures for investment projects in Croatia are regulated by the Croatian Investment Promotion Act and pertain to investment projects in manufacturing and processing activities, development and innovation activities, business support activities and high-added value services. The main incentives relate to either tax refunds or cash grants for enterprises registered in Croatia, as follows:

- tax refunds and tax advantages,
- cash grants for costs of new jobs and/or employee trainings linked to investment projects,
- aid for development and innovation activities, business support and high value-added services,
- cash grants for capital costs of investment projects and labor-intensive investment projects,
- incentives for investments which utilize inactive government-owned property, and
- incentives to modernize business processes through automation and digitalization of production and manufacturing processes.

Substantial tax cuts on profits (minimum 50% and up to 100% reduction) are also available depending on the size of the investment and the number of new jobs created as well as profit tax reductions for investments modernizing the manufacturing industry.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

There are no special incentives and exemptions which apply to foreign investors.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency. The Constitution of the Republic of Croatia sets out that all rights acquired by investing capital will not be limited by law or other legal act and that foreign investors are guaranteed free transfer and repatriation of profits and invested capital.

12. Are there any restrictions for foreign investments in your jurisdiction?

There are no specific laws aimed at foreign investment; both foreign and domestic market participants in Croatia are protected under the same legislation. Pursuant to the Croatian companies' law, domestic and foreign companies operate under equal conditions in Croatia. A foreign investor may establish or participate in establishing a company and may acquire rights and/or obligations under the same conditions as any domestic investor. Specific restrictions may apply in areas related to Croatia's national security, defense and areas of its strategic interest.

In terms of real estate investment in Croatia, foreign investors may acquire Croatian properties under the condition of reciprocity; however, this restriction does not apply to citizens and legal entities from the member states of the European Union. European Union citizens and legal entities can acquire properties in Croatia under the same conditions as Croatian citizens and legal entities. Starting from 2023 this benefit also extends to acquiring agricultural land.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

No, provisions of Croatian law do not prescribe an equity requirement specifically for project financing in Croatia. However, the minimum share capital for the establishment of a limited liability company in Croatia amounts to EUR 2,500 and for a joint stock company EUR 25,000.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

There are no special registration and filing requirements generally applicable to project finance documents in Croatia, apart from security documents which need to be registered with the relevant authorities for the sake of perfection. Also, project financing involving public authorities (such as concessions and PPP) needs to go through regulated procedures which, among others, in certain steps may require the filing of project financing documents.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

In terms of choice of law, European Union law directly applicable in Croatia makes a distinction between insurance contracts covering large risks, whether or not the risk covered is situated in a member state of the European Union, and all other insurance contracts covering risks situated inside the territory of the Member States.

Large risks are specifically defined and listed in European Union's Solvency II Directive and include risks such as risks in relation to aircrafts and ships. In case of insurance contracts covering large

risks, the parties have full freedom of choice regarding the governing law of the insurance policy. There is however a limitation for cases where the parties have chosen the law of a foreign country when all other elements relevant to the situation are located in a different country. In that case, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

For insurance policies securing risks other than large risks, the parties' choice of foreign law is limited only to:

- the law of any member state of the European Union where the risk is situated at the time of conclusion of the contract,
- the law of the country where the policyholder has its habitual residence,
- in the case of life insurance, the law of the member state of the European Union of which the policyholder is a national,
- for insurance contracts covering risks limited to events occurring in 1 (one) member state of the European Union other than the member state where the risk is situated, the law of that member state, and
- where the policyholder pursues a commercial or industrial activity or a liberal profession and the insurance contract covers 2 (two) or more risks which relate to those activities and are situated in different member states of the European Union, the law of any of the member states concerned or the law of the country of the habitual residence of the policyholder.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Insurance proceeds may generally be assigned to the benefit of the lenders, except for proceeds from insurance policies which by their nature do not allow assignment (such as insurance proceeds from policies securing damages to third parties).

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

In terms of the assignment of insurance policies in favor of the lenders, Croatian law requires that the insurers are notified of such an assignment for the sake of the full perfection of the assignment. In case of insurance of high amounts where there are several insurers and/or reinsurance takes place, the delivery of the notices of assignment and particularly providing evidence of such delivery may be challenging. On the lender side however, it is a common expectation that evidence of delivery of the notice of assignment will take place as a condition precedent to any funding which may delay closings or require for waivers of conditions precedents.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Public-private partnership is a permitted method of developing projects in Croatia. To date, contracts for 17 public-private partnership projects have been concluded in Croatia with an estimated capital value of EUR 338 million. The public-private partnerships were mostly established for the construction of public service accommodations (such as school buildings, entertainment or sports facilities and government buildings) and transport

infrastructure (such as highways, airports and bus terminals).

The most dynamic period for public-private partnership in Croatia was between 2006 and 2008 with building projects of new sport facilities in Split and Varaždin, the construction of the bus terminal in Osijek and the reconstruction of the Varaždin County palace. Further, 9 (nine) contracted projects were related to the educational system with the purpose of construction, upgrading and maintenance of schools and school buildings. In 2013, a contract for the construction of a new passenger terminal at Zagreb Airport was signed for EUR 188 million, thereby becoming the public-private partnership project with the highest capital value in Croatia.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between public authorities and lenders are not prohibited by Croatian law; however, they are not common in the Croatian market. Generally, public authorities enter into public-private partnership agreements with private companies incorporated for a specific purpose*, i.e.,* for the implementation of a specific public-private partnership project. The lenders then enter into loan agreements with the "specific purpose" private company in order to finance the project.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption, etc.) available in your jurisdiction.

Croatian government support may be found in public-private partnership agreements mostly in the form of tax exemptions, tax deductions and establishing a building right without consideration payment or assistance in obtaining necessary permits and approvals in the initial phases of the public-private partnership project. Occasionally, the government will provide private partners with state guarantees, equity financing or some form of additional financial support. The level of government support varies and is determined on a case-by-case basis.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Generally, the political risk under public-private partnership agreements is assumed by the public party. Political risk usually means the probability of changes in certain legal regulations that can significantly affect the cash flows of the public-private partnership project (such as tax rates changes) or prevent further business development (for instance property expropriation). Therefore, public-private partnership agreements regularly contain a provision by which the private party is entitled to monetary compensation, if during the implementation of the public-private partnership project, statutory regulations are changed due to political reasons.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

When it comes to concession agreements, investors and lenders are usually not protected against the risk of legislative changes. Namely, granting a concession for works or services includes the transfer of operational risk to the private partner which also includes the transfer of the demand and/or supply risk. For example, a legislative change regarding the increase

of the value added tax rate can cause an increase in the selling price of certain work or services and therefore, the demand by the end user for specific work or a service may significantly decrease. This means that the materialization of the legislative change risk can induce a whole range of other risks which may be borne by investors and lenders.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is generally regulated by the provisions of Croatian obligations law which regulates the basics of contractual and non-contractual mandatory relations between parties. In general, the concept of *force majeure* is defined as an external, unpredictable and extraordinary event that could not be prevented, eliminated or avoided. The Croatian Public Private Partnership Act specifically regulates that every PPP agreement must contain a *force majeure* clause in order to be binding.

24. What are the general environmental and social requirements in project financings?

In project financing, companies must comply with applicable statutory obligations in the field of environmental, social and labor law. There is a general awareness of societal expectations regarding responsible business conduct which is regulated by law. The government effectively implements domestic laws in order to maintain consumer and environmental protections and avoid the infringement of human and labor rights.

Croatia has also implemented and continues to implement all the European Union legislation which requires a due diligence approach to responsible business conduct. Labor laws are strictly implemented and not waived to retain or attract investment. Collective bargaining is a common tool, mostly implemented by unions, which overwhelmingly represent workers associated with government spending and state-owned enterprises.

Various laws related to forest and water management, concessions and environmental protection maintain a high level of environmental and human rights standards. For instance, provisions of the Croatian Concession Act prescribe that the impact on the environment must be taken into account and form part of the justification study when granting a concession to a private entity.

Finally, ever-growing environmental, social and governance (ESG) legislation became a significant part of Croatia's corporate environment in recent years. With demand for transparent and sustainable business practices at an all-time high, companies have had to set up environmental, social and governance strategies and reporting standards for environmental, social and governance factors to meet investor, customer, employee and regulator expectations. Since 2021, an increasing number of Croatian companies have started implementing sustainable business practices which are environmentally responsible, protect employee well-being and ensure transparent company operations.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Yes, submission to foreign law and waiver of immunity provisions are generally enforceable in Croatia. In terms of choice of law, enforcement thereof may be limited to the extent that the application of foreign law may be found contrary to Croatian public policy (*order public*) and/or mandatory provisions of Croatian law.

26. Can financing documents provide for arbitration clauses?

Yes, arbitration clauses may be included in financing documents. Arbitration awards may be generally enforced in Croatia without examination of the merits of the case, subject to applicable recognition and enforcement treaties and regulations of general application.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

In Croatia, project financing is currently often used in energy-related projects, especially in developing private energy production facilities. These are mostly private projects, and there is little project financing active in the public sector in Croatia at the moment. Currently in Croatia, there is a stagnation in the number of concluded public-private partnerships. This is largely due to the funds made available through Croatia's membership in the European Union, where most of the largest infrastructure projects in Croatia in the past 5 (five) year period were co-financed by the European Union, and this trend is expected to continue in the coming years.

28. Are any significant development or change expected in the near future in the project finance market?

The lending industry in Croatia is generally expecting a positive outlook following Croatia's entrance into the Eurozone in 2023. The loss of the exchange rate risk with respect to the Euro should lower financing costs and foster foreign financing and investment. Project financing is expected to benefit from this forecast as well.

Though the need for the development of a legal framework for project financing in Croatia is generally recognized among stakeholders in the financing industry in Croatia, there are still no official initiatives in that respect.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

LIBOR has not been widely applied in Croatia. In the small amount of transactions where LIBOR was used, the interest rate was mainly turned into SOFR or STR during the transition period.

DENMARK

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

There is no specific legal framework governing project financings in Denmark. Project finance is governed by general principles of law. However, there are some specific acts regulating lending in general, guarantees etc.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

Denmark has a well-developed project finance market, supported by a stable political and economic environment, a skilled workforce, and a strong renewable energy sector. The country is known for its ambitious renewable energy targets and has been a pioneer in the development of offshore wind farms.

Recently, other types of renewable projects have transpired in Denmark including the following:

- On 20 January 2026, European Energy A/S and Mitsui & Co., Ltd. secured a green-financing bridge facility for their joint venture developing the solar park and e-methanol plant in Kassø, formally known as Solar Park Kassø (SPK). The agreement supports the continued operation on one of Europe's most advanced Power-to-X projects and supports continued development of e-fuels for sectors where reducing emissions is particularly challenging. Kassøe is currently the world's largest eMethanol plant in Denmark.

Late January 2026, the Danish Energy Agency made public that its Carbon Capture Storage CfD Tender had received two applicants and enters into the next phase.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The following security types are the ones most commonly used in project financings in Denmark:

- Mortgage over real property (including land)
- Assignment and subrogation agreement relating to the construction agreement and other project agreements
- Assignment of project insurances
- Pledge over bank accounts
- Pledge over shares in special purpose vehicle company
- Assignment of intercompany loans (if any)
- Guarantees

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

The shares in a company incorporated in Denmark can be pledged as security for the benefit of lenders.

A security interest over shares is protected against competing rights by providing notice of the pledge to the issuing company and having the pledge registered in the company's share register.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Private sale

In Denmark, private sale is a recognized method for the enforcement of a share pledge, however, a private sale of the shares is only available if agreed between parties in the share pledge agreement.

Market standard Danish law share pledge agreements provide for an option to enforce the share pledge by private sale upon the occurrence of certain triggering events, typically an event of default under the facilities agreement pursuant to which the security is provided.

Any enforcement by way of taking over the shares after valuation or a private sale of the shares may only be initiated after the pledgor has been given a 1 (one) week's prior written notice (calculated from the delivery of the notice) by registered mail unless an immediate sale is required in order to avoid or limit losses. This is a mandatory rule set out in the Danish Administration of Justice Act that may not be deviated from by agreement.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Future assets

Future assets can only be pledged if it is clearly described in the pledge document, i.e., the assets need to be identified accurately. As fixed mortgages over assets (such as machinery and chattel) cannot cover collections of uniform assets, each asset must be identified in the pledge agreement.

In most cases (depending on the assets to be pledged), perfection cannot be achieved prior to the pledgor receiving title to the relevant asset. This applies to pledges over real property and chattel.

In cases where the pledgor becomes subject to bankruptcy proceedings within a period of 3 (three) months after proper

perfection of the security (and in some instances 2 (two) years), such security would be subject to avoidance.

Future Rights and Receivables

It is possible under Danish law to assign future rights and receivables. However, any assignment of such rights and receivables will normally not be valid vis-á-vis the creditors of the Seller (including its bankruptcy estate) until such time as the future rights and receivables are clearly identified.

Bulk sales would most likely not create an enforceable right for the pledgor, as each receivable that is to be assigned must be clearly identified at the time of the assignment in order to eliminate any uncertainty as to the nature and scope of the future receivables.

However, any assignment of future rights and receivables will only be valid vis-á-vis the creditors of the Seller (including its bankruptcy estate) if the perfection requirements, including satisfaction of the notice to the debtor, clearly identifying the rights/receivables assigned (the "**Identification Prong**"). As there is very limited Danish case law on the subject, it is difficult to establish precise guidelines detailing what would be required to satisfy the Identification Prong. Generally, however, the Identification Prong will likely be satisfied provided that the contractual relationship between the Seller and the debtor, which gives rise to relevant future receivables, can be described in detail.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Both the debtor and any creditor may initiate bankruptcy proceedings in respect of the debtor where the debtor is insolvent where "insolvent" for such purpose means inability to pay its debts as they fall due. In general, when it becomes likely that the company will not make it through the distress, the directors should file for bankruptcy. If not, they may incur liability for debt incurred after it should have been clear to the directors that the company would not be able to survive.

During bankruptcy, it is in principle possible for a pledgee to enforce a pledge of shares, a pledge of bank accounts and assignments of contractual rights and receivables. The enforcement proceedings must not be made in cooperation with the bankruptcy estate and can be made without the consent of the administrator of the bankruptcy estate. However, the administrator can require that a valuation of the pledged assets be carried out. If such a valuation is not made, the pledgee will have to ensure – and will ultimately be held liable for – having completed the realisation of the relevant assets at a fair market value.

The enforcement of security over real estate will be impacted by the commencement of bankruptcy proceedings. Such security interests may only be enforced by the bankruptcy administrator, and the creditors cannot demand enforcement of such security interests until 6 (six) months after the declaration of bankruptcy. Prudent bankruptcy administrators will, however, cooperate closely with a mortgagee so as to arrange for the best sale of the real estate which is often by way of a private sale. Where the outstanding loan secured under a mortgage exceeds the value of the real estate, the bankruptcy administrator will generally take instructions from the mortgagee in respect of the conduct of the sale.

Generally, the bankruptcy administrator will have to account to the secured creditors (and the non-secured creditors

as well) for any significant step taken by the administrator in respect of the assets of the bankruptcy estate. For assets over which mortgages are registered, such as real estate, the bankruptcy administrator would not be able to sell below the loan secured by the mortgage(s) by way of a private sale. However, the bankruptcy administrator may initiate a forced auction sale and it is generally acknowledged that a sale on a forced action cannot qualify as an undervalue sale whatever the sales price and whether or not the secured loan is fully discharged. Costs incurred by the bankruptcy estate in respect of the secured assets, e.g., in respect of insurance, maintenance, operational costs, sales costs (including sales fee to the bankruptcy administrator), etc., rank ahead of the secured debt. If the mortgage over the asset in question also includes earnings from the asset (e.g., rental), such earnings will cover the said costs first and then the secured debt.

A 'straight forward' bankruptcy would normally be able to be concluded within 6 -18 months, but may – and many will – obviously be delayed by many factors, such as litigation, sale of assets, claims against other bankruptcy estates, the complexity of the debtor group, etc.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Denmark does not recognise the concept of trust and is not a party to the Hague Convention on Trusts 1986. However, the concept of security agents/trustees administering security on behalf of the secured parties, i.e., by way of the security trustee acting as an agent on behalf of the secured parties is recognised under Danish law. Moreover, it is possible to grant the relevant security for the benefit of the security trustee on behalf of each of the secured parties by appointing the security agent/trustee as an agent in accordance with Section 18(1) cf. Section 1(2) of the Danish Act on Capital Markets (in Danish: *lov om kapitalmarkeder*). In such case, the security agent may enforce the security on behalf of all other finance parties.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Denmark has a well-developed project financing market, and there are various incentives and exemptions available for project financing in the country. Some of the main incentives and exemptions include:

1. Public funding: The Danish government does in some instances provide public funding to support project financing, including loans, and guarantees. These funding programs are designed to encourage investment in specific sectors, such as renewable energy, infrastructure and research and development. Within the renewable section, the Export & Investment Fund of Denmark (EIFO) is the most significant player. Also, the Danish Energy Agency has recently closed a tender for CfD for Carbon Capture Storage (CCS).
2. Green bonds: Denmark is a leader in the issuance of green bonds, which are debt securities that are specifically used to finance environmentally-friendly projects.
3. Supportive regulatory environment: Denmark has a supportive regulatory environment for project financing, with clear and transparent laws and regulations that promote investment and protect the rights of investors.

4. Strong project pipeline: Denmark has a strong pipeline of projects that are suitable for project financing, particularly in the areas of renewable energy, infrastructure, and real estate. This provides investors with a diverse range of investment opportunities and reduces their risk exposure.

Overall, the main incentives and exemptions for project financing in Denmark are designed to promote investment in sustainable and socially responsible projects, while also providing investors with attractive returns and reducing their risk exposure.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

There are no tax or other incentives provided preferentially to foreign investors or creditors.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no restrictions in Denmark in regards to borrowing bank loans and/or shareholder loans from abroad or in a foreign currency.

12. Are there any restrictions for foreign investments in your jurisdiction?

On July 1, 2021, the act on screening of certain foreign investments etc. in Denmark entered into force pursuant to which foreign investors in some cases are obliged to obtain approval from the Danish Business Authority ("**DBA**") prior to executing the transaction. The rules are quite broad and will be described in general below.

Transactions that will trigger screening requirements

The act introduces (i) a mandatory screening mechanism for certain foreign investments in sensitive sectors if the foreign investor obtains at least 10 % ownership or voting rights, or equivalent control by other means, and (ii) a voluntary cross-sectoral notification mechanism for certain foreign investors who obtain at least 25 % ownership or voting rights, or equivalent control by other means (relevant for investments in non-sensitive sectors which may nevertheless threaten national security or public order). Investments, where control is acquired indirectly, may also trigger a screening requirement e.g., in case of a sale of a foreign parent with a Danish subsidiary.

The sensitive sectors for which the mandatory screening requirement applies are (i) defence, (ii) IT security or processing of classified information, (iii) companies producing dual-use goods, (iv) other critical technology, or (v) companies within critical infrastructure.

Investors covered by the screening requirements

- Foreign citizens.
- Companies not domiciled in Denmark even though they have a permanent establishment in Denmark.
- Companies domiciled in Denmark if the company is a subsidiary or a branch of a company not domiciled in Denmark.
- Companies domiciled in Denmark if a foreign person or undertaking has control of or significant influence over the company.

Danish authority that controls and monitors foreign investments

The DBA controls and monitors foreign direct investments and receives and processes filings related to the screening mechanisms.

Consequences of not filing

The Danish authorities can issue an order

to roll-back a planned or completed investment if an investor fails to file. If the order is not complied with, the DBA may, for instance, annul the foreign investor's voting rights.

Legislation that impact investments in Danish companies

Foreign investors seeking to invest in Danish companies must at an early stage factor-in that the investment may need to be approved by the DBA prior to the investment being concluded. This also applies even if the intended investment does not concern a company that operates in or is otherwise active within any of the sensitive sectors set out in the act.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no specific minimum equity requirement for project financing in Denmark under the legislation. However, the amount of equity required for a project finance transaction in practice will depend on a variety of factors, including the type and size of the project, the perceived risk of the project, and the requirements of the lenders.

In general, project finance transactions in Denmark are typically structured with a mix of equity and debt financing. The equity component of the financing is typically provided by the project sponsors, who are responsible for providing a portion of the project's capital in the form of equity.

The amount of equity required for a project finance transaction in Denmark will vary depending on the specific project and the risk profile of the project. In some cases, lenders may require a minimum equity contribution from the project sponsors to ensure that they have a sufficient stake in the project and are incentivized to ensure its success.

It is important to note that while there is no specific minimum equity requirement for project financing in Denmark under the legislation, lenders will carefully evaluate the equity component of a project finance transaction to ensure that it is sufficient to support the project and to provide a cushion against potential losses. This evaluation will typically include a review of the project sponsors' financial strength, their experience in the relevant industry, and their commitment to the project.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In general, project finance documents are not subject to any registration and filing requirements.

However, if security has been taken over the property in the form of a non-possessory pledge (i.e., legal mortgage) the perfection requirement is registration with the Danish Land Registry (in Danish: *Tingbogen*). Registrations are publicly available and serve as protection against both contracting parties and other creditors of the mortgagor.

Security over real estate is established by way of a mortgage. There are 3 (three) types of mortgages available:

(i) the ordinary mortgage, which is usually applied by mortgage-credit institutions (in Danish: realkreditinstitutter);

(ii) the indemnity mortgage (in Danish: skadesløsbrev); and

(iii) the owner's mortgage (in Danish: ejerpantebrev).

Registration of mortgages with the Danish Land Registry is subject to a registration

fee of 1.25 per cent of the face value of the secured amount, together with a handling fee of DKK 1,825.

Further, it is common in project financings that a negative pledge is registered over the property in the Danish Land Registry. The consequence of registering such a negative pledge is that it will not be possible to register new mortgages in favour of third parties without the consent of the pledgee. If negative pledges are to be registered with the Danish Land Register of the real estates, such registration should be made a condition subsequent to completion. Otherwise, it can negatively impact the timing of the registration process of the mortgages required to be registered for the purpose of completion.

The registration of a negative pledge with the Danish Land Registry is subject to a handling fee of DKK 1,850.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

It is possible for local insurance policies in Denmark to be governed by a foreign law.

Under Danish law, parties to an insurance contract are generally free to choose the law that will govern their contract, as long as the choice of law is not contrary to Danish mandatory rules. This means that parties may choose to have a foreign law govern their insurance contract, as long as the choice of law does not violate mandatory provisions of Danish law, such as those concerning consumer protection or public policy.

If a foreign law is chosen to govern an insurance policy, the policy must still comply with Danish mandatory provisions, such as those related to claims handling, dispute resolution, and consumer protection.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

It is market practice in Danish project finance transactions that the company's rights under insurance policies are assigned in favor of the lenders/security agent.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

There are no other general complications, concerns or issues in relation to the insurance provisions under project financing documentation.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

PPP is a permitted and often used method for developing projects in Denmark.

Below are a few examples of PPP projects that have been developed in Denmark:

Hobro tinglysningsret project in Denmark is a public-private partnership ("**PPP**") project that involved the construction of a new building to house the Danish Registration Court. The project was a joint venture between the Danish government and a private company, which is responsible for designing, building, and financing the facility. It has been seen as a model for future PPP projects in Denmark and elsewhere to have a positive impact on the local economy, creating jobs and attracting new businesses to the area as it demonstrates the potential benefits of public-private partnerships in delivering

public services more efficiently and effectively.

Kliplev-Sønderborg Motorvejen: Kliplev-Sønderborg Motorvejen is a highway project in Denmark that was developed through a PPP model.

Under the PPP agreement, a private consortium was responsible for financing, designing, constructing, and operating the motorway for a period of 30 years. The consortium included several construction and engineering firms, as well as a financial partner.

The motorway project included the construction of approximately 30 kilometers of new four-lane motorway, as well as the widening and upgrading of approximately 13 kilometers of the existing motorway. The project also included the construction of several bridges, interchanges, and other associated infrastructure.

The PPP agreement between the private consortium and the Danish government included a number of key provisions. For example, the private consortium was responsible for financing the project through a combination of equity and debt financing. The consortium also assumed the risk of construction delays, cost overruns, and other potential risks associated with the project.

In exchange for assuming these risks and delivering the motorway project, the private consortium was granted a long-term concession to operate and maintain the motorway for a period of 30 years. The government agreed to make payments to the consortium over this period, based on the consortium's performance in meeting certain key performance indicators, such as traffic volumes and maintenance standards.

Overall, the Kliplev-Sønderborg Motorvejen project is an example of how PPP models can be used to finance and deliver large-scale infrastructure projects while sharing risks and responsibilities between the public and private sectors.

In all of these projects, the private sector partners are responsible for financing the construction of the infrastructure, and for operating and maintaining the facilities over a period of time. The public sector partner provides a long-term contract and payment stream to the private partner in exchange for the delivery and operation of the infrastructure.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between the public authorities and the Lenders are permissible under Danish law and are often seen in regards to infrastructure projects.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The Danish government can provide a treasury guarantee to lenders on behalf of the borrower. This guarantee is issued by the Danish Ministry of Finance and covers both principal and interest payments. The guarantee reduces the risk for lenders and may result in lower interest rates for borrowers.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

In Denmark, as in most other countries, the allocation of responsibility for political risk events in Public-Private Partnership

agreements depends on the specific terms and conditions of the agreement.

PPP agreements usually contain provisions that allocate the risk of political events between the public and private parties. These provisions may vary depending on the specific project and the preferences of the parties involved.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

In general, investors and lenders in project financings may not be fully protected against a change in law passing subsequent to the signing of the relevant concession agreement in Denmark. However, the specific provisions and protections offered in the concession agreement, as well as the relevant laws and regulations in Denmark, may provide some level of protection to investors and lenders.

In Denmark, concession agreements are typically negotiated between the project sponsor and the public authority responsible for the infrastructure project. These agreements outline the terms and conditions of the project, including the rights and obligations of the parties involved. Concession agreements are typically governed by Danish law and subject to the jurisdiction of Danish courts.

In terms of protection against changes in law, the concession agreement may include provisions that address this issue. For example, the agreement may include a force majeure clause that provides for relief in the event of unforeseeable circumstances beyond the control of the parties, including changes in law. Additionally, the agreement may specify a dispute resolution process that can be used to resolve disputes arising from changes in law.

However, the level of protection provided by the concession agreement will depend on the specific terms and conditions negotiated by the parties. Furthermore, the Danish legal system provides for the possibility of legislative changes that may impact the terms of the concession agreement or the project itself. In such cases, investors and lenders may need to rely on the protections offered by the concession agreement or seek recourse through the courts or arbitration process.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is not specifically regulated under Danish legislation in regards to project financing. Under the Danish Contracts Act, force majeure is referred to as "*force majeure og lignende tilfælde*" (force majeure and similar cases). According to Section 24 of the Danish Contracts Act, a party to a contract may be released from its obligations if it can be demonstrated that the failure to perform was due to a force majeure event. The party claiming force majeure must show that the event was beyond its control and could not have been foreseen at the time of entering into the contract. The party must also show that the event has made it impossible to fulfill its obligations under the contract.

It is important to note that force majeure clauses are not implied in contracts in Denmark, which means that parties must specifically include a force majeure clause in their contract if they wish to rely on it. The clause must specify what events will constitute a force majeure event and the consequences of such an event, such as whether the party will be released from its obligations or whether the contract will be terminated.

24. What are the general environmental and social requirements in project financings?

There are several Danish acts dealing with the issue of environmental contamination and clean-up orders, which are generally supervised by the regions.

Any Danish property is to some extent surveyed in order to establish an overview of contaminated or possibly contaminated properties, to minimise the risk of groundwater pollution, prevent pollution expanding and to ensure that public health is not put at risk. If a property is mapped as contaminated or possibly contaminated, certain restrictions to the property apply. A contamination registration does not restrict the actual use of the property, but any change of the use to sensitive use or construction on the mapped property requires a permit from the authorities.

The "polluter pays" principle is well established in Denmark. Clean-up orders can be issued to polluters even though they do not own the polluted property. In such case, the owner can be ordered to tolerate the clean-up.

The environmental liabilities under Danish public law are supplemented by the general law of torts, which generally bases liability on negligence but under some circumstances applies a strict liability.

Rules on health and safety in the work place, including working hours and holidays, are mainly set forth in the Danish Holiday Act, the Danish Act on Working Hours and the Danish Act on Working Environment (and related executive orders).

The above acts are all administered by the Ministry of Employment. Further, the Danish Working Environment Authority (which is an agency under the Ministry of Employment) contributes to the creation of safe working conditions at Danish workplaces, e.g., by carrying out inspections of companies.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

A Danish company may submit to a foreign jurisdiction, although a judgment obtained in a foreign jurisdiction may not be immediately enforceable in Denmark.

Furthermore, a waiver of immunity will generally be effective. However, assets which are necessary for the proper functioning of the Kingdom of Denmark will be protected against post-judgment measures of constraint such as attachment, arrest or execution in Denmark.

26. Can financing documents provide for arbitration clauses?

Financing documents may provide for arbitration clauses. Denmark is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which means that arbitration agreements and awards made in other countries that are signatories to the convention are recognized and enforceable in Denmark, subject to certain limited exceptions.

Furthermore, the Danish Arbitration Act allows parties to agree to submit their disputes to arbitration, and the Act applies to both domestic and international arbitrations. The Act also allows parties to agree on the procedure for appointing arbitrators and the conduct of the arbitration proceedings.

Therefore, parties can include arbitration clauses in their financing documents in Denmark, and these clauses will generally be enforceable under Danish law.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The main current trends in project financing in Denmark are:

- **Green financing**: Denmark is committed to achieving a carbon-neutral economy by 2050, and this has led to an increased focus on green financing. Many projects related to renewable energy, energy efficiency, and sustainable infrastructure are being financed through green bonds, loans, and other instruments.
- **Public-private partnerships (PPPs)**: The Danish government is actively promoting the use of PPPs to finance infrastructure projects. PPPs involve a partnership between the public sector and private companies, and they are being used to finance projects such as hospitals, schools, and transportation infrastructure.
- **Public financing sources:** The Danish project finance market has seen a still increasing involvement of public and treaty based financiers, such as EIFO, EIB, NIB and national export credit institutions.
- **ESG considerations**: Environmental, social, and governance ("**ESG**") considerations are becoming increasingly important in project financing. Lenders and investors are placing more emphasis on the sustainability and social impact of the projects they finance.
- **Hybrid projects and power-to-X:** The power-to-X market in Denmark has been subject to significant attention in recent years, and we have seen an increased focus on developing power-to-X facilities in Denmark. Further, it is becoming increasingly more prevalent that projects are structures as hybrid structures with e.g. renewable energy, battery storage and power-to-X facilities. Such projects typically require specifically tailored structures.
- BESS: Denmark has a significant number of wind- and solar projects, but recently we have seen an increase of Battery Energy Storage System (BESS) projects – both in connection with wind- and solar projects but also on a stand alone basis.

28. Are any significant development or change expected in the near future in the project finance market?

Denmark has a strong tradition of project finance, particularly in the renewable energy sector. In recent years, there has been a significant increase in the number of large-scale wind and solar projects in Denmark, many of which have been financed through project finance structures.

One recent development in the project finance market in Denmark is the increasing focus on sustainability and ESG (Environmental, Social, and Governance) factors. Investors are increasingly interested in financing projects that align with their sustainability objectives, and many financial institutions are incorporating sustainability criteria into their lending decisions.

Another potential development in the project finance market in Denmark is the use of alternative financing structures, such as green bonds and green loans. These financing structures are specifically designed to fund environmentally sustainable projects and are often attractive to investors with a focus on sustainability.

Finally, the Danish government has set ambitious targets for reducing greenhouse gas emissions and increasing the share of renewable energy in the country's energy mix. These targets are expected to

drive continued growth in the renewable energy sector and may lead to increased investment in project finance structures to fund renewable energy projects.

Geopolitical developments have also become increasingly relevant for the project finance market in Denmark. Heightened geopolitical tensions in Europe have intensified the focus on energy and supply infrastructure and security, which has resulted in increased political support for renewable energy infrastructure. In turn, investors in the Danish market seem, to some extent, to shift their focus to such projects.

Since the beginning of 2026, there has been significant attention in Denmark on the Greenland discussions between primarily Denmark, Greenland and the United States, including whether and how this may affect future presence of Denmark and the United States in Greenland. These discussions may affect the future of projects in Greenland, and thereby the project finance market, however, at this point it is uncertain if and to what extend the discussions will have a significant impact in this regard.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

The current Danish reference term rate for Danish Kroner, CIBOR, is still in place and it is expected that it will continue to exist for years to come. In November 2025, the Danish Central Bank announced that it supports an analysis of the possibility to transition away from CIBOR to transaction-based reference rates, and accordingly, the Danish Central Bank and Finance Denmark (the main business association for the finance sector in Denmark) have established a joint working group to analyse and advise on a CIBOR transition. In general, market participants seem to take the view that if Europe moves away from "term rates" such as EURIBOR to actual market rates/risk-free rates, the Danish market will likely do the same to harmonise with the international market. Hence, we believe that CIBOR at some point will be discontinued.

FRANCE

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Domestic regulatory framework:

Public, Private Partnerships ("**PPPs**") and concessions are mainly governed by two binding legal texts:

- Ordinance of July 23, 2015 and Decree of March 25, 2016 for PPPs; and
- Ordinance of January29, 2016 for concessions. Prior to the enactment of the Ordinance of January 29, 2016, concessions were largely defined by the case law of the "*Conseil d'Etat*" (the French supreme administrative court), a number of decisions of which continue to apply and which have set the general principles of administrative law applicable to concessions.

More generally, the legal provisions governing project finance are to be found in in the French Civil code, Commercial code and Monetary and financial code.

International treaties:

European Union law is an important source of legislation, through the implementation of EU directives and the direct application of EU regulations governing subject matters relevant to project finance.

France is also party to many international treaties governing human rights, assets and liabilities, judicial co-operation and the environment.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in France is a very mature market. For a bit less than 30 years, significant transport infrastructure,

especially motorways, have been developed using limited recourse project financing. Other transport infrastructure, such as high-speed and urban railway projects have also been developed using limited recourse financing. In the years following 2003, a large number of social infrastructure (hospitals, schools, universities, prisons, police stations, army barracks, sports infrastructure and stadiums, government accommodation projects, etc.) were developed and financed though the implementation of availability scheme PPPs, making France one of the leading project finance markets in the world. A large number of deals in the power and renewables sector (such as wind and solar projects) have also been financed through limited recourse financing structures. In more recent times, a number of very large telecom fiber deals have also been developed using limited recourse project financing. The most significant projects to have reached financial close over the last 12 months in France include:

- the refinancing of telecom fiber company Orange Concessions' financial indebtedness with a total debt amount of EUR 1.2 billion;
- the acquisition by Vauban Infrastructure Partners of Towerlink France (Cellnex's French data center business) for a total amount of approximately EUR 400M; and
- the financing and refinancing of SFTRF, the company in charge of operating the French section of the Fréjus road tunnel in France, for a total amount of approximately EUR 1bn.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

A variety of security interests can be used in project financings in France. These include pledges, which can be granted over assets, shares, financial securities accounts, bank accounts and a wide variety of receivables.

Receivables can also be secured through an assignment by way of security. The *Dailly* assignment (governed by Articles L. 313-23 *et seq*. of the French Monetary and financial code) has been one of the most popular instruments because of its simplicity and efficiency: title to the receivables is immediately transferred to the beneficiary, which has proven to be a useful protection in the case of debtors' insolvencies. However, only credit institutions and specific investment vehicles can benefit from it. A reform passed in 2021 has offered an alternative with the creation of a "common law" assignment of receivables by way of security in the Civil code, which can be granted for the benefit of any type of creditor and offers rights comparable to those available under the *Dailly* assignment.

Personal guarantees can also be granted under French law, in particular suretyships (*cautionnement*) and on-demand guarantees *(garanties autonomes)* granted by a credit institution or a parent company. Debt delegation *(délégation de paiements)* is another technique which grants the creditors a direct right over the project company's debtors.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Share pledges are very common in France.

Pledges over the shares of a French *société par actions simplifiée* (which is the most commonly used corporate vehicle for project financings in France) take the form of a financial securities account pledge.

The validity of financial securities accounts pledges requires a statement of pledge (*déclaration de nantissement de comptes de titres financiers*) including specific mandatory information to be signed by the pledgor. No further formality is required for the validity of the pledge.

For specific categories of companies which are not regularly incorporated in the context of project finance transactions, formalities in relation to registration of a pledge over their shares are required under French law.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Under French law, there is a general prohibition of enforcement of security interests by way of private sale (*voie parée*). However, private foreclosure (*pacte commissoire*) is possible and allows the beneficiary to take ownership of the pledged asset without any judicial procedure.

Share certificates do not exist under French law and shares are dematerialized. All joint-stock companies (*sociétés par actions*), which include the *société par actions simplifiée*, keep shareholders' accounts specifying the identity and the number of shares detained by each shareholder, which serve as a proof of the relevant shares' ownership. Shareholders' accounts also specify whether the shares are subject to any pledge.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Security interests can be established over future assets, rights and receivables under French law.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Under French law, any contractual clause adversely affecting the position of the borrower as a direct result of the opening of amicable or insolvency proceedings (such as triggering an event of default) is deemed null and void.

If the borrower is under out-of-court, amicable proceedings (*mandat ad hoc* or conciliation proceedings), no automatic stay on claims will apply, so the lenders may theoretically enforce their security interests. It is, however, common practice that all the creditors involved in negotiations in the context of amicable proceedings commit not to make any repayment demand or to enforce their security interests against the borrower during the period of the negotiations (full standstill period). In addition, in the context of conciliation proceedings, the borrower is entitled to request extensions of time for payment of up to 24 months from the Court, which may prevent the enforcement of security interests.

If the borrower is subject to judicial insolvency proceedings governed by the *Livre VI* of the French Commercial code (safeguard, reorganization or liquidation proceedings), an automatic stay will apply to all unsecured and secured creditors. Except for a few exceptions and depending on the type of insolvency proceedings, the lenders will in principle not be able to enforce their security interests during the proceedings.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

A new security trustee regime was introduced under French law by a reform passed in 2017. It has enabled the security agent to take, manage and enforce security interests granted in favor of the creditors, act on their behalf in relation to the security interests and hold title to the security interests. The security interests held by the security agent are not part of its estate or the creditors', but are held in an autonomous and distinct estate. Therefore, insolvency proceedings affecting the security agent cannot affect the creditors' rights in relation to the security interests.

Additionally, the French Judicial Supreme Court (*Cour de cassation*) has recognized the validity of parallel debt provisions.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Foreign and local investors may benefit from subsidies and financial incentives based on various considerations, such as the project's sector and location, the project company's size, the level of contribution to research and development, etc.

It should be noted that the European Commission closely monitors such state aid for compatibility with EU competition rules. All but the smallest incentive schemes require the Commission's approval.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Please refer to the answer to question 9.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

A project company may take out loans from abroad as long as it complies with the anti-money laundering and terrorism financing regulations. It should also be noted that, in relation to trans-border shareholder loans, specific tax rules may apply which may limit or eliminate the project company's ability to deduct interests from its taxable income (Article 238 A of the French General tax code prohibits such deduction if the shareholder is located in a non-cooperative country or territory for tax purposes).

Borrowing in a foreign currency is not subject to any limitation in particular.

12. Are there any restrictions for foreign investments in your jurisdiction?

A number of ordinances and decrees have broadened the scope of the foreign investment control regime under French law.

Articles L.151-3 and R. 151-1 and seq. of the Monetary and financial code require the prior approval of the Ministry of Economy for foreign investments made in strategic sectors if they result in the control of a French entity (according to different criteria).

Strategic sectors include activities in relation to national defense, public order and public safety.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

French law does not provide for any minimum equity requirement in relation to project financings. Even though the equity requirement will depend on the projects' characteristics and risks, it is unlikely that equity will be lower than 30% of the aggregate financing in practice.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In general, project documents and finance documents do not require any filling or registration.

Only a number of security documents are subject to registration in order to be enforceable against third parties. Per example:

- pledges of assets need to be registered at the commercial court registry of the place of registration of the pledged company; and
- non-possessory pledges over tangible furniture must be registered in a special register within the commercial court registry of the place of registration of the grantor.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

The parties to project finance documents are free to choose the law governing the insurance policy in accordance with Article 7 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of June 17, 2008 on the law applicable to contractual obligations (Rome I).

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Insurance proceeds constitute receivables which can be pledged or assigned by way of security to the benefit of the lenders.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

There are no complications or concerns or issues in relation to the insurance provisions under French law in the context of project financing.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

PPPs are expressly permitted under Article L.1112-1 of the French *Code de la commande publique*. They are refered to as "*marchés de partenariat*" which is a specific form of public procurement. There has been a very large recourse to PPPs in France with hundreds of examples in a variety of projects including hospitals, schools, universities, prisons, governmental accommodation projects, railways, stadiums, sports facilities, street lighting, army barracks, police stations, etc.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements are permissible and very common in project financings governed by French law with local governments and authorities. There are no examples of direct agreements in the context of projects involving central national government in concession-based projects.

Direct agreements typically provide the lenders with specific rights such as direct payment rights, step-in rights and substitution rights to ensure the continuation of the project in case of failure by the project company.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Pursuant to an instrument entitled "Act of acceptance of the assignment or pledge of a professional claim", the public entity may accept to pay a significant part of

the remuneration due to the project company under a partnership contract directly to the lenders, who benefit from a Dailly assignment granted by the project company (in accordance with Articles L. 313-29 et seq of the Monetary and financial code). This may be done on a lump-sum basis or in installments, which in fact result in a form of debt assumption.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Political risk events usually fall under the scope of the force majeure regime, as they are traditionally considered as force majeure events – hence not under the responsibility of the private party.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

A general change in law does not typically entitle the investors to make a claim for protection or compensation. However, such measures may be afforded for specific changes in law in French projects.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is defined in and governed by Article 1218 of the French Civil code: it occurs when an event (i) beyond the control of the debtor, (ii) which could not reasonably be foreseen at the time of the conclusion of the contract and (iii) the effects of which cannot be avoided by appropriate measures, prevents the performance of its obligations by the debtor. Force majeure allows the affected party to suspend its performance or to terminate the contract.

However, the parties are free to contractually agree on a different definition of the *force majeure* or to exclude its application.

The above-mentioned conditions to qualify an event as *force majeure* (exteriority, unpredictability and irresistibility) apply differently under administrative law, which governs contracts entered into between a private party and a public authority.

24. What are the general environmental and social requirements in project financings?

Any company established or operating in France must comply with French labor law and other requirements in relation to environmental protection (through stringent permitting and consenting processes which generally apply to all projects), construction permitting, human rights, anti-money laundering and anti-corruption.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Administrative law agreements (such as concessions and PPPs) must be governed by French law. It is also the case for security documents in relation to assets located in France (such as real estate and shares of a company registered in France). The other project and finance documents may be governed by a foreign law chosen by the parties as long as such choice of governing law does not violate French international public policy.

Waiver of immunity provisions clearly expressed by a foreign State are enforceable in France. Regarding the immunity of the French public authorities, the law remains silent on whether such immunity may be waived. It is however prohibited to take any security interest over State-owned assets.

26. Can financing documents provide for arbitration clauses?

Finance documents can provide for arbitration clauses. However, the enforceability of the arbitration decision will be subject to an exequatur judgement by a French court.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

A number of legislative reforms have made French law more modern with regard to taking security and the role of security agents.

The French banking monopoly has also been relaxed to enable new players such as debt funds to enter the market as lenders. The French banking monopoly is the principle according to which only credit institutions and financing companies (*sociétés de financement*) are authorized to enter into credit transactions and receive funds from the public on a regular basis (Article 511-5 of the Monetary and financial code). There are various exceptions to the requirement of holding a banking license, which were extended to certain investment vehicles by Law of December 9, 2016 and Ordinance of October 4, 2017: regulated funds, finance organizations (*organismes de financement*), which include the existing securitization organizations (*organismes de titrisation*), and specialized finance organizations (*organismes de financement spécialisés*).

ESG and sustainability-linked financings have also become common in the French market. Sustainability-linked loans generally adjust the borrower's interest rate based on the achievement of environmental or social objectives agreed at the outset - for example, reducing carbon emissions or improving energy efficiency. These ESG commitments are now negotiated from the start of the transaction and have become an integral part of many French law financing documentations.

Looking ahead, the implementation of AIFMD2 (the revised Alternative Investment Fund Managers Directive), expected by April 2026, will introduce new rules for EU credit funds. This reform could facilitate cross-border lending within the European Union, including into France, by funds meeting certain regulatory requirements.

28. Are any significant development or change expected in the near future in the project finance market?

The French Parliament has adopted a new law for the acceleration of renewable energy projects on February 7, 2023, with the objective to promote and simplify the development of renewable energy projects. In particular, the law has introduced planning for offshore wind projects in France and includes measures for the reduction of the authorization process' duration, such as the mutualization of the public debate for all offshore wind projects located in the same seafront, which is likely to accelerate the development of future offshore windfarms.

This reform is in line with the European Green Deal, a package of policy initiatives aiming at bringing the EU to climate neutrality by 2050 which includes binding objectives. In this context, the project finance market will certainly see a

significant increase of renewable energy transactions.

In addition, the Government has announced in 2023 a EUR 100 billion plan for railway projects by 2040, with two main ambitions: modernizing and decarbonizing the rail network.

The data center sector has also emerged as a significant new segment in the French project finance market, driven by the exponential growth of artificial intelligence and cloud computing. France has experienced strong growth in data center capacity over the past decade, a trend expected to accelerate in the coming years. The AI Summit held in Paris in February 2025 catalysed major investment announcements, with EUR 109 billion allocated to the French AI Action Plan, a substantial portion of which is dedicated to data center projects. The regulatory framework is also evolving: the DDADUE law (*loi portant Diverses Dispositions d'Adaptation au Droit de l'Union Européenne*), adopted in April 2025 to align French law with various EU directives, transposes the European Energy Efficiency Directive and introduces new obligations for data centers, including energy performance reporting and mandatory recovery of waste heat for facilities over 1 MW.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

EURIBOR was not affected by the LIBOR transition. It is still being published and no decision to cease its publication was taken by the European authorities. The governance and calculation methodology of EURIBOR have been strengthened by its administrator (EMMI) as part of its prerogatives and to comply with the FSB / IOSCO recommendations and the requirements of the BMR regulation (Regulation (EU) 2016/1011 of the European Parliament and of the Council of June 8, 2016). EURIBOR is authorized under the BMR regulation and has been registered with ESMA since July 2, 2019. This index can therefore continue to be used without any time limit.

GIBRALTAR

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Gibraltar is a common law jurisdiction based on the British legal system, however Gibraltar (unlike Great Britain), also has its own constitution which summarily, establishes its own executive, legislative and judiciary, and adopts the laws of Gibraltar. Moreover, in the absence of any Gibraltar authority on any particular matter, English and Commonwealth case law is highly persuasive in Gibraltar and will typically be followed. To the extent however that such matters may concern the interpretation of different Gibraltar statutory instruments and provisions, such English and/or Commonwealth decisions cannot be expressed to be binding.

Generally speaking, there are no principal piece(s) of statutory legislative instruments relating to project finance in Gibraltar. Depending on the type and nature of the applicable project, as well as the underlying governing laws of the same, a range of Gibraltar legislation (and applicable international treaties) may need to be considered and adhered to, including legislation pertaining to corporate structuring, tax, financing, environmental, insurance, planning, health and safety, and insolvency. In addition, approvals and consents from governmental bodies and departments may be required throughout.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

Notwithstanding Gibraltar's land mass of approximately 6.8kmsq, the project finance market in Gibraltar continues to go from strength to strength. Over many years, numerous Gibraltar based entities (or subsidiaries within larger global group structures) have undertaken numerous

global financing projects, specifically in the context of secured and unsecured financing projects such as bond and note issuances. In recent years however, the buoyant nature of the property and real estate market in Gibraltar has provoked a notable increase in both commercial and residential property developments. Accordingly, this has attracted a substantial degree of international interest and investment in Gibraltar, specifically in the context of development finance, with luxury property developments such as EuroCity and North Gorge recently completing, and new projects (featuring reclaimed land on British Gibraltar Territorial Waters) being announced such as of Victoria Quays and the Eastside Marina (the latter currently seeking to include a superyacht marina).

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

Generally, as permitted by Gibraltar law, it is common in project financing transactions for a security trustee and/or security agent to be appointed for the purposes of holding security for the benefit of a single lender, a syndicate of lenders, or such other applicable secured parties. Moreover, a range of security interests may be granted in project financings, including but not limited to: (i) all asset debentures; (ii) fixed and/or floating charges; (iii) mortgages; (iv) pledges; and ultimately (v) quasi-security interests such as guarantees.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes – to the extent that a Gibraltar registered company grants a security interest (typically in the form of those security interests mentioned in Question 3 above, with the exception of a guarantee), over its assets (including shares held in a subsidiary), the directors of said Gibraltar company would be required to file the instrument of transfer creating said security interests at Companies House, Gibraltar. In the case of a Gibraltar company this is required to be done within 30 days of the date borne on the same, and in the case of a partnership, within 21 days. Additionally, subject to the underlying transactional/security documents' governing law, the shares of a Gibraltar company may be pledged as security by its foreign shareholder (however this would not be registrable in Gibraltar). Failure to timely register the relevant security interest in Gibraltar could affect the priority of the security, and additionally become void as against any creditors and/or liquidators of the borrower.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

In Gibraltar, a private sale is a recognized method for the enforcement of a share pledge/mortgage of shares. The Land Law and Conveyancing Act 1895 (as amended by the UK Conveyancing and Law of Property Act 1881), affords creditors power of sale in the case of a mortgage which is made by deed. Generally, the power will arise when the secured indebtedness has become payable, and it enables the secured party to sell the property concerned. Statutory restrictions on the power of sale do exist, however such restrictions are invariably included in the terms of security documents.

With regards to share certificates being endorsed, the security document will typically be accompanied by: (i) a signed and undated instrument of transfer of shares (typically in the form of a share

transfer form); and (ii) signed and undated share certificates in the name of the secured party, which would be held by the secured party and/or security trustee/ agent once the share pledge/mortgage of shares is entered to, and which can become effective once dated in the event the indebtedness becomes due and payable.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Save with the exception of a legal mortgage (on the basis that, generally speaking, it is not possible to create a legal mortgage over future property unless the same is both in existence and owned by the mortgagor at the relevant time), Gibraltar law (which largely follows the position under common law), does allow for the possibility of taking security over intangibles such as future assets, rights and receivables.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

From a Gibraltar legal perspective, the applicable security document needs to explain when and how the security can be enforced, including setting out the lenders' remedies. For example, a debenture over all the assets of the borrower would typically permit the lender to appoint an administrator or administrative receiver. Where the security document is not an all-asset debenture, it is expected that the security document would provide for enforcement powers to be tailored to the type of asset which is the subject of the security, including the appointment of a receiver with powers to manage the assets comprising the security. Equally, in cases of technical or actual insolvency, Gibraltar law affords statutory remedies and options to secured and unsecured parties under the provisions of the Insolvency Act 2011.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The concept of a security trustee (or security agent as also referred to from time to time) is permitted in Gibraltar, and is common in project finance transactions. The security trustee will be appointed to hold security for the benefit of a single lender or syndicate of lenders. For the avoidance of doubt, it is typically the case that registrable security in Gibraltar be registered in favour of the security trustee (who will hold the same for and on behalf of the lenders)

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

The reality is that any incentives and/or exemptions applicable to local (as well as foreign investors) are not specifically applicable to project finance in Gibraltar, and ultimately noting that the application and relevance of each of these will be fact and project specific. Moreover, tax credits (including foreign tax credits), and potential incentives such as development aid may, to the relevant parties, be deemed to be incentives for project financing in Gibraltar. In order to attract investments (specifically private developments) to Gibraltar, development aid for example offers promoters and developers of approved projects certain forms of tax relief, import duty relief, and rates relief.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Please refer to the answer to question 9.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Gibraltar does not currently have any exchange control restrictions, there being a complete freedom to remit funds into and out of the territory and to convert funds into other currencies. Incidentally, and subject to any potential prohibition under Gibraltar law (including for example, sanction regimes), Gibraltar companies are permitted to hold bank accounts in foreign jurisdictions.

12. Are there any restrictions for foreign investments in your jurisdiction?

Gibraltar attaches great importance to free markets and competition and save with the exception of any potential prohibitions under Gibraltar law (including for example, sanction regimes), there are no restrictions imposed on foreign ownership or investment.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

To the best of our knowledge, there are no minimum equity requirements in Gibraltar for project financings, whether under Gibraltar legislation or in practice.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In the majority of project financing scenarios, the only documents required to be registered in Gibraltar will be the security documents as more particularly set out above in our response to Question 4.

In addition, project financing transactions concerning land in Gibraltar may be subject to further registration requirements with the Gibraltar Land Registry.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Generally speaking, parties are free to choose the specific choice of law governing policies. In our experience, parties determine this in consideration of all relevant details of the insurable risk, including but not limited to: (i) the class and type of business; (ii) the location of the risk; and (iii) the location of the insured.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Subject to the form and terms of the underlying insurance and/or reinsurance policies, and on the assumption that each of the same are governed under the laws of Gibraltar, in our experience lenders can take security over insurance/reinsurance policies by an assignment by way of security.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

Specific complications, concerns and issues relating to insurance provisions under project financing documentation will ultimately be driven and arise in the context of the project in question which will vary from deal to deal. Risks that lenders would generally require to be insured against, and which would require careful thought and consideration, would be in relation to loss or damage, third party liability, business interruption, start-up delays, and forms of environmental risk.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

In Gibraltar, PPP is a permitted method of developing projects. In recent years, particularly in the context of the 'construction boom' Gibraltar is still experiencing, efforts have been made to include the private sector in the development and fundings of public facilities and services. Naturally, there are many different forms of PPP structures and arrangements (which exceed the scope of this text), however in Gibraltar the Build Operate Transfer ("**BOT**") PPP method, whereby the private sector finances, constructs and operates and maintains the facilities for a given period, with the public sector acquiring operational control at the end of that period. This method is best known for assisting policymakers with controlling capital expenditure on public infrastructure projects, and also maintaining public finances. In recent years, there have been numerous PPP projects in Gibraltar, specifically in regard to schooling, healthcare, energy and government housing.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements are permissible under local law, however to the best of our knowledge, save for the BOT method explained in Question 18, these arrangements are not in our experience commonly seen.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Different types of government support in Gibraltar may ultimately depend on the form, nature and terms of each different project. As a minimum, the government will provide its co-operation in many large projects, including at times the transfer and sale of the land, and provision of further assistance in expediting (for cost-time efficient purposes), the developers' provision and receipt of statutory approvals, authorisations and consents for the constructions and operation of the project.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

In our experience this will typically be determined by the specific agreement reached by the parties in the procurement stage and prior to formalizing and entering into a PPP agreement. On the basis that Gibraltar is considered to be a jurisdiction of political certainty and stability, we would expect the risk of any political event to be remote in nature, and in any event borne by the private party (albeit noting that this is not standardized, and the position on the same my fluctuate depending on the specific nature of individual projects).

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

In our experience, investors and lenders may from time to time (and subject always to the type and nature of the project at hand) seek to make provision for protective mechanisms to be included within the underlying project finance documentation in cases of changes in law, notably in the event that such changes render the obligations or the performance of parties to be illegal and/or contrary to law, in

which case this may trigger an entitled for investors and/or lenders to expect immediate repayment.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is not specifically regulated under local legislation in Gibraltar. On the basis that Gibraltar is a common law jurisdiction, force majeure clauses are (similarly to English law), drafted in relatively defined scope, identifying acts, events or circumstances beyond the reasonable control of one of the parties to the relevant document. To the extent that the performance of a contract is rendered as an impossibility under the applicable force majeure clause, the English common law doctrine of frustration may be invoked in certain circumstances, which may ultimately operate to terminate the said contract.

24. What are the general environmental and social requirements in project financings?

Gibraltar's land area amounts to approximately 640 hectares but due to the topography of the Rock, much of this is undevelopable. Accordingly, Gibraltar's scarce land resources have created a coordinated set of policies and proposals which seek to manage Gibraltar's future growth, and which accounts for numerous competing environmental, social and economical demands and interests. This is enshrined in the Gibraltar Development Plan (the "**Plan**"), a planning scheme implemented pursuant to the Town Planning Act 2018. The Plan, as enforced by the Gibraltar Development and Planning Commission ("**DPC**"), set out numerous planning policies pertaining to the different areas and zones in Gibraltar, each of which differs and has their own specific set of policies, considerations and safeguards. The Plan is to be used, amongst others, by developers when formulating new developments on the Rock, and ensure full conformity with the policies and proposals in the Plan. Policies and requirements include many aspects relating to ESG matters, including new developments requirements: (i) environmental impact assessment studies; (ii) appropriate assessments on land use; (iii) protection and enhancement of Gibraltar's culture and heritage; and (iv) energy efficiency and consumption. Currently, the DPC as well as other related stakeholders are in discussions with HM Government of Gibraltar to develop a new Gibraltar development plan, particularly in the context of the recent influx of residential and property developments on the Rock.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Submission to foreign law and waiver of immunity provisions are enforceable, and in certain circumstances would not require a re-examination of the facts. This will however ultimately depend on the requirements of the foreign law in question.

26. Can financing documents provide for arbitration clauses?

Confirmed that Gibraltar law does not prohibit parties from including arbitration clauses within financing documents, and are (as a matter of course and best market practices) expected to typically consider and pursue different methods of alternative dispute resolution.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

As alluded to in our response to Question 2, most recently Gibraltar can be considered to have enjoyed a 'boom' of both private commercial and residential property developments. Notwithstanding the political uncertainty of Brexit and economic implications of the Covid-19 pandemic, the buoyant nature and surge of (almost uninterrupted) economic activity in the property and real estate market in Gibraltar has created an expectation that in the context of project finance, development finance will continue to trend as the principal protagonist. This has also been exacerbated by the relocation of numerous ultra-high and high-net worth individuals, which has consequently attracted an array of international investment in to Gibraltar. Currently, there are numerous property developments which have either been announced; are seeking either outline or full planning permission; or are presently under construction. Examples include: (i) numerous high-rise residential property developments; (ii) a new ~£100 million national Category 4 football stadium complex (comprising 92 additional units of residential homes, retail and office units and a business center); and (iii) a largescale development on the east side of Gibraltar (encompassing, amongst other things, ~1,300 luxury residential homes and a 550-600 berth marina for boats ranging from six meters in length to superyachts). Undoubtedly, traditional streams of project finance in Gibraltar will also compliment this, particularly in the context of corporate finance transactions and projects concerning largescale secured lending in and amongst established industries in Gibraltar such as online gaming and fintech.

28. Are any significant development or change expected in the near future in the project finance market?

Unquestionably for both the project finance market and for Gibraltar as a jurisdiction, the most significant development or change expected in the near future will be the precise language and implementation of the Schengen-style treaty governing Gibraltar's future relationship with the EU, and the mutual benefits this may afford in terms of fluidity of goods and people in Gibraltar. Originally announced on December 31, 2020, the intention by all parties concerned, notably Gibraltar, the United Kingdom and the EU (together with Gibraltar's neighboring EU Member State, Spain) was to seek to find, consider and implement a 'bespoke solution' of developing a framework and/or treaty which would allow for the application in Gibraltar of the relevant parts of the Schengen acquis necessary to achieve the elimination of the control of the movement of persons and goods (but not services) between Gibraltar and the Schengen area. Since said initial announcement, all relevant parties have entered into negotiations, committing personnel and resources to various rounds of progressive dialogue with a view to developing a mutually agreeable form of treaty (which received full political agreement on 11 June 2025 (concluding nearly four years of negotiation) and a first draft of the much-anticipated treaty text is expected by early 2026). Undoubtedly, we expect any favourable treaty which is implemented to add to Gibraltar's offering to both the domestic and global project finance market.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

At the time of writing, the alternative reference interest rates to LIBOR which we have seen deployed in project financing transactional documents are either SOFR (Secured Overnight Funding Rate) or SONIA (Sterling Overnight Index Average).

ITALY

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Project finance in Italy is governed by a combination of civil, financial, and public-law sources:

- Italian Civil Code (contracts, obligations, guarantees, security interests) (mainly, Book IV and Book VI).
- Italian Consolidated Banking Act ("**TUB**") and Consolidated Financial Act ("**TUF**") for lending, financial services and security interests. (D.Lgs. 385/1993; D.Lgs. 58/1998).
- Italian Public Contracts Code for PPPs, concessions and public works (D.Lgs. 36/2023 (nuovo Codice dei Contratti Pubblici).

European Union law plays a significant role in shaping the Italian legal framework applicable to project finance, both through the transposition of EU directives and the direct applicability of EU regulations in areas relevant to infrastructure and energy projects.

Italy is also a signatory to numerous international treaties concerning human rights, environmental protection, judicial cooperation, and the allocation of assets and liabilities, all of which contribute to the broader regulatory environment in which project finance transactions operate.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The Italian project finance market is highly developed, with a long-standing track record in transport infrastructure, energy (particularly renewables), social infrastructure and digital networks.

Over the past 12 months, the most significant transactions have involved large

renewable energy portfolios, motorway concession refinancings, and digital infrastructure (fiber networks and data centres), reflecting the country's focus on energy transition and digitalisation.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

Italian project finance transactions typically rely on a comprehensive security package designed to capture all key project assets and cash flows. This includes mortgages over real estate and registered assets, pledges over shares or quotas, receivables, bank accounts and movable assets, as well as assignments by way of security of project receivables.

In addition, Italian law allows the creation of liens over business movable assets (*privilegio generale/speciale*). Personal guarantees, including corporate guarantees and bank sureties, are also used to strengthen the lenders' position.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Under Italian law, the shares or quotas of a company may be pledged in favour of lenders.

The applicable formalities depend on the corporate form of the issuer.

Shares in an S.p.A. may be either dematerialised or non-dematerialised, and the perfection requirements differ accordingly. In case of dematerialised shares, the pledge is perfected through registration in the accounts of the authorised intermediary with whom the shares are deposited. The pledge becomes effective against the company and third parties upon such registration.

In case of non-dematerialised shares, the pledge must be annotated on the share certificates (or alternatively the share certificates must be endorsed in pledge) recorded in the shareholders' ledger maintained by the company. The entry in the ledger is essential for enforceability against the company and third parties.

In both cases, the pledge agreement must be in writing, but no notarial form is required.

Quotas in an S.r.l. are not represented by share certificates and are subject to a stricter formal regime. The pledge must be executed by notarial deed or by private agreement with signatures authenticated by a notary, and registered with the Companies' Register (Registro delle Imprese) of the company's registered office. Registration is a mandatory perfection requirement.

Also, the company's by-laws may impose limitations or conditions on the creation of pledges (e.g., prior approval of the shareholders' meeting), particularly in S.r.l. structures.

5. Is private sale a recognized method for the enforcement of share pledge? What are the endorsement types typically used for the share certificates?

Under Italian law, private sale in general is not the primary way to enforce (this being a court driven tender process regulated by the law), except that private sale is recognized in limited cases and subject to certain conditions provided by the law, provided that it is expressly contemplated in the pledge agreement and accompanied by adequate valuation safeguards.

Italian courts have consistently upheld enforcement clauses that allow the

pledgee to proceed through private sale - as opposed to judicial auction - so long as the mechanism ensures a fair and independent valuation of the pledged shares (e.g., expert appraisal or fair market value determination), transparency and predictability of the enforcement process, restitution to the pledgor of any surplus after satisfaction of the secured obligations.

In addition, where the pledge qualifies as a financial collateral arrangement under Legislative Decree 170/2004, the legal framework expressly permits private sale and even appropriation, subject to similar fairness and valuation requirements.

When shares are in certificated form, Italian practice mainly use the so called "*girata in garanzia*" (the endorsement is made as security. The creditor becomes holder of the certificate as pledgee).

6. Can security interest be established over future assets, rights and receivables of the borrower?

Italian law allows security over certain future assets subject to certain limits and conditions and provided they are clearly identifiable or determinable at the time the security is created. (e.g. receivables, bank account balance, movable assets).

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Italian law distinguishes between a debtor who is merely in financial difficulty and one who has formally entered an insolvency or pre-insolvency procedure. This distinction is crucial, because the moment a formal procedure is opened, the lender's ability to enforce its security becomes subject to statutory stays and court supervision—unless the collateral qualifies as financial collateral, which enjoys a special regime.

The enforcement landscape under Italian law can be summarized as follows:

- Before any formal procedure: lenders are free to enforce according to the security documents.
- During a composition with creditors: enforcement is generally stayed, except for financial collateral.
- During judicial liquidation: enforcement is stayed and centralized, except for financial collateral, which remains fully enforceable.

The key variable is therefore whether the collateral qualifies as financial collateral, because this determines whether the lender is subject to the insolvency stay or can proceed independently.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The security trustee structure or parallel debt structure is not recognised and enforceable under Italian law. In the Italian market practice the role of security agent is normally structured as a mandate with representative powers (*mandato con rappresentanza*) from the lenders to the agent or security agent to act also in their name and on their behalf. On this basis all lenders are parties to the finance documents and security documents, although represented by the agent / security agent**.**

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Italy offers certain type of incentives that can significantly support projectfinanced initiatives, especially in sectors aligned with the country's industrial, digital, and greentransition priorities.

Although Italy does not have a single piece of legislation granting automatic benefits, projectfinanced structures routinely rely on a combination of national tax incentives, sectorspecific subsidies, and investment support schemes that reduce capital costs and improve bankability.

As in any EU country, the European Commission exercises strict oversight over national State-aid measures to ensure their compatibility with EU competition rules.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

While Italy does not reserve incentives exclusively for foreign investors, the combination of equal access, targeted investment-attraction tools, and sector subsidies creates a highly supportive environment for international sponsors entering the Italian market.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

A project company may freely take out bank loans or shareholder loans from abroad, provided it complies with the applicable anti-money-laundering ("**AML**") and counter-terrorism financing regulations. Italy has fully liberalised cross-border financial flows, and no prior authorization is required for receiving financing from foreign lenders.

With respect to cross border shareholder loans, certain tax rules may apply. In particular, interest paid to a foreign shareholder or group company must comply with the arm's length principle under Article 110(7) of the Italian Income Tax Code (TUIR). Moreover, interest payments to lenders located in non cooperative jurisdictions may be subject to certain limitation under Article 110(10) TUIR and related anti avoidance provisions. These rules do not restrict the ability to borrow, but they may affect the tax deductibility of interest.

Borrowing in a foreign currency is likewise fully permitted and is not subject to any specific limitation. Following the abolition of exchange controls under Law No. 227/1993, Italian companies may freely incur obligations in any currency; the only requirement is that foreign-currency items be translated into euros for accounting purposes pursuant to Article 2426 of the Italian Civil Code.

12. Are there any restrictions for foreign investments in your jurisdiction?

Italy does not impose broad or systematic restrictions on foreign investors. However, Italy does maintain specific controls in sectors considered strategic for national security or public interest. These controls do not prohibit foreign investments, but they may require government notification or prior authorization (e.g. Decree-Law No. 21/2012, as amended, the "**Golden Power Law**").

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

Italian law does not impose any statutory *minimum-equity requirement for project-financed transactions. The Codice Civile, the Testo* Unico Bancario and sector-specific regulatory frameworks do not mandate a fixed equity-to-debt ratio, leaving the capital structure to be determined by the parties.

In practice, however, equity levels are driven by market standards and by the project's specific risk profile.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

Italian law does not require project-finance contracts themselves (such as the common terms agreement, facility agreement, intercreditor agreement, or direct agreements) to be registered or filed in order to be valid and enforceable. These documents are fully effective once executed by the parties.

However, security documents and certain ancillary acts do require specific formalities to ensure validity, perfection, and enforceability against third parties. By way of example only:

- Mortgage over real estate or immovable assets (*ipoteca*): must be executed before an Italian notary and must be registered with the Real Estate Registers (Conservatoria) to be enforceable against third parties.
- Pledge over quotas of an S.r.l. (limited liability company): must be executed before a notary and must be registered in the Companies Register (*Registro delle Imprese*) to be enforceable against third parties.
- Special privilege.
- Security assignments of receivables towards state entities, and other security depending on the project.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Under Article 7 of Regulation (EC) No 593/2008 (Rome I), the parties to projectfinance insurance arrangements are generally free to choose the governing law of the policy (subject to usual public policy and other mandatory law restrictions).

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Under Italian law, insurance proceeds qualify as receivables and may therefore be assigned or pledged as security in favour of the lenders. This can be done through a pledge over receivables or an assignment of receivables for security purposes, both of which are fully recognised mechanisms under the Italian Civil Code (Arts. 1260–1264 c.c.).

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

Under Italian law, there are no particular complications or specific issues relating to insurance provisions in the context of project-finance transactions. The standard insurance package can be implemented without difficulty, and lenders' requirements—such as assignment of proceeds, loss-payee clauses, and minimum coverage standards—are routinely accommodated within the Italian regulatory framework.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes. Public-private partnerships (PPPs) are a fully permitted and widely used method for developing projects in Italy. The Italian Public Contracts Code (*Codice dei Contratti Pubblici*, Legislative Decree 36/2023) expressly recognises PPPs as a standard procurement and project-delivery model, including concessions, project finance structures, availability-based schemes, and mixed-capital arrangements.

Over the past two decades, numerous PPP projects have been successfully developed in Italy, particularly in the transport, healthcare, energy, waste-management, and social-infrastructure sectors. PPPs are therefore an established and well-tested tool within the Italian legal and market framework.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between the public authority and the lenders are permitted under Italian law and are widely used in project-finance and PPP transactions. The Italian Public Contracts Code (Legislative Decree 36/2023) expressly allows lenders to enter into direct agreements—typically in the form of *accordi diretti* or step-in agreements—to secure their rights in case of contractor default, termination, or substitution of the project company.

In practice, these agreements are standard market tools in Italian PPPs and concession-based projects, ensuring lenders have step-in rights, cure periods, and a structured dialogue with the granting authority.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Governmental support is typically embedded in PPP and concession structures through public contributions, availability payments, and tariff mechanisms under the Public Contracts Code. Beyond the PPP framework, Italy benefits from the support of Cassa Depositi e Prestiti ("**CDP**") and SACE S.p.A., which may provide financing, co-financing, or guarantees for strategic sectors such as energy transition, export-oriented projects, and major infrastructure. These instruments operate within EU State-aid rules and are therefore targeted, structured, and subject to eligibility criteria.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

In Italian PPP agreements, political risk events are generally allocated to the public party and the Public Contracts Code (D.Lgs. 36/2023) requires the economic balance of the concession to be preserved when such events occur.

This mechanism, grounded in the Public Contracts Code, ensures that political risk does not fall on the private sector and preserves the longterm viability of the project.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Under Italian law, investors and lenders are generally protected against changes in law occurring after the signing of a concession agreement. The Public Contracts Code (D.Lgs. 36/2023) expressly requires the restoration of the economicfinancial balance (*riequilibrio economicofinanziario*) when regulatory or legislative changes materially affect the project. This protection is grounded in Art. 182(3) of D.Lgs. 36/2023, which obliges the granting authority to rebalance the concession through measures such as tariff adjustments, extension of the concession term, or public contributions.

23. Is force majeure specifically regulated under the local legislation?

Under Italian law, force majeure is not defined by a single dedicated provision; rather, it is inferred from the general principles of the Civil Code governing

supervening impossibility. Articles 1218 and 1256 of the Civil Code establish that a party is not liable for non-performance when an unforeseeable and unavoidable event, beyond its control, renders performance objectively impossible, in which case the obligation is suspended or extinguished for the duration of the impediment.

Parties remain free to define force majeure contractually, adjust its scope, or regulate its effects, and this flexibility is routinely exercised in sophisticated commercial contracts and PPP arrangements.

In the sphere of administrative law—applicable to concessions and PPPs with public authorities—events akin to force majeure are addressed through the mechanism of economic-financial rebalance (*riequilibrio economico-finanziario*).

24. What are the general environmental and social requirements in project financings?

Any company operating in Italy must comply with Italian labour law and with the full set of environmental, health and safety, and constructionpermitting requirements applicable under national and EU legislation. Projects are subject to stringent environmental procedures and sectorspecific authorisations. In project finance, these environmental and social obligations apply uniformly to all projects and are typically embedded in due diligence, financing documentation, and ongoing monitoring.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Concessions and PPP contracts must be governed by Italian law. The same requirement applies to security interests over assets located in Italy, including real estate, infrastructure, and shares in Italian companies, which are subject to mandatory Italian legal and perfection rules. By contrast, the remaining project and finance documentation may be governed by a foreign law chosen by the parties, provided that the choice does not conflict with Italian public policy (*ordine pubblico*).

Waivers of immunity granted by a foreign State are generally recognised and enforceable in Italy, provided they are expressed in clear and unequivocal terms. As for Italian public authorities, the legislation does not expressly regulate the waiver of sovereign immunity; however, when they enter into commercial or financing arrangements (acta iure gestionis), they are treated as acting in a non-sovereign capacity and may validly waive immunity from suit and enforcement. It remains prohibited to create security interests over assets that are inalienable or subject to public-law constraints, such as assets forming part of the inalienable public domain (*demanio pubblico*).

26. Can financing documents provide for arbitration clauses?

Financing documents may validly include arbitration clauses under Italian law, provided the dispute is arbitrable and the clause is drafted in clear and unequivocal terms. If the arbitral award is rendered abroad, its enforcement in Italy requires recognition through an exequatur procedure before the competent Court of Appeal, in accordance with the New York Convention and the Italian Code of Civil Procedure.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

Over the past decades, certain reforms have modernised the legal framework applicable to security packages, collateral enforcement, and the role of security agents, bringing Italian practice closer to international standards and facilitating more sophisticated financing structures. At the same time, the lender base has expanded: regulatory developments and EUdriven initiatives have opened the market to alternative lenders, including debt funds, insurance investors, and other nonbank credit providers.

These changes have contributed to a more competitive and diversified funding environment, particularly in renewable energy, digital infrastructure, and transport sectors. The market is also seeing increased use of alternative debt instruments - such as minibonds, private placements, and directlending structures - which complement traditional bank lending and support larger, more complex financings. Overall, the trend is toward a more flexible, internationally aligned, and investorfriendly projectfinance ecosystem.

28. Are any significant development or change expected in the near future in the project finance market?

The continued implementation of the Italian National Recovery and Resilience Plan ("**PNRR**") is set to generate a substantial pipeline of infrastructure, renewable-energy, digital-network, and transport projects, all of which rely heavily on structured finance solutions.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

Compounted SOFR, initially and then mainly term SOFR.

KAZAKHSTAN

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The main legislation and international treaties governing the project financing in the Republic of Kazakhstan ("**Kazakhstan**") are:

1) the Constitution dated August 30, 1995;
2) the Civil Code (General Part) dated December 27,1994 and the Civil Code (Special Part) dated July 1, 1999 No. 409-I (the "**Civil Code**");
3) the Entrepreneurial Code dated October 29, 2015 No. 375-V (the "**Entrepreneurial Code**");
4) the Law on Securities Market dated July 2, 2003 No. 461-II;
5) the Law on Project Financing and Securitization dated February 20, 2006 No. 126-III; (the "**Law on Project Financing and Securitization**");
6) the Law on Public Private Partnership dated October 31, 2015 No. 379-V (the "**PPP Law**");
7) other legal acts;

The main international treaties governing the project financing in Kazakhstan are:

8) the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States;
9) the 1985 Seoul Convention on Establishing the Multilateral Investment Guarantee Agency;
10) the 1993 Ashgabat Agreement on Cooperation in the field of Investment Activity;
11) the 1997 Moscow Convention on Protection of Rights of Investor;

12) agreements on encouragement and mutual protection of investments with around 52 countries (USA, UK, Germany, France, Netherlands, Russia, etc.);

13) the 1994 Lisbon Energy Charter Treaty;

14) other international treaties.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

Project finance in the strict sense of the term (i.e., where the financing structure is based on the performance of the project itself) has not yet developed and is not tested so far in Kazakhstan. So-called 'project finance' transactions that took place in Kazakhstan so far, in fact, were either conventional bank loans (mostly by international financial institutions like the European Bank for Reconstruction and Development ("**EBRD**") or the International Finance Corporation ("**IFC**")) that have somehow benefited from government guarantees, security packages, direct budgetary investments or net private investments.

Although the Kazakh law on Securitization was adopted in 2006 and later in 2012 it was transformed into the law on Project Financing and Securitization (the "**Law on Project Financing and Securitization**"), we are not aware of major projects being implemented under its framework.

The major projects implemented in Kazakhstan over the last 12 months include the following:

1) A project on construction of a ceramic products manufacturing plant in Karaganda, Karaganda region, with participation of QAZCLINKER LLP. The project was signed in 2025 with a total project cost of KZT 27.212 billion, including financing of KZT 16.613 billion provided by the Development Bank of Kazakhstan. The project is implemented in the construction materials manufacturing sector.

2) Project on organisation of operations of the Atyrau Railcar Manufacturing Company for the production of freight railway wagons in the Atyrau region, with participation of Atyrau Railcar Manufacturing Plant LLP. The project was signed in 2025 with a total project cost of KZT 105.706 billion, including financing of KZT 15 billion provided by the Development Bank of Kazakhstan.

3) Project on development of automotive manufacturing facilities in Almaty, implemented by Astana Motors Manufacturing Kazakhstan LLP. The project was signed in 2025 with total investments amounting to KZT 182 billion. The project includes the creation of approximately 3,600 jobs and an annual production capacity of up to 120,000 passenger vehicles. The project is implemented in the mechanical engineering (automotive manufacturing) sector.

There are a number of major projects announced and/or being implemented in Kazakhstan.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

Kazakh law provides for several methods of securing obligation. Obligations could be secured by penalty, pledge, surety, guarantee, deposit, withholding the debtor's property, guarantee deposit, security deposit, and other methods stipulated by legislation or agreement.

The most commonly used types of security in Kazakhstan are pledges and guarantees.

Though assignment is not strictly speaking a type of security under Kazakh

law, it is quite often a part of a standard security package in international finance transactions.

Also, in a typical project finance deal creditors require so-called "step-in" rights that enable them to appoint a nominee to undertake the project company rights together with the project company itself (with the project company remaining liable for all the obligations) or appoint a new obligor in the place of the project company to repay the amounts due to the lenders. These "step-in" rights enable the lenders to take over control of the project and implement the project by finding a long-term buyer, thus ensuring that the project continues generating revenues. "Step-in" rights were introduced into the Law on Project Financing and Securitization and the PPP Law.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Holders of shares of a Kazakh Joint-Stock Company (the "**JSC**") and participatory interests of a Kazakh Limited Liability Partnership (the "**LLP**") have the right to pledge all or part of such shares or participatory interests respectively in favour of creditors (including foreign creditors). The major shortcoming of such a pledge is that the creditors would not be entitled to take possession of the shares but must instead seek to sell the shares through a public auction.

A pledge over shares of the JSC must be registered with the Central Securities Depository, which will make an entry regarding the pledge in the system of registers of security holders. Such pledge is only valid upon its registration.

Another form of commercial legal entity under Kazakh law is an LLP which has participatory interests as opposed to shares. A pledge over participatory interests of the LLP is, generally, can be registered with the "State Corporation "Government for Citizens" NJSC, unless the Central Securities Depository is provided under the corporate documents of the LLP and in this case pledge over participatory interests must be registered with the Central Securities Depository.

Establishing and perfecting a share pledge shall be made in the same manner as most other types of pledges of movable property.

It should be noted that a purchaser of more than 50% of shares or participatory interests in a Kazakh company may be required to obtain approval of such purchase from the Competition Agency. If the purchase is subject to the antimonopoly approval (this will depend on the combined asset value or annual turnover of the purchaser and the Kazakh entity), then the purchaser will be required to apply for approval within 30 days after the public auction at which it acquired the shares or participatory interests. If the pledge provides for a transfer of voting rights in the event of default over more than 50% of shares or participatory interests, such transfer may be a subject of separate approval of the Competition Agency.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Under the Civil Code, a secured creditor cannot simply take possession of the collateral (except for cash and receivables). The creditor shall seek to sell the collateral through a public auction and recover

the debt from the sale proceeds. The sale proceeds will be used first to cover expenses incurred in connection with the enforcement and sale (including any fines imposed on the debtor by a court marshal during the enforcement). After that the proceeds will be used to repay the debts. The remainder, if any, will be returned to the debtor. Enforcement may take up to 6 (six) months from the moment of default to the sale of the pledged property. It may take longer if the pledgor contests the underlying default.

A pledge agreement may be enforced either through a court-supervised judicial procedure or through an out-of-court procedure. The relevant pledge agreement must specify the mode of enforcement (i.e., through the courts or without court involvement). We outline those in more details below.

Out-of-Court Enforcement. In the out-of-court enforcement procedure, the pledgee (its representative) will organize and carry out the enforcement procedure, including the sale of the collateral. For this, it will be necessary for the pledgee's representative to carry out a number of procedural steps, including preparing and registering a default notice, publishing an auction notice in mass media, and conducting the auction.

In case the auction fails for the reason of being attended by less than two bidders, the pledgee will have the option to either take possession of the collateral at its estimated value determined by a licensed appraiser or to conduct a new auction.

If the pledge agreement provides for out-of-court pledge enforcement procedure, the lenders will be able to enforce the pledge by selling the collateral without the need to pay the court fee or any other State fee. However, if the local borrower refuses to co-operate with the lenders in selling the collateral or otherwise obstructs the enforcement of the pledge, the lenders will have no other recourse but to apply to a Kazakhstani court seeking judicial enforcement of the pledge. In such case, it will be necessary for the lenders to pay a court fee in the amount of 3% of the value of the collateral (if the lenders are successful in their litigation, the court would require the customer to reimburse the lenders for the paid court fee).

Enforcement may take up to 6 (six) months from the moment of default to the sale of the pledged property. It may take longer if the pledgor contests the underlying default. The enforcement costs should be in a range of several thousand USD (without taking into account the court fee). The law, however, provides that expenses incurred by the pledgee are recoverable from the sale proceeds, and the court fees are to be reimbursed by the pledgor.

Judicial Enforcement. If the lender enforces the pledge through a court-supervised procedure, it will be necessary for the lender to pay a court fee in the amount of 3% of the value of the collateral. If the lender is successful in its court action seeking pledge enforcement, the court will order the customer to reimburse the lenders for the court fees paid by the lender in commencing the court action.

In case of enforcement through judicial action, the court marshal is obliged under the law to conduct the auction and sell the collateral within 4 (four) months after he received the relevant court order. This term may be extended in certain circumstances.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, security interest can be established over future assets, rights and receivables of the borrower. With limited exceptions, law does not limit the types of property that can be pledged. After-acquired assets may be pledged, as well as goods in turnover, such as inventories, raw material, semi-finished goods, and finished products.

It is possible for a company to pledge its monetary claims under a contract (e.g., insurance agreement or off take agreements) provided that such claims are assignable. Where rights to receivables are pledged, the enforcement will be carried out by way of assignment of the relevant rights to the pledgee (i.e. without the public auction as it is with most other types of collateral).

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Final liquidation of a Kazakh legal entity upon bankruptcy involves a disposal of the debtor's assets and distribution of the proceeds to creditors in the payment order established in the Law on Rehabilitation and Bankruptcy.

A pledge would effectively be terminated in the event of bankruptcy of the pledgor. Creditors secured by a pledge become creditors of the third priority and unsecured creditors become creditors of the fifth (last) priority and their claims are satisfied only after settlement of all other claims.

In order to become creditors of the second priority secured creditors must submit their claims to an interim manager within 1 (one) month period from the day of announcement on receiving claims from creditors, otherwise they will become creditors of the fifth (last) priority.

Note that creditors having security other than a pledge governed by Kazakh law would be considered unsecured creditors in insolvency proceedings.

Technical insolvency (i.e., not associated with initiation of insolvency proceedings in the manner set out by Kazakh law) does not affect the steps to be taken by the lenders to enforce their security interest.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Kazakhstan does not recognise trusts, and, as a general rule, security must be granted to the actual creditor, i.e. the lender which advances the loan. As a matter of Kazakh law, a security trustee (who is not the actual creditor), generally, cannot hold security and act as a pledgeholder on behalf of the lenders. Accordingly, it is uncertain whether any security arrangement whereby a security trustee is acting as holder of security on behalf of the lenders would be enforceable in Kazakhstan. In practice, a so-called parallel debt structure is often used to address this problem in international financing transactions in Kazakhstan.

Also, in a security agent (and not a security trustee) structure, the above concerns are largely mitigated because Kazakh law provides a good legal basis for it, as follows:

- Article 305-1 of the Civil Code explicitly provides for the concept of co-pledgees (*созалогодержатели*), where multiple lenders can hold a security interest in the same collateral for a single loan obligation. In this structure, a security agent can be appointed to act on behalf of all co-pledgees. While the article states that each co-pledgee generally exercises rights independently, it also allows for different arrangements to be established by contract. This contractual flexibility permits the parties to delegate the exercise of rights and duties to a single security agent, thereby mitigating the practical concerns of having multiple secured parties.
- An even more robust and specialised solution is introduced by the Project Finance Law, through the figure of a "pledge manager" (управляющий

залогом). According to Article 14-2 of this law, co-pledgees are expressly authorised to enter into a pledge management agreement with a pledge manager. This legal entity then acts under the name and in the interests of all the lenders (co-pledgees). The pledge manager holds significant, exclusive authority: it concludes the pledge agreement with the pledgor and exercises all the rights and obligations of the pledgeholders under the pledge agreement. Critically, the law stipulates that the individual co-pledgees are not permitted to exercise these rights themselves until the management agreement is terminated. This creates a clear, legally recognised mechanism for a single entity to centralise the administration and enforcement of security for a syndicate of lenders, providing a high degree of certainty for international financing transactions in Kazakhstan and largely resolving the enforceability concerns associated with a common law security trustee structure..

It seems, therefore, the security agent (and not a security trustee) structure is more appropriate for the purposes of Kazakh law securities as it provides a natural risk mitigant, being that the agent is to act in the name in the name and for the benefit of the lenders, and this concept is recognised by Kazakh law.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction? Are there any incentives or exemptions specifically applicable to foreign investors?

There are no specific incentives and exemptions for project financing in Kazakhstan. However, some categories of projects may benefit from incentives and exemptions designed to encourage investments in certain industries.

For instance, so-called investment preferences are available to so-called investment projects, i.e., a complex of measures providing for investments in creation of new or expansion/renewal of existing production facilities. To receive the benefits, the investor (which in most cases should be a Kazakhstani company, e.g., a local subsidiary of a foreign investor) shall sign an investment contract with the government.

Depending on the size of the project, an investor may get the following investment preferences: exemption from customs duties, exemption from import value-added tax (VAT) for certain specified products, state in-kind grants, i.e., assets; tax preferences in the form of corporate income tax and land tax exemptions, as well as a property tax exemption, stability of tax laws, stability of work permit laws; and/or some others.

In case of projects being implemented in the framework of the PPP Law, an investor is entitled to get such measures of so-called 'state support' as state sureties for infrastructure bonds; state guarantees for loans, the proceeds of which are to be used for PPP/concession agreement purposes; transfer of the exclusive IP rights owned by the State; provision of so-called 'in-kind grants' (e.g., land, machinery); co-financing by the State; guaranteed offtake by the State of a certain amount of goods (works, services) to be produced by the PPP/concession facility, and/or some others.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Kazakhstan is a party to bilateral and multilateral investment treaties which provide for such commonly used protection of foreign investors as protection against

expropriation without compensation and against discrimination, national treatment or most-favoured nation treatment of foreign investors, guarantees of fair and equitable treatment etc.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency. However, currency control and regulation requirements may apply: e.g., if the amount of a loan to be granted from a foreign legal entity to a local legal entity exceeds USD 500,000, then corresponding loan agreement is subject to record registration with the National Bank of Kazakhstan.

12. Are there any restrictions for foreign investments in your jurisdiction?

There are restrictions on foreign ownership and/or control in legal entities operating in certain industries in Kazakhstan, for example, a 20% limit in mass media companies, a 49% limit in airline companies, a 49% limit in telecommunication companies being intercity and/or international operators; restrictions on foreign companies' participation in banks and insurance companies, etc.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There are no specific requirements for project financings.

Requirements may apply in case of seeking so-called investment preferences under the Entrepreneurial Code. There are following minimum investment requirements in relation to investment projects:

- an agreement on investments:
  - tourism infrastructure: development of long-term tourist assets in designated priority zones (no less than 200,000 so-called monthly calculation indices ("**MCI**", aroung USD 1.73 mln); or;
  - new food & light industry facilities: establishment of new plants in these sectors (no less than 1,000,000 MCI, around USD 8.65 mln); or
  - new manufacturing plants: construction of new production facilities (no less than 2,000,000 MCI, around USD 17.3 mln); or
  - expansion/modernization of existing plants: projects involving upgrades to core assets (no less than 5,000,000 MCI, around USD 43.25 mln); or
  - hotel projects (new construction or renovation): (no less than 1,000,000 MCI, around USD 8.65 mln), subject to three key conditions:
    - location outside major cities (Almaty, Astana, Shymkent);
    - hotel rating of 3, 4, or 5 stars by international standards;
    - a master franchise or franchise agreement with an international hotel chain operating no less than 1,000 hotels across no less than 10 foreign countries;
  - to finance capitalized subsequent expenditures; and/or costs for the acquisition, production, or construction of new long-term assets; and/or other costs that increase the value of long-term assets; and
  - investments must be made within a period of eight (8) years; and
  - no less than 75,000,000 MCI, around USD 649 mln.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

Normally the following registration and filing requirements may arise in a project finance transaction being implemented in Kazakhstan:

- registration of rights to and encumbrances on real estate (e.g., lease of a land plot);
- registration of pledge to ensure its first ranking (in case of most types of movable property) or to ensure its validity (in case of immovable property and some types of movable property);
- record registration of loan agreements for the amount exceeding USD 500,000 if a loan is provided by a foreign legal entity to a local legal entity;
- apostillization or legalization of documents issued abroad should the relevant document be submitted to a local state body.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Property interests located on the territory of Kazakhstan and belonging to a legal entity or an individual resident of Kazakhstan may only be insured by a local insurance company or a local branch of foreign insurance (reinsurance) company.

Agreements between local residents shall be governed by Kazakh law. Therefore, local insurance agreements between local insurers and local residents shall be governed by Kazakh law. Should a foreigner be seeking for a local insurance policy from a local insurer, generally it could be governed by a foreign law assuming that all Kazakh law requirements are met.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

A policy holder or a beneficiary under an insurance policy must have insurable interest in the insured property. Accordingly, where the lender has insurable interest in the insured property, the lender may be named as the beneficiary in the relevant insurance policy. However, where the lender does not have such interest, it may not be named as the beneficiary.

Accordingly, Kazakh legislation provides a pledgee with a priority right to receive insurance proceeds under an insurance contract relating to the pledged property. The pledgor will be entitled to the insurance proceeds only if the pledgee waives its priority rights to such insurance proceeds. Thus, where the insured property is pledged in favor of the lenders, the lenders will have priority right to the insurance proceeds in respect of such property.

E. Overview

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

There are no issues in relation to the insurance provisions under the project financing documentation. As stated in question 14, it is worth mentioning that local insurance companies or local branches of foreign insurance (reinsurance) company are allowed to insure risks in Kazakhstan (foreign reinsurance is widely used in projects with foreign investors).

F. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, PPP is a permitted method of developing projects. Moreover, Kazakhstan has special PPP Law and developed PPP legislation as well as political will to use the PPP tool to improve local infrastructure.

As of 2026, there are 1,108 PPP projects being implemented in Kazakhstan with total capital costs of USD 1,370,026,500. However, in practice most PPP projects are in the area of social infrastructure. The Big Almaty Ring Road, also known as "BAKAD" by its local abbreviation, is the only project that is considered to be an internationally tendered long-term PPP that has reached financial close with the involvement of foreign banks. Currently, another landmark project is being implemented – the tender for the PPP project of construction and operation of a large hospital in Karaganda was launched with the support of the Ministry of Health of the Republic of Kazakhstan and the Asian Development Bank.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Yes, direct agreements between the public authorities and the Lenders permissible under the local law.

Direct agreement with a lender of a private partner shall provide for the following terms and conditions:

1) obligation of a public partner to inform lenders of a private partner on material breach of obligations under a PPP agreement that could lead to default under a PPP agreement;

2) pledge of rights under a PPP agreement and (or) assignment of claims, or transfer of debt of a private partner shall be upon consent of a public partner;

3) right of creditors of a private partner to request replacement of a private partner in case of material breach of its obligations under a PPP agreement, which may lead to default under terms of a PPP agreement, as well as to nominate a new private partner;

4) procedure for replacement of a private partner;

5) other conditions not contradicting the legislation of the Republic of Kazakhstan.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The PPP Law contemplates the following measures of state support for the concessionary to encourage private investments into the PPP projects:

(a) a state surety for infrastructure bonds;

(b) state guarantees for loans, attracted for financing of PPP projects;

(c) transfer of the exclusive IP rights owned by the state only for purposes and period of implementation of PPP project;

(d) provision of 'in-kind grants' (e.g., land, machinery);

(e) co-financing of PPP projects by the state; and

(f) guaranteed offtake by the state of a certain amount of goods (works, services) to be produced in the course of implementation of PPP project.

The PPP Law also provides that the total amount of cofinancing and compensation for investment: costs from the state budget for the purposes of recovery of costs in relation to creation and (or) reconstruction of the PPP facility, cannot exceed the total amount of expenditures for construction and (or) reconstruction of the PPP facility.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

One of the main principles of the PPP is securing mutually beneficial balance of allocation of risks between public and private partners. As a general principle of the PPP Law, risk should be placed where it is best managed and such allocation shall be stipulated in the PPP agreement. Generally, political risk events usually under the responsibility of the public party under the PPP agreements.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

The PPP Law, which inter alia regulates agreements, lacks the 'stability clause' that is meant to protect the private party from the possible changes in legislation. However, the private party may rely to certain extent on the general rule set out in Article 383 of the Civil Code which states that if, after the conclusion of the contract, the legislation establishes rules binding on the parties other than those that were in force at the time of the conclusion of the contract, the terms of the concluded contract shall remain in force, unless the law establishes that its effect extends to relations arising from previously concluded contracts.

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure specifically regulated under Kazakhstan legislation.

According to Kazakh law, an entity that has not fulfilled or improperly fulfilled its obligations shall be liable if it does not prove that proper performance was impossible due to force majeure, which includes emergencies and unavoidable circumstances (natural disasters, military actions, etc). However, Kazakh law emphasizes that such conditions do not include, in particular, a shortage of the items, works, or services required for the execution on the market. The agreement may allow for additional consequences of force majeure. There is also no remedy for any party to the contract, as in case of force majeure both parties suffer losses.

Entrepreneurs who are unable to meet their contractual duties due to an emergency must demonstrate how the incident affected their ability to fulfill each obligation in order to establish force majeure. They may submit an application to the Foreign Trade Chamber to support the force majeure situation. According to the terms of international agreements and foreign trade contracts, the Foreign Trade Chamber certifies the force majeure.

It is also worth mentioning that the term of the PPP agreement may be extended by a court decision in the manner prescribed by the PPP agreement in cases such as delays or suspension of the public-private partnership project as a result of circumstances beyond the control of the parties to the PPP agreement.

24. What are the general environmental and social requirements in project financings?

The Environmental Code regulates environment use and protection issues. Facilities that have the potential to have an impact on the environment or human health must conduct an environmental impact assessment (EIA). A thorough process for carrying out an environmental impact assessment is provided by the Code. Depending on the classification of the enterprise, the Code specifies the kind and specifics of the environmental licenses needed. The Chapter 7 of the Environmental Code contains a section on EIAs, the circumstances in which they must be performed, and the procedure for conducting the EIA.

The Equator principles and the environmental, social, and governance safeguards which may be crucial for bankability are not specifically regulated under Kazakh law. Moreover, some requirements of the Equator principles related to the resettlement do not conform to the Kazakhstani legislation.

The State environmental inspectors of the Ministry for Ecology and Natural Resources or its local territorial departments are entitled to carry out regular, annual environmental inspections of companies that are required to have environmental permits. However, in cases of environmental accidents, health, safety and other emergency situations, State environmental inspectors are empowered to carry out extraordinary inspections.

G. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

The PPP Law explicitly confirms that if a private sector partner under a PPP agreement is a non-resident, the parties shall have discretion to choose the applicable law of the PPP agreement.

The state (represented by the government) takes part in relationships regulated by civil legislation on an equal basis with other participants and is liable for its undertakings with its own property. Therefore, if the government enters into commercial activity, it loses special treatment or sovereign immunity. The government, as a public person, waives its sovereign immunity.

The concept of waiver of rights is, generally, not recognised by Kazakh law, however, if the State enters, for instance, into an agreement governed by English law that provides for a waiver immunity and international arbitration, such a contractual arrangement shall be legal and enforceable from the Kazakh law perspective.

26. Can financing documents provide for arbitration clauses?

Yes, financing documents can provide for arbitration clauses.

The PPP Law, as amended, extends the circumstances in which the parties to the PPP agreement may agree on Kazakhstan or international arbitration for dispute resolution purposes. In addition to the case where the private partner is a non-resident, the PPP Law allows for arbitration to be selected if at least one of the private partner's shareholders holding 25% or more of voting shares is non-resident in Kazakhstan. However, this provision applies only to PPP projects costing more than four million times MCI (approx. USD 34 million).

The Republic of Kazakhstan is not party to any multilateral or bilateral treaties with any Western jurisdiction or the United States for the mutual enforcement of court judgments. Consequently, should a judgment be obtained from a court in any Western jurisdiction or the United States, it is highly unlikely to be given direct effect in Kazakhstan courts.

H. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The main focus is for energy projects, social sphere, utilities and transport. Kazakhstan intends to implement a large project of construction and operation of a nuclear power plant.

It is expected that proper PPPs and project finance deals will finally take off in Kazakhstan in the near future, firstly because proper legislation on PPPs has been put in place, secondly, after decades of neglect, the government of Kazakhstan has finally not only declared, but seems to confirm its readiness to improve the investment climate and to attract private investments through PPPs (including into the housing and utilities sector) and decided to invest at least part of the wealth from commodity exports in long-postponed infrastructure projects, thirdly, following the peak of fake PPP projects, the government decided to increase control over the quality of PPP projects. Such IFIs as EBRD, Asian Development Bank (ADB) and IFC provide technical assistance in the development of projects in the mentioned areas.

28. Are any significant development or change expected in the near future in the project finance market?

On July 30, 2024 the President signed the National Plan for Development of the Country until 2029. It provides for the following development priorities and expected results:.

- liberalization and stimulation of competition to increase global competitiveness and improve the quality of goods and services;
- protection and development of entrepreneurship, clear, predictable and attractive economic policy for investors, which will provide the economy with sufficient investment for growth;
- unlocking the potential of citizens with a focus on providing quality education and supporting entrepreneurial and creative initiatives;
- focus on increasing the productivity and complexity of the economy through the expansion of innovative activity, modernization and digitalization of industries and enterprises;
- prevention of critical gaps in the development of regions and creation of conditions for the regions to realize their potential and greater economic independence.

The plan provides for the following major directions of development:

- healthcare including increase of quality and accessibility of medical assistance;
- education and science including set up of a high-quality education system, based on equal access to fundamental knowledge, digital technologies and comfortable educational infrastructure;
- social protection;
- comfortable environment including increasing access to the infrastructure to rural areas and development of "smart" localities;
- oil and gas sector as a strong foundation for the economy;
- energy sector including stimulating investment in the modernization and expansion of infrastructure, as well as large-scale implementation of measures to improve the energy efficiency of the economy;

- manufacturing industry including development of technology and competitiveness of existing and new production facilities
- Kazakhstan as a major regional trade and logistics hub;
- agro-industrial complex including attracting investors and developing cooperation;
- digital and creative economy including development of the country's innovative potential and its transition to a qualitatively new level, as well as the development of creative industries with a gradual increase in their contribution to the country's economy;
- tourism including creation of a dynamic business environment and new investment projects.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

LIBOR is being replaced by such products as Sonia for British pounds, Tona for Japanese yen, Saron for Swiss francs, and others. In addition, interest rates may be calculated depending on the so-called base rate which is set out by the National Bank of Kazakhstan.

KYRGYZSTAN

GRATA

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The main legislation governing project financing in the Kyrgyz Republic includes:

Civil Code of the Kyrgyz Republic dated May 8, 1996 No. 15 (Part I);

Civil Code of the Kyrgyz Republic dated January 5, 1998 No. 1 (Part II);

Land Code of the Kyrgyz Republic dated Juny 18, 2025 No. 149;

The Law of the Kyrgyz Republic "On business partnerships and companies" dated November 15, 1996 No. 60;

The Law of the Kyrgyz Republic "On joint stock companies" dated March 27, 2003 No. 64;

The Law of the Kyrgyz Republic "On investments in the Kyrgyz Republic" dated August 12, 2025 No. 198;

The Law of the Kyrgyz Republic "On securities market" dated July 24, 2009 No. 251;

The Law of the Kyrgyz Republic "On public-private partnership" dated August 11, 2021 No. 98;

The Law of the Kyrgyz Republic "On Pledge" dated March 12, 2005 No. 49;

As for the international treaties, the following are relevant:

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) dated June 10, 1958;

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) dated March 18, 1965;

In addition, The Kyrgyz Republic has entered into a number of bilateral treaties on mutual support, encouragement and protection of investment with the following countries:

The People's Republic of China (1995);
The Republic of Turkey (1996);
The Republic of Ukraine (1993);
The United States of America (1994);
The Republic of Armenia (1995);
The United Kingdom of Great Britain and Northern Ireland (1998);
The Republic of France (1997);
The Islamic Republic of Iran (2005);
The Republic of Azerbaijan (1997);
The Federal Republic of Germany (2006);
The Republic of Georgia (2016);
The Republic of India (2000);
The Republic of Kazakhstan (1997);
The Republic of Belarus (2001);
The People's Republic of Mongolia (1999);
The Swiss Confederation (2003);
The Republic of Tajikistan (2001);
The Kingdom of Sweden (2003);
The Republic of Moldova (2004);
The Republic of Finland (2004);
The Republic of Korea (2008);
The Republic of Latvia (2008);
The Republic of Lithuania (2009);
Denmark (2001);
Malaysia (1995);
The Islamic Republic of Pakistan (1996);
The Republic of Indonesia (1997);
The Republic of Uzbekistan (1997);
The United Arab Emirates (2014);
State of Qatar (2014);
State of Kuwait (2015);
The Republic of Austria (2016).

It is important to note that project financing in the Kyrgyz Republic may also be subject to various regulations issued by the National Bank of the Kyrgyz Republic and other regulatory bodies.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in the Kyrgyz Republic is relatively small and still developing. However, there have been some notable project financings in the country such as

- Construction of Upper Naryn hydropower plant cascade (still ongoing. The project provides for the construction of four HPPs with total installed capacity of 237.7 MW. The total cost of the project – USD 727 650 000;
- Building infrastructure of information system for fee collection. The project provides for the set-up of infrastructure of the information system for fee collection that includes 42 control points, 2 user service centers, one of which will be combined with the service center for freight traffic on public roads using global navigation technologies (GPS, GLONASS, Galileo etc.) The total cost of the project – USD 58 200 000;

Overall, while the project finance market in the Kyrgyz Republic is still developing, there are opportunities for financing in the country, particularly in the energy sector.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The types of security that may be used can vary depending on the specific circumstances of the project and the preferences of the parties involved. Some common types of security that may be used in project financings include:

- Mortgage: This is a form of security that involves the transfer of a property interest to the lender, which serves as collateral for the loan. If the borrower defaults on the loan, the lender may foreclose on the property and sell it to recover its investment.
- Pledge: This is a form of security that involves the transfer of possession of a movable asset, such as shares in a company or equipment, to the lender as collateral for the loan. If the borrower defaults on the loan, the lender may sell the pledged asset to recover its investment.
- Guarantee: This is a form of security that involves a third party (such as a parent company or a government entity) providing a guarantee to the lender that the borrower will repay the loan. If the borrower defaults on the loan, the guarantor is obligated to repay the loan on the borrower's behalf.
- Assignment of rights: An assignment of rights is a transfer of contractual rights from one party to another. In project financings in the Kyrgyz Republic, an assignment of rights is commonly used to transfer the right to receive payments from the project to the lender, thereby providing additional security for the lender.

It is important to note that the use of security in project financings can be complex and may involve a combination of different types of security. The specific security types used in a project financing transaction in the Kyrgyz Republic will depend on the nature of the project and the lender's requirements. Lenders typically seek to obtain as much security as possible to protect their investment in the project.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, the shares of the company can be pledged as security to the benefit of lenders.

There are specific requirements and procedures that must be followed for establishing or perfecting a share pledge in the Kyrgyz Republic.

Under the Kyrgyz legislation, a share pledge is established through a written agreement between the pledgor (the shareholder) and the pledgee (the creditor). The agreement must specify the number and type of shares being pledged, the amount of the secured debt, the duration of the pledge and other terms.

To perfect a share pledge, the pledge agreement must be registered with the Pledge Registration Department of the Ministry of Justice of the Kyrgyz Republic. The registration process involves paying state fee, submitting application and the original pledge agreement.

It's important to note that failure to register a share pledge with the authorized state body may result in the pledge being ineffective against third parties, so it's essential to follow the proper registration procedures to ensure the validity and enforceability of the pledge.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Yes, private sale is a recognized method for enforcing a share pledge in the Kyrgyz Republic. The pledgor and pledgee can agree on the terms of the private sale in the pledge agreement, or the sale can be conducted through a court-approved public auction.

In the event of default by the pledgor, the pledgee may enforce the pledge by selling the pledged shares. The pledgee must provide the pledgor with notice of the intended sale, including the time, place, and method of sale, as well as the minimum price for the sale, which must be equal to or greater than the outstanding debt secured by the pledge.

If the pledged shares are sold for more than the outstanding debt, the excess proceeds must be returned to the pledgor. If the pledged shares are sold for less than the outstanding debt, the pledgor remains liable for the remaining debt.

As for the endorsement types used for the share certificates, on the territory of the Kyrgyz Republic, all emissive securities are issued in form of book entry securities.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, security interests can be established over future assets, rights, and receivables of the borrower in the Kyrgyz Republic.

Under the Kyrgyz legislation, a security interest can be established over future assets and rights by way of a pledge agreement. The agreement must specify the future assets and rights to be pledged. Similarly, security interests can be established over future receivables through a pledge agreement.

It is important to note that the specific requirements and procedures for establishing security interests over future assets, rights, and receivables may vary depending on the type of asset or right in question and the specific terms of the pledge agreement.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Regarding the steps to be taken by lenders to enforce their security interest in the event of the borrower's insolvency, technical insolvency, or composition process in the Kyrgyz Republic, there may be some variation depending on the specific circumstances and the terms of the security agreement. However, the general steps that may be taken are:

- Verify the security interest: The lenders should review the security agreement and ensure that it has been properly executed and registered, if applicable, to determine the validity and enforceability of the security interest.
- Assess the priority of the security interest: If there are multiple security interests over the same asset or property, the lenders should assess the priority of their security interest relative to other security interests.
- Notify the insolvency administrator: The lenders should notify the insolvency administrator or receiver of their security interest and provide evidence of the security interest, such as a copy of the security agreement and proof of registration.
- Participate in the insolvency proceedings: The lenders should participate in the insolvency proceedings and file a claim for the outstanding debt secured by the security interest.

Enforce the security interest: If the borrower's assets are insufficient to satisfy the outstanding debt, the lenders may enforce their security interest by selling the pledged assets or property through a public auction or private sale, as permitted by Kyrgyz legislation.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The concept of a security trustee is not specifically provided for in the laws of the Kyrgyz Republic. However, lenders (pledgees) can appoint a pledge manager to represent the pledgee in exercising all of the pledgee's rights to the pledged property.

Information on the appointment or termination of the powers of the pledge manager shall be sent to the pledger and in case of a registered pledge shall be submitted to the local body of the authorized state body for registration of rights to immovable property, if the subject of the pledge is immovable property, if the subject of the pledge is movable property, the information shall be reflected in the pledge notice as provided by the Kyrgyz legislation.

In terms of the use of a parallel debt mechanism, this is not expressly provided for in the laws of the Kyrgyz Republic.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

The main incentives and exemptions for project financing in the Kyrgyz Republic include:

- Tax incentives: The Kyrgyz Republic offers a range of tax incentives to attract foreign investment, including exemptions or reductions in corporate income tax, property tax, and customs duties.
- Investment protection: The Kyrgyz Republic has signed bilateral investment treaties with a number of countries, which provide foreign investors with protection against expropriation and other forms of political risk. These agreements also typically include provisions for the settlement of investment disputes through international arbitration.
- Government guarantees: The Kyrgyz Republic government may provide guarantees for project financing, which can reduce the perceived risk of the investment and lower the financing costs. These guarantees typically cover political risks such as expropriation, breach of contract by the government, and transfer restrictions.
- Concessional financing: The Kyrgyz Republic is eligible for concessional financing from international financial institutions such as the World Bank, Asian Development Bank, and European Bank for Reconstruction and Development. This financing is typically offered at lower interest rates and longer repayment periods than commercial financing.
- Renewable energy incentives: The Kyrgyz Republic has significant potential for renewable energy development, and offers a range of incentives for projects in this sector. These incentives include feed-in tariffs, tax exemptions, and simplified licensing procedures.
- Infrastructure development: The Kyrgyz Republic government is actively promoting infrastructure development, including transport, energy, and telecommunications. Projects in these sectors may be eligible for government support, including tax incentives and guarantees.

It is important to note that the specific incentives and exemptions available for project financing in the Kyrgyz Republic may vary depending on the sector, size, and location of the project.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

There are several incentives and exemptions available specifically for foreign investors in the Kyrgyz Republic. Some of these incentives and exemptions include:

- National treatment of business activities, equal investment rights of domestic and foreign investors, no intervention into the business activities of investors, protection and restitution of infringed rights of investors in accordance with the laws of the Kyrgyz Republic;
- Export or repatriation of profit gained on investment, proceeds of investment activities in the Kyrgyz Republic, property, and information, out of the Kyrgyz Republic;
- Protection against expropriation (nationalization, requisition, or other equivalent measures, including action or omission on the part of authorized government bodies of the Kyrgyz Republic that has resulted in seizure of investor's funds or investor's deprivation of the possibility to use the results of their investment). In exceptional cases involving public interest, investments may be expropriated with concurrent state guarantees of appropriate coverage of damage incurred by the investor;
- The investor's right to freely use the income derived from their activities in the Kyrgyz Republic;
- The freedom to invest in any form into objects and activities not prohibited by the legislation of the Kyrgyz Republic, including the activities subject to licensing;
- Freedom of monetary transactions (free conversion of currency, unbound and unrestricted money transfers; should provisions restricting money transfers in foreign currency be introduced into the legislation of the Kyrgyz Republic, these provisions will not apply to foreign investors, with the exception of cases where investors engage in illegitimate activities (such as money laundering);
- The right to: establish legal entities of any organizational and legal form provided by the legislation of the Kyrgyz Republic; open branches and representative offices within the territory of the Kyrgyz Republic; select any organizational and managerial structure for the business entities, unless a different structure is explicitly required by law for the given organizational and legal form of a business entity; acquire property (except land plots), shares, other securities, including governmental securities; participate in privatization of state property, establish associations and other unions; hire local and foreign employees subject to the legislation of the Kyrgyz Republic; and engage in other investment activities not prohibited by legislation in the Kyrgyz Republic;
- Recognition by public authorities and officials of the Kyrgyz Republic of all intellectual property rights of foreign investors;
- In the event of amendments to the legislation on investments, or the tax legislation of the Kyrgyz Republic or the non-tax payments legislation, the investor and the investee who meet the statutory requirements have the right, during 10 (ten) years from the date of signing the stabilization agreement, to choose such conditions as may be most favourable to them for paying taxes including value added tax but excluding other indirect taxes, and

nontax payments (except fees and charges for public services) in the manner provided by the laws of the Kyrgyz Republic. The procedure and conditions for applying stabilization regime to tax and nontax legal relationships are established by the laws of the Kyrgyz Republic;

- Other guarantees specifically provided in bilateral and multilateral international treaties on the promotion and protection of investment, to which the Kyrgyz Republic is a party.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

No. There are no restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency.

12. Are there any restrictions for foreign investments in your jurisdiction?

Yes, there are restrictions on foreign investments in the Kyrgyz Republic. Below are some of the key restrictions on foreign investments in the Kyrgyz Republic:

Restrictions on foreign ownership: Certain sectors of the economy, such as media, broadcasting, and defense industries, may be subject to restrictions on foreign ownership.

Requirements for obtaining permits: Foreign investors may need to obtain permits or approvals from government authorities before making investments in certain sectors or industries. These requirements may vary depending on the nature and size of the investment.

Limits on land ownership: Foreign individuals and legal entities are not allowed to own land in the Kyrgyz Republic, except in limited circumstances such as transfer into ownership in case of foreclosure of mortgage loan with the obligation of subsequent alienation of the land plot within 2 (two) years from the date of origination of ownership of land or long-term leasehold rights.

It is important to note that the regulations and restrictions on foreign investments in the Kyrgyz Republic are subject to change, and may vary depending on the nature and size of the investment.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no specific minimum equity requirement for project financing in the Kyrgyz Republic under the legislation. However, the actual equity requirement may vary depending on the type, size, and risk profile of the project, as well as the requirements of the lenders or investors involved.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

To be valid and enforceable in the Kyrgyz Republic, project finance documents may need to be registered or filed with various government authorities. The registration and filing requirements that are applicable will depend on the nature and structure of the project, as well as the type of document in question. Below are some of the common registration and filing requirements that may be applicable for project finance documents in the Kyrgyz Republic:

Registration of security documents: Security documents, such as mortgages or pledges, must be registered with the authorized state bodies. The registration

process involves filing an application and paying a registration fee. Once registered, the security document will be publicly recorded and enforceable against third parties.

Filing of corporate documents: Project companies may need to file corporate documents, such as articles of incorporation or bylaws, with the authorized state bodies. This filing is required to establish the legal existence of the company and ensure that it is registered and in good standing.

Compliance with licensing requirements: Certain projects, such as those in the energy or mining sectors, may require special permits or licenses from government agencies. Compliance with these licensing requirements may be a condition precedent to the validity and enforceability of project finance documents.

It is important to note that the specific registration and filing requirements applicable to project finance documents in the Kyrgyz Republic may vary depending on the type of project and the legal structure of the transaction.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

The insurance activity is mainly regulated by the Law of the Kyrgyz Republic "On organization of insurance in the Kyrgyz Republic" dated July 23, 1998 No. 96 ("**Insurance law**") and fundamentals are provided in the Civil Code of the Kyrgyz Republic dated May 8, 1996 No.15. In accordance with Insurance law the insurance policy should be governed by Kyrgyz laws, including the terms and conditions of the policy and the rights and obligations of the insurer and the insured. It's worth noting that insurance activity is subject to licensing in the Kyrgyz Republic.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Generally, the assignment of insurance and reinsurance proceeds under insurance or reinsurance policies to the benefit of the lenders is not prohibited under Insurance law. It's worth noting that this might be subject to certain restrictions and limitations. It's essential to review the terms and conditions of each insurance agreement.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

In Kyrgyzstan there might be several potential complications, concerns or issues in relation to the insurance provisions under the project financing documentation. Firstly, their compliance to project financing documentation under legal regulatory framework set forth by Kyrgyzstani legislation. Secondly, one of the key concerns with insurance provisions in project financing is ensuring that the insurance coverage is adequate to protect the project and its participants from potential risks and losses. The project documents may require certain types and levels of insurance coverage, and the insurance policies should be carefully reviewed to ensure they meet these requirements. Thirdly, insurance provisions of project financing documentation should clearly state and include events of force majeure defined by Kyrgyzstani legislation. Overall, it is essential for parties to carefully review and consider the insurance provisions in project financing documentation for compliance with legislation.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

In accordance with the legislation of the Kyrgyz Republic, **Public-Private Partnership ("PPP**") is a permitted method of developing projects. The PPP as a method of developing projects is regulated by the Law of the Kyrgyz Republic "On public-private partnership" dated August 11, 2021 No. 98.

The Kyrgyz Republic has been actively developing PPP projects. To date, there are 40 implemented PPP projects, 5 PPP projects at the competition stage, and 37 PPP projects are currently under preparation. Most PPP projects are developed in areas of transport, energy, social, and environment. Some of the prominent PPP projects developed in Kyrgyzstan are the following:

- Establishment of hemodialysis centers in Kyrgyz Republic;
- Electronic ticketing in public transport;
- Reconstruction of the cinema for children 'Kyzyl Kyrgyzstan";
- Modernization of airports of the Kyrgyz Republic;
- Bishkek city public transportation improvement;
- Installation of CT scanners in public healthcare institutions.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

In accordance with Kyrgyzstani legislation on PPP, direct agreements between the public authorities and the Lenders are permissible only in case the amount of investment is more than 1 billion Kyrgyz soms (approximately USD 11 439 278). The PPP project is awarded through direct negotiations provided that the investment meets the set investment amount and the qualification requirements.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The government of the Kyrgyz Republic has demonstrated commitment to supporting PPP projects. There are several government supports available in the Kyrgyz Republic:

- Provision of guarantee for the fulfillment of obligations by the state partner.
- Provision of guarantee of minimum profitability of the PPP project;
- Provisions by the tax legislation of the Kyrgyz Republic;
- Provisions of preferential rental rates for the use of property owned by the state and/or municipality;
- Provision of state or municipal preferences under the PPP agreement;
- Provision of assistance in obtaining permits and licenses.

Some of the government guarantees available in the Kyrgyz Republic:

- Non-interference by the state partner in the economic activity of the private partner;
- Protection of property of a private partner from nationalization or other equivalent measures;
- Rightly to freely own, use and dispose of investments made to the PPP project and the income and profits received from it;

- Right to carry out operations on the sale and purchase of cash and non-cash national and/or foreign currency on the territory of the Kyrgyz Republic;
- Right to review the terms or early terminations of the PPP agreement and receive compensation for damage caused due to the adoption of legal acts deteriorating conditions of project implementation.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

The allocation of risk between partners is one of the most crucial ways to ensure the successful implementation of a PPP arrangement. Article 6 of the PPP law ensures principle of fair distribution of risks. In accordance with Article 14 of the PPP law, PPP agreement should include term on distribution of risks between the public and private partners.

The allocation of political risk in PPP agreements depends on the specific terms of the agreement, as well as the nature of the risk. Generally, political risks are shared between the public and private partners. In some cases, the public party may assume a greater share of the political risk, particularly in cases where the project involves a public service or infrastructure that is of critical importance to the government. On the other hand, in some cases, the private party may assume more political risk in exchange for greater potential rewards or as a condition of securing financing for the project. Therefore, the allocation of political risk in PPP agreements will depend on the specific circumstances of the project and the priorities and preferences of the public and private parties involved in PPP arrangements.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Yes, in accordance with Article 6 of the PPP Law any laws and by-laws adopted after the conclusion of PPP agreement and affecting PPP issues are not applicable to existing project agreements. An exemption of applicability is illustrated in cases when the initiative to apply amended legal provisions or newly adopted laws comes from the private partner. In this case, amendments to existing agreements shall be made in accordance with the procedure stipulated by the relevant PPP agreement.

23. Is force majeure specifically regulated under the local legislation?

Generally, force majeure is regulated by the civil legislation of the Kyrgyz Republic. Para.3 of Article 356 of the Civil Code of the Kyrgyz Republic defines force majeure and provides a respective regulation for its applicability. Para. 3 of Article 356 of the Civil Code provides a basis for exemption from liability in cases of force majeure. In accordance with the above-mentioned legal provision force majeure is extraordinary and unavoidable circumstances under the given conditions. Such circumstances, however, do not include a breach of duty on the part of the debtor's counterparties, the unavailability of goods on the market needed for the fulfillment of obligations, or the debtor's lack of the necessary funds.

It's worth noting that in accordance with provisions of the above-mentioned Article, the agreement may provide for other conditions of exemption from liability.

24. What are the general environmental and social requirements in project financings?

In accordance with Kyrgyz law, it's prohibited to finance and implement projects related to use of natural resources without a positive conclusion of the state's ecological expertise. Particularly, according to the Regulation on the procedure of environmental impact assessment in the Kyrgyz Republic projects should undergo the assessment process to consider the potential environmental impact of the project. Moreover, an environmental management plan should be designed to ensure that the project will be operated in an environmentally responsible manner. Regarding social requirements in project financing, there are general requirements to engage with local communities and stakeholders and ensure compliance with labor legislation of the Kyrgyz Republic.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

In accordance with the civil legislation of the Kyrgyz Republic, agreements can be governed by foreign law. The enforceability of a submission to a foreign law rather that Kyrgyz law should be clearly indicated or directly derived from the terms of the agreement. In accordance with Kyrgyz legislation, the freedom of parties to choose the governing law of their agreement is recognized. Waiver of immunity is generally recognized action which is subject to certain limitations under by legislation of the Kyrgyz Republic.

26. Can financing documents provide for arbitration clauses?

Yes, financing documents can include arbitration clauses in the Kyrgyz Republic. In accordance with Kyrgyzstani legislation, parties are free to agree to resolve any arising disputes through arbitration. The Kyrgyz Republic has adopted UNCITRAL Model Law on International Commercial Arbitration and ratified ICSID Convention.

For instance, Article 19 of the PPP Law states that any disputes arising between parties to the PPP agreement in connection with the conclusion, performance, and termination of said agreement shall be resolved through negotiations in compliance with the provisions of the PPP agreement. In case the parties cannot resolve a dispute amicably, the dispute shall be considered either by the state courts of the Kyrgyz Republic or the international court/arbitrational tribunal if the PPP agreement provides for it. Thus, the PPP agreement provides for arbitration clauses.

In order to ensure the enforceability of an arbitration clause in a financing document in Kyrgyzstan, parties should consider the following:

- An arbitration agreement should be in writing and signed by the parties. It can be in the form of a separate agreement or as a clause within the financing documents.
- The arbitration agreement should clearly identify the disputes that are subject to arbitration and the rules and procedures that will govern the arbitration.
- The arbitration agreement should specify the seat or legal place of arbitration, which is the jurisdiction in which the arbitration will take place. Parties may choose a foreign seat of arbitration, but this may affect the enforceability of the award in Kyrgyzstan.
- Parties should ensure that the arbitration agreement complies with any mandatory provisions of Kyrgyz law and does not violate public policy.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The Kyrgyz Republic is currently at the stage of developing its economy and project financing overall. Some of the main trends in project financing include the following:

- Public-Private Partnerships (PPPs): PPP projects became one of the most popular methods of project financing in the Kyrgyz Republic. Particularly, PPPs are mainly used in infrastructure, transport and energy sectors. It's worth noting that renewable energy is a separate block of PPP projects that is highly supported and developing in the Kyrgyz Republic. For instance, IFC and the government of the Kyrgyz Republic will cooperate in the development of a solar plant under the Scaling Solar Program.
- Mining: The mining sector is a key driver of the Kyrgyz economy, and project financing in this sector is focused on the development of new mines and the expansion of existing operations. As of today, there were several big projects in mining sector.
- Islamic finance: Project financing based on Islamic principles has been actively developing in the Kyrgyz Republic. There are several banks, microfinance companies that support and provide financing on Islamic principles.
- Microfinance: Microfinance has become an important source of funding for small and medium-sized enterprises (SMEs) in the Kyrgyz Republic, particularly in rural areas.

Considering above mentioned developments and focus sectors, project financing is rapidly developing in the Kyrgyz Republic. The government of the Kyrgyz Republic tries to implement reforms and provide guarantees that will attract foreign investments into the country.

28. Are any significant development or change expected in the near future in the project finance market?

As mentioned earlier the project finance market is still developing in the Kyrgyz Republic. The government of the Kyrgyz Republic will likely to implement the following measures:

- Further support and development of PPP. The Kyrgyz government has expressed a strong commitment to developing PPP projects. Reviewing experience of our country PPP is a key mechanism for financing public infrastructure projects. It is expected that more PPP projects will be launched in the coming years and that the government will continue to implement legal and regulatory reforms to encourage private sector participation.
- Focus on renewable energy and mining sectors. As mentioned above, the Kyrgyz government actively participates in PPP projects focused on the renewable energy sector. The mining sector is a crucial area of development and our authorities will likely to implement new reforms to promote its development.
- The Kyrgyz government also stipulates on importance of digital transformation. In coming years there are expected more projects in digital infrastructure, e-commerce platforms and financial technologies.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

During the LIBOR transition period, the RFR rates is commonly used in the Kyrgyz Republic. Alternative rates are Secured Overnight Financing Rate (SOFR) for USD and Sterling Overnight Index Average (SONIA) for GBP.

LIBYA

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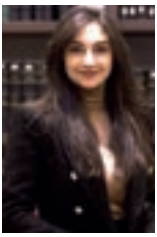

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

- Commercial code (for private projects)
- The Regulations Governing Administrative Contracts (if the Government is a party)

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance is undeveloped and uncommon practice in Libya as a result of political and economic instability.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

- Mortgages
- Personal guarantee

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, the shares of a company could be pledged as a security to the benefit of lenders. Article 140 requires the approval of the company for shares' pledge, it stipulates that "If the company approved shares' pledge, this will be considered as prior approval for transfer of the pledged shares to the buyer in case of execution on shares."

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Not applicable.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Not applicable.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

In case the borrower becomes insolvent, the creditors shall participate in what results from the liquidation of the company's liabilities, according to their order of date and priority in sharing the remaining funds, according to Articles 999-1031 of the Commercial Code.

And in case there is a mortgage with the bank, the bank can seize it immediately to collect the value of the loan in the event that the company becomes insolvent and is unable to pay its debts to the bank.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Not applicable.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

There are currently no incentives nor exemptions rendered for project financing in Libya.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Yes, foreign investors that come under Law No. 9 for the year 2010 Regarding Investment Promotion enjoy extensive privileges and exemptions. The incentives provided for by law can be encapsulated as tax customs exemptions on equipment, a five-ear income tax exemption, a tax exemption on reinvested profits and exemptions on production tax and expert fees for goods produced for export markets. Investors are also granted the privilege to transfer net profits overseas, defer losses to future years, import necessary goods, and hire foreign labor if local labor was unavailable. Foreign workers may acquire residency permits and entry reentry visas for 5 (five) years and transfer earnings overseas.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Yes, there exists limited restrictions on borrowing bank loans and shareholder loads from abroad albeit in national or in foreign currency.

12. Are there any restrictions for foreign investments in your jurisdiction?

Yes, there are. Both Law No. 9 for the year 2010 Regarding Investment Promotion as well as Law No. 23 for the year 2010 Regarding Commercial Activities contain restrictions placed on foreign participation and investments in general that manifest in capital requirements and restricted types of activities.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

The minimum equity requirement is dependent on the particular type of the project concerned.

The following is an example for such: Decree 207 for the year 2012 Concerning Participation of Foreigners stipulates that when foreign contribution exists, the minimum project value for the following contracts is ought to be 50 million Libyan dinars: Building and construction, construction of roads, bridges and dams, marine constructions such as marine quays, break waters, dry docks and deepening ports, construction of airports and runways, Laying railways and construction of stations.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

The requirements are dependent on the particular nature of the project concerned; requirements are different across the different types of projects; i.e., it is on a case-by-case basis.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

No.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

There are no other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Public-Private Partnership Projects are lack of sufficient regulation within the Libyan jurisdiction and therefore a seldomly used method of developing projects in Libya.

This is particularly as public procurement is more regulated and therefore more commonly used as a preferred method of project development.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

They are indeed permissible under Libyan law, but not commonly seen.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Libyan law does not permit governmental support in the form of debt assumptions or financial guarantees on a particular project.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

There is no straightforward answer due to:

i. The inexistence of sufficient regulation on Private-Public Partnership

ii. The uncommon nature of PPP projects means there are not enough cases and projects to safely conclude nor assume who 'usually takes' the responsibility'.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Protection against change in law is not guaranteed. This is predominantly dependent on contents of the newly passed law and whether it contains exceptions to its application. A predominate example of this within the Libyan jurisdiction is the passing of Law No.1 of 2013 Regarding the Prohibition of Interest-Based Transactions in Libya which had a retrospective effect and ended all interest-based transactions even if signed prior to the date of the passing of the legislation.

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure is regulated by virtue of Art.220 of the Libyan Civil Code.

24. What are the general environmental and social requirements in project financings?

Not applicable.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

This depends on whether the waiver of immunity is in relation to the right to not be sued or the seizure of public assets. As regards to the latter, the waiver of immunity in relation to the seizure of public assets will not be enforceable.

The submission to a foreign law, granted that is both agreed upon by the parties, can be indeed enforceable. This is contingent however on the public party obtaining the necessary approvals.

26. Can financing documents provide for arbitration clauses?

Libya law does not prohibit the inclusion of arbitration clauses in financing agreements, provided that the public party has obtained the necessary approval from relevant authorities prior to signing such agreements.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The main current trend in Libya is the Public Funding and Loans.

28. Are any significant development or change expected in the near future in the project finance market?

To the best of our knowledge, there will be no significant development or change expected in the near future.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

Interest rates have been prohibited by law in all types of transactions since 2016.

NEPAL

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The following legal instruments primarily govern project financing laws in Nepal:

The primary legal framework governing project financing in Nepal consists of the following domestic statutes, which regulate contract formation, security interests, foreign investment, and sector-specific obligations:

1. **The National Civil Code, 2017 ("the Civil Code");** Serves as the foundational law for property rights, the validity of contracts, and general principles of debt and security.
2. **Public Private Partnership and Investment Act, 2019 ("PPPA");**Provides the specialized legal framework for large-scale infrastructure development and the regulation of private investment in public projects.
3. **Companies Act, 2006**; Governs the incorporation, corporate governance, and statutory obligations of the Special Purpose Vehicles (SPVs) typically used in project finance.
4. **Nepal Rastra Bank Act, 2002 ("NRB Act")**; Establishes the authority of the Central Bank of Nepal ("**NRB**") to regulate foreign exchange, master credit circulars, and the movement of capital.
5. **Banking and Financial Institutions Act, 2017 ("BAFIA")**; Regulates the lending activities, statutory liquidity requirements, and debt recovery powers of commercial banks.
6. **Foreign Investment and Technology Transfer Act, 2019 ("FITTA")**;Regulates the entry of foreign equity, the protection of foreign investors, and the repatriation of profits and dividends.
7. **Secured Transaction Act, 2006 ("Secured Transaction Act")**; Modernizes the regime for creating and perfecting security interests in movable and intangible assets through a centralized registry.

8. **NRB Foreign Investment and Foreign Loan Management By-law, 2021 ("NRB Bylaws")**; Sets the procedural mandatory requirements for approving offshore loans, interest rate caps, and the recording of foreign debt.
9. **Environment Protection Act, 2019 ("EPA")**; Mandates environmental impact assessments and compliance standards that serve as critical conditions precedent for project disbursement.
10. **Insolvency Act, 2006**; Governs the procedures for corporate restructuring or liquidation and defines the priority of secured creditors during default.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

Nepal's project finance market has attained a notable degree of maturity in recent years. Foreign lending structures are now well tested, particularly in large hydropower and infrastructure projects, with mechanisms such as security trustees, direct agreements and multi-lender security arrangements having been implemented in practice. Nepali law and regulators have, in general, been accommodating of these structures, allowing project finance transactions to be structured broadly in line with international standards.

In addition, regulatory practice has evolved to address earlier constraints. For instance, NRB has introduced practical reforms in the foreign loan regime, including easing procedural requirements such as not requiring prior approval for each interest payment, which had previously created operational challenges. Similarly, insurance-related mechanisms such as assignment of reinsurance proceeds, direct payment structures and cut-through arrangements in favour of security trustees have now been implemented and tested in recent transactions.

That said, certain structural challenges remain. In particular, proposals relating to dollar-denominated PPAs and hedging mechanisms have faced parliamentary and public opposition, and the commercial rationale of such structures has not fully resonated in the local context. As a result, a comprehensive and operational framework for allocation of foreign exchange risk has not yet been implemented. In addition, practical implementation issues persist, particularly in relation to delays in land acquisition and compensation, as well as delays in obtaining forest clearances and tree cutting approvals. Accordingly, while the market has matured significantly from a structuring and regulatory standpoint, execution risks at the project level continue to remain a key challenge.

Some significant project financings in the last 12–13 months in Nepal are:

- **Third Bridges Improvement and Maintenance Program (BIMP-III)**
  In March 2025, the World Bank approved financing of $150 million to strengthen Nepal's bridge infrastructure, focusing on resilience, connectivity and maintenance of the strategic road network.
- **Electricity Distribution and Irrigation Projects (May 2025)**
  In May 2025, the World Bank approved a combined financing package of $257 million to improve electricity distribution services and irrigation systems. This represents one of the largest recent infrastructure-focused financing packages in Nepal.
- **Upper Seti Hydropower Project (216 MW)**
  In August 2025, the Upper Seti Hydropower Project achieved financial

closure with approximately NPR 42 billion in financing led by Kumari Bank with participation from other domestic banks, marking a significant recent private sector hydropower financing.

- **Budhigandaki Hydropower Project (341 MW)**
  In August 2025, the Budhigandaki Hydropower Project reached financial closure with approximately NPR 52.5 billion in debt financing from a consortium of Nepali banks and financial institutions, making it one of the largest recent domestic project financings.

- **Koteshwor Intersection Improvement Project**
  In December 2025, JICA signed an ODA loan agreement of approximately JPY 34.49 billion (around NPR 31.7 billion) for the development of the Koteshwor intersection, representing a significant transport infrastructure financing.

B. Security Interest

3. What are the most commonly used security types in in your jurisdiction? project financings

The most commonly used security types in Nepal's project financing regime are:

- **Mortgage: Over immovable property such as land and buildings. Non-possessory mortgage is very common in Nepal where the security grantor is entitled to use the mortgaged asset and the possessory right is transferred to the security beneficiary only in the event of the security grantor's default.**

- **Hypothecation: Over movable assets, especially for the purpose of working capital needs such as inventory management, raw materials, etc.**

- **Pledge: Security interest on movable assets such as share certificates.**

- **Assignment of rights: Security by assigning any or all rights in receivables, contracts leasehold rights) and instruments.**

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, shares of a company can be pledged as a security to the benefit of lenders. Share pledge can be perfected through possession of the share certificate. Company law also mandates recording of the pledge in the shareholder's registry book. It is also a practice to have such shareholder's registry book certified from the Office of Company Registrar ("**OCR**") Perfection of shares in favor of the foreign lenders would also require prior approval from NRB.

5. Is private sale a recognized method for the enforcement of a share pledge? What are the endorsement types typically used for the share certificates?

Yes. Private sale is recognised in Nepal as a method of enforcing a share pledge. Under the Secured Transaction Act, a secured creditor may enforce security over shares through non-judicial means such as private sale, provided the security interest has been properly perfected, for example through possession (in the case of shares). In practice, lenders, particularly banks and financial institutions, may take possession or control of the shares and transfer them by private sale without court involvement, while judicial auction under the Civil Procedure Code remains an alternative route.

As to endorsement, Nepalese law does not prescribe a specific endorsement type for share certificates in the manner of negotiable instruments. Instead, enforcement is effected through corporate and contractual mechanisms, including the deposit of share certificates with the secured party, recording of the pledge in the shareholder register book and getting it certified from the OCR, and the grant of authority, typically through a power of attorney in favour of the security agent or secured party, to transfer the shares upon default.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, security interests can be established over future assets, rights and receivables of the borrower. Secured Transaction Act has provisioned security interest as a property right over collateral- even those arising in the future. This includes assets, rights, and receivables. However, security interests cannot be established over future immovable assets.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Under the Insolvency Act 2006, secured lenders are generally entitled to enforce their security interests notwithstanding the insolvency of the borrower. The commencement of insolvency or restructuring proceedings does not, in principle, restrict the secured creditor's right to enforce its security.

However, this position may be qualified where the secured creditor consents to a restructuring plan or votes in favour of such plan, or where a court issues an order restricting enforcement on the basis that the restructuring should proceed and the interests of the secured creditor are adequately protected**.**

8. Is the security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

NRB has allowed for security interests are collectively created in favor of a security agent/trustee through a circular and it is a tested structure tried across at least two hydropower transactions we have experienced. Nepali banks usually act as the security agent because enforcement of security, if required, is easier for Nepali banks and Nepali banks can fully utilize the remedies provided by BAFIA. One consideration to note is that prior approval from the council of ministers has been expected by regulators in our experience even though security is created in favor of Nepalese banks who are acting as a security agent for an on behalf of foreign lenders. Parallel debt structure is neither tried nor tested structure in Nepal.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

The principal incentives and exemptions applicable to project financing in Nepal are primarily fiscal in nature and are provided under the fiscal laws, and sector-specific regulatory frameworks, particularly for energy and infrastructure projects.

Under the Income Tax Act, 2002 significant tax incentives are available for renewable energy projects. Hydropower and other renewable energy projects (including solar, wind and biomass) are generally entitled to full income tax exemption for an initial period (typically up to 10 years), followed by a partial exemption (usually 50%) for a subsequent period of up to 5 years. In the case of reservoir and semi-reservoir

hydropower projects with a capacity exceeding 40 MW, and downstream projects operating in tandem, enhanced incentives are available, including 100% income tax exemption for the first 15 years and 50% exemption for an additional 6 years, provided financial closure is achieved within the prescribed statutory deadline (currently linked to mid-April 2029). In practice, such deadlines are frequently revised through annual Finance Acts.

Further, specific incentives are also available for emerging and strategic sectors. Green hydrogen production industries are entitled to a 100% income tax exemption for the first 5 years from commencement of operations. In addition, projects involving construction, operation and transfer of public infrastructure (including PPP projects and power generation, transmission and distribution projects) are eligible for a concession of 20% on the applicable income tax.

From an indirect tax perspective, project imports benefit from significant concessions. Equipment, machinery, tools, spare parts and raw materials required for generation, transmission and distribution of electricity may be imported on concessional terms, including VAT exemption and reduced customs duty (in certain cases as low as 1%), where such goods are not manufactured domestically and the project has obtained the requisite approvals from competent authorities such as the Investment Board Nepal or the Department of Electricity Development. Large hydropower projects achieving financial closure within prescribed timelines are also eligible for similar import-related concessions.

This is in addition to other forms of contractual and legal protection (such as change in law compensation, political risk allocation and force majeure relief) which are addressed elsewhere in this Q&A.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Yes, although this should be understood primarily in terms of protection and bankability rather than standalone fiscal incentives. Under FITTA, foreign investors are granted core protections such as protection against direct and indirect expropriation, repatriation of capital and returns, foreign currency convertibility, national treatment, and access to business visas, land use and industrial security. However, tax incentives are generally sector-driven and not granted solely on the basis of foreign status, being instead linked to the classification of the project under applicable laws and sectoral regimes.

From a project finance perspective, the more meaningful distinction arises in projects developed under the Investment Board Nepal framework. To date, such projects have largely involved foreign developers and foreign lenders. In these projects, concession agreements are heavily negotiated and specifically structured to enhance lender protection and overall bankability. A key feature is the ability to assign core project rights, including offtake agreements, licences, receivables and, in practice, leasehold interests over government-provided land, in favour of lenders or a security trustee.

In addition, direct agreements between lenders, the project company and relevant government authorities or offtakers are a central feature of these structures. These agreements provide lenders with step-in rights, cure rights and protection against termination.

Concession agreements also contain detailed allocation of political and regulatory risk. Change in law provisions are typically drafted to preserve the project's economic position by providing

mechanisms such as tariff adjustment, compensation, extension of time or other financial relief where legal or tax changes adversely impact the project. Similarly, force majeure provisions distinguish political events and allocate such risks to the government, with corresponding relief including cost compensation, time extensions and, where applicable, termination compensation.

In practice, these concession-based protections and direct agreement structures are a defining feature of foreign-financed, foreign-developed IBN-type projects and are typically required by foreign lenders as a condition to disbursement. Comparable protections are generally not present, or not required to the same extent, in projects financed solely by domestic lenders, where reliance is placed more on conventional security and local enforcement mechanisms.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Nepali entity may, subject to prior approval of NRB, borrow loans from abroad in foreign currency. Such loans must be approved in advance and recorded with NRB within six months of receipt.

Foreign loans from foreign banks and financial institutions are generally permitted, provided the lenders fall within the categories recognised by NRB. These loans are subject to prescribed conditions, including interest rate caps linked to international benchmark rates and minimum and maximum loan tenors (generally ranging from six months to fifteen years).

Shareholder loans are permitted in Nepal but are more closely regulated under NRB Bylaws. Such loans may be extended by foreign investors, parent companies or group companies to a foreign-invested company, subject to prior approval and compliance with prescribed limits. In particular, the total exposure from shareholder loans is generally capped by reference to the paid-up capital of the borrower (commonly up to two times, subject to limited exceptions), and any additional borrowing is assessed on an aggregate basis against this cap. Interest rates are also regulated, with ceilings linked to internationally recognised benchmark rates (such as SOFR, SONIA depending upon currency denominations) plus a specified margin, and where multiple shareholder loans exist, the weighted average interest rate across all such loans must remain within the prescribed limits.

In addition, the by-laws recognise project-related advances in the context of construction and implementation of projects. In such cases, advances may be provided by a parent company or group company acting as contractor or supplier for project development, subject to NRB approval. These advances must be connected to project construction requirements, are typically linked to construction costs, and are required to be regularised and recorded as foreign loans under the approved structure.

12. Are there any restrictions for foreign investments in your jurisdiction?

Foreign investment by way of equity is restricted in Nepal under FITTA in certain sectors.

These include:
(i) poultry farming, fisheries, bee-keeping, fruits, vegetables, oil seeds, pulse seeds, milk industry and other sectors of primary agro-production;
(ii) cottage and small industries;
(iii) personal service businesses (such as hair cutting, tailoring, driving, etc.);
(iv) industries manufacturing arms,

ammunition, explosives and nuclear, biological and chemical weapons, as well as atomic energy and radioactive materials;
(v) real estate business (excluding construction), retail business, internal courier services, local catering services, money changing and remittance services;
(vi) travel agencies, trekking and mountaineering guides and rural tourism (including homestay);
(vii) mass media (newspaper, radio, television and online news) and motion pictures in national language;
(viii) management, legal, engineering and consultancy services, as well as training services;
(ix) consultancy services with more than fifty-one percent foreign investment;
(x) ride-sharing services with seventy percent or more foreign investment; and
(xi) aviation-related sectors beyond prescribed foreign investment thresholds.

Foreign investment by way of loans is linked to the negative list applicable to equity investment as per NRB Bylaws. However, certain exceptions does exist. For e.g. Nepalese banks and financial institutions are permitted to obtain foreign loans for on-lending purposes in primary agriculture, and cottage and small industries which are restricted under equity investment.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

In the context of foreign investment, NPR 20 million (Nepalese Rupees Twenty Million) is the minimum threshold for foreign investment in Nepal, as per the Nepal Gazette notification on 14 November 2022. Such threshold is not applicable to equity investments in the information technology sector.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

According to the NRB Bylaws, foreign loans terms must be approved by the NRB. The borrower must also record the foreign loan amount within 6 months of foreign currency inflow. Land mortgage deeds must be registered at Land Revenue Office to ensure priority and perfection, and security interest must be filed at Secured Transaction Registry Office where filing is the mode of perfection.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

While the Civil Code provides for party autonomy in selecting a governing law, applying foreign law to a Nepali insurance policy is rarely seen in practice. Local insurers generally resist such clauses, preferring the certainty and familiarity of domestic law.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Under Nepalese law and practice, the assignment of insurance and reinsurance proceeds for the benefit of lenders is a recognized and standard component of project finance security packages. In case of reinsurance this is structured through a Reinsurance Assignment Deed or an equivalent security document, where the borrower assigns its rights, title, and interest in the proceeds to a security trustee. To ensure that funds are not trapped at the level of the primary insurer, these arrangements incorporate loss payable clauses and cut-through provisions, facilitating direct payment from reinsurers into designated secured accounts.

Beyond the contractual framework, the enforceability of such assignments is also subject to regulatory approval. Specifically, the Nepal Insurance Authority ("**NIA**") must provide formal approval for the direct payment of reinsurance proceeds to a lender or security trustee as per the Directive Related to Reinsurance Business (Management and Operation), 2019. Given the criticality of cash flow control in infrastructure and energy projects, obtaining this regulatory clearance is almost universally treated as a condition precedent to the first disbursement of the loan.

If the security structure involves payments to an offshore security trustee or a foreign currency account held abroad, prior approval from the NRB is highly recommeded in advance.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

In Nepal, insurance provisions in project financing transactions present certain practical and regulatory challenges despite the availability of assignment structures. A key issue is that direct payment from reinsurers to lenders or security trustees is not automatically recognised without specific regulatory approval. While cut-through clauses and direct payment mechanisms are contractually included, their effectiveness is contingent on approval from the NIA and NRB.

Further, where reinsurance proceeds are payable to accounts maintained by the security trustee especially in bank accounts abroad, approval from the NRB may be required. In the absence of such approvals, there is a risk that proceeds may be delayed or required to be routed through the local insurer, which can impact the intended cashflow control under the financing structure.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?'

Yes, PPP is a permitted method of developing projects in Nepal. PPP is governed by the PPPA.

Some notable PPP projects being developed are:

- **Arun-3 Hydro Electric Power Project**
- **Upper Trishuli-1 Hydropower Project**
- **Upper Marsyangdi-2 Hydropower Project**

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between the public authorities and the lender is permissible under Nepali law and has been practiced since few years especially for PPP hydropower projects developed by foreign lenders.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Host government support in Nepal does not typically take the form of sovereign guarantees, treasury guarantees or debt assumption as a standard feature. Instead, support is primarily provided through contractual undertakings in concession agreements particularly in large infrastructure projects developed under the Investment Board Nepal (IBN) framework.

Government undertakes to procure the grant, renewal and maintenance of key

permits, licences and approvals required for the project, provided the project company complies with applicable legal requirements. This includes sectoral licences, environmental approvals, import permits, communication permits and other regulatory consents. In practice, this operates as a facilitation obligation whereby the government coordinates with relevant authorities to ensure timely issuance and continuity of approvals.

It should be noted that such structured and centralised support is most developed in IBN-led projects, where IBN acts as both facilitator and implementing agency and assumes a coordinating role across government entities.

A further structural consideration relates to revenue and offtake risk. In the power sector, reliance on a single state-owned offtaker has historically raised bankability concerns, particularly in the absence of explicit payment guarantees. Proposals such as dollar-denominated power purchase agreements and hedging mechanisms have been explored to mitigate foreign exchange and payment risk, but have faced regulatory and policy scrutiny, including review by parliamentary committees and oversight bodies. Accordingly, host government support in Nepal is best understood as a negotiated, concession-based risk allocation framework rather than a guarantee-based regime.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Under PPP agreements in Nepal, political risk events are generally allocated to the public party (i.e., the Government of Nepal), although this allocation operates within a structured contractual framework rather than as an absolute transfer of risk. In concession agreements and PDAs, events such as politically motivated strikes, riots, civil commotion, insurrection, state of emergency and similar disturbances are typically classified as GON force majeure events, provided they are beyond the reasonable control of the affected party and materially affect performance.

In such cases, (i) the private party is entitled to relief, primarily in the form of suspension of performance and extension of time; (ii) both parties are subject to a duty to mitigate, with the government often required to provide reasonable assistance to facilitate resumption of project operations; and (iii) the private party may be entitled to recover additional costs and, in certain cases, loss of revenue, subject to compliance with contractual procedures such as notice, substantiation and mitigation. However, compensation is not automatic and is typically structured through mechanisms such as set-off, royalty adjustments or reimbursement, and termination is permitted only as a last resort in cases of prolonged force majeure.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Investors and lenders in Nepal are generally afforded protection against changes in law through a combination of statutory guarantees and contractual risk allocation under concession agreements. While Nepalese law does not provide a single, comprehensive stabilization regime akin to some jurisdictions, certain sectoral statutes and, more importantly, project agreements provide meaningful protection in practice.

Under the Industrial Enterprises Act, 2076, a form of statutory stabilization is available in respect of incentives, exemptions, facilities and concessions granted to industries. The Act provides that no subsequent legal provision shall reduce such benefits once

granted, although additional benefits may be introduced. It also ensures continuity of benefits across legislative transitions, particularly where an industry was registered under earlier laws. However, this protection is limited in scope and applies primarily to fiscal and regulatory incentives rather than broader legal or economic changes affecting project performance.

Accordingly, in project finance transactions, the principal protection against change in law is typically derived from concession agreements. These agreements contain detailed and lender-oriented change in law provisions, which go significantly beyond the general statutory framework.

In particular:

(i) change in law is expressly defined and includes both general legal changes and specific changes in tax affecting the project, its sponsors, lenders or contractors;

(ii) the project company is entitled to relief where such change adversely impacts project costs, revenues or tax liabilities, including recovery of additional costs and loss of revenue;

(iii) contractual relief mechanisms include extension of time for performance, monetary compensation, and tariff or royalty adjustments, as well as the possibility of tax exemptions or other governmental measures to restore the project's economic position;

(iv) where compensation is not fully provided, the concession term itself may be extended to enable the project company to recover its losses; and

(v) termination is only contemplated as a last resort, typically in cases where the effects of change in law persist for a prolonged period (for example, beyond twenty-four months) and materially prevent continued performance.

In addition, concession practice in Nepal often incorporates elements of economic equilibrium, ensuring that the project company is placed, to the extent possible, in the same financial position as prior to the change in law. This is reinforced by structured compensation mechanisms, including set-off against government dues, royalty reductions, or direct reimbursement.

23. Is force majeure specifically regulated under the local legislation?

Civil Code treats events beyond human control (such as floods, landslides, earthquakes, etc.) as a fundamental change in circumstances permitting non-performance of contractual obligations. In effect, this operates similarly to the doctrine of frustration, whereby contractual performance may be discharged. However, this default position is not particularly suitable for project finance transactions, where continuity of performance is critical and outright discharge is generally avoided.

Accordingly, in practice, force majeure is primarily governed by concession agreements, which contractually displace or refine the Civil Code position.

Under such agreements:

(i) force majeure events are specifically defined and subject to qualification criteria, ensuring that not all unforeseen events automatically trigger relief;

(ii) the project company is required to promptly notify the relevant government authority of the occurrence and impact of the force majeure event;

(iii) both parties are typically subject to a duty to mitigate, with the government often required to provide reasonable assistance to enable resumption of project operations;

(iv) the primary contractual reliefs include suspension of performance and extension of time, rather than discharge of obligations; and

(v) termination is treated as a measure of last resort, generally permitted only after prolonged force majeure and failure of mitigation efforts.

24. What are the general environmental and social requirements in project financings?

The Nepalese regulatory framework in relation to environmental and social requirements in project financings is not contained in a single ESG statute. Rather, it is spread across a number of laws and project documents, including the Environment Protection Act, 2076 (2019) and the Environment Protection Rules, 2077 (2020), the Forest Act, 2076, the Labour Act, 2074, the Industrial Enterprises Act, 2076, and, for large concession-based infrastructure projects, the relevant concession agreements. In practice, Nepal's regime focuses on environmental clearance, forest and land-use restrictions, resettlement and community impacts, labour and occupational safety, and certain mandatory community-benefit measures.

Under the environmental legislation, projects are generally required to obtain approval of the applicable environmental study report, which may take the form of a brief environmental study, initial environmental examination (IEE) or environmental impact assessment (EIA) depending on the nature, scale and thresholds of the project. As part of that process, public notice and comment, impact identification, mitigation measures and ongoing compliance obligations are built into the approval framework. Where forest land is used or trees are felled, separate forest-law compliance is also required. In practice, this has included compensatory plantation / afforestation obligations and, following recent amendments to the forest regulatory regime, a more structured system for use of forest land for nationally significant and IBN-approved projects, including compensation and maintenance-related payments through the forest framework.

On the social side, Nepalese law and project practice go beyond generic corporate responsibility language. The Industrial Enterprises Act, 2076 requires qualifying industries to set aside at least 1% of annual net profit for corporate social responsibility in specified sector such as health, education.

In addition, current concession practice in major hydropower projects shows that project documents themselves often import a more detailed E&S package. They require compliance with the EIA/IEE and agreed performance standards, and specifically mandates a Local Benefit Sharing Plan, Resettlement and Rehabilitation Plan, Occupational Health and Safety Plan, Employment and Skills Training Plan, Nepal Industrial Benefits Plan, a community-level grievance mechanism, periodic E&S reporting, and, in that sector, issuance of 10% local shares to project-affected families and local residents in the project area.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Yes, submission to foreign law and waiver of immunity provisions are enforceable. Developers negotiate them and such waiver-clauses are found in concession agreements.

26. Can financing documents provide for arbitration clauses?

Yes, Nepal's law does not restrict financing documents to have arbitration clauses. In case of security agreements, it is advisable to use local courts as a forum so that security enforcement can be undertaken swiftly. Arbitration is also used as a dispute settlement mechanism in concession agreements.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

The main current trend in Nepal is that project financing continues to be driven primarily by hydropower and core infrastructure. Recent financings show a combination of large sovereign and multilateral-backed transactions, such as the World Bank financings for bridges, electricity distribution and irrigation, alongside sizeable domestic-bank-led hydropower financings.

A second trend is the increasing normalization of more sophisticated project finance structures. Direct agreements, security trustee arrangements and BOOT-style concession structures are becoming more entrenched in the market. This is reflected in recent IBN approvals relating to the Arun-III direct agreement and the continued advancement of the Lower Arun project under the IBN/SJVN framework, showing that foreign lender protection mechanisms and concession-based bankability structures are now more accepted than before.

A third trend is regulatory easing in relation to foreign investment and foreign loan administration. Recent NRB amendments indicate a shift away from an approval-heavy approach towards greater reliance on licensed banks and post-transaction supervision, including relaxation of some prior approval requirements for foreign investment inflows and repatriation.

At the same time, there is a parallel trend of tighter prudential scrutiny over project lending, particularly hydropower exposure in the banking sector. NRB and market commentary indicate growing concern over concentration risk, stalled projects and provisioning discipline, meaning that although project financing is expanding, lenders are becoming more selective and risk sensitive.

28. Are any significant development or change expected in the near future in the project finance market?

Yes. In the near future, Nepal's project finance market is expected to evolve through a combination of sectoral prioritisation, regulatory liberalisation and reform in risk allocation structures.

A key development is the strategic shift in the energy sector towards storage-based hydropower and hybrid renewable systems. The Government of Nepal is prioritising reservoir and pumped storage projects to address seasonal imbalances in electricity supply, with large-scale projects such as Dudhkoshi setting the benchmark for future financings. In parallel, the regulatory framework has begun to recognise the higher cost structure of such projects, with differentiated PPA tariffs introduced for reservoir-based hydropower, allowing developers to factor in financing costs and foreign exchange risks. There is also a growing push towards solar and hybrid models, with solar integration being promoted to complement hydropower generation and stabilise the grid.

A second important trend is regulatory liberalisation in foreign investment and foreign loan administration. The Fifth Amendment to the NRB Bylaws reflects a move towards a less approval-driven

regime. It removes the requirement for prior approval for certain equity inflows, allows commercial banks to approve repatriation of dividends and disinvestment proceeds, and introduces limited outward investment flexibility for Nepali companies. For project finance transactions, this is expected to reduce transaction friction and facilitate more efficient structuring of cross-border investments, including the use of offshore SPVs.

A third development relates to refinement of bankability in power purchase arrangements. Recent policy debates around transitioning to a "take-and-pay" model have led to market uncertainty; however, this approach has been partially reversed, with "take-or-pay" structures continuing for smaller hydropower projects and export-oriented projects. This indicates a continued recognition by the government of the importance of bankable offtake arrangements for attracting private and foreign investment.

Further, there is an emerging policy focus on introducing new procurement and financing models for infrastructure projects. Investment Board Nepal is currently working on procedures for the Swiss Challenge method for unsolicited proposals and the Hybrid Annuity Model for roads and bridges. These models are expected to enable greater private sector participation while sharing early-stage construction and revenue risks between the government and private developers.

At the same time, large-scale infrastructure such as airports, roads and bridges is likely to continue being financed primarily through sovereign borrowing and multilateral support, rather than pure limited recourse project finance structures.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

In light of the global cessation of LIBOR, Nepal has transitioned to a specific set of risk-free reference rates (RFRs) as mandated by the NRB. For new foreign currency loans and the renewal of existing ones, the alternative reference interest rates commonly used in this jurisdiction are currency-specific: SOFR (Secured Overnight Financing Rate) for USD, SONIA (Sterling Overnight Interbank Average Rate) for GBP, SARON (Swiss Average Rate Overnight) for CHF, TONA (Tokyo Overnight Average Rate) for JPY, and €STER (Euro Short-term Rate) for EUR.

For legacy contracts that transitioned after December 31, 2021, the NRB permits the use of these new benchmarks in conjunction with a Credit Spread Adjustment (CSA). Specifically, if a fallback provision was in place or if the parties mutually agree to switch from LIBOR to one of the new RFRs, an additional all-in-cost margin of up to 50 basis points may be added to the previously approved LIBOR-based margin to account for the structural differences between the rates.

NETHERLANDS

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Dutch project finance transactions are generally regulated by the Dutch Civil Code (DCC). There are no specific regulations applicable to project finance in the Netherlands. Project finance transactions may fall within the scope of the Dutch Financial Supervision Act (DFSA) and may trigger the Dutch Competition Act.

Furthermore, depending on the type of project, various specific laws and regulations may apply, including laws relating to (among others): the environment, maritime constructions, mining, energy, health and public commissioning.

The Netherlands is also a party to several international treaties that may be relevant for project financings, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in the Netherlands is considered mature, with a strong track record of successful project financings across various sectors, such as renewable energy, infrastructure and transportation. Significant activity is involved in large scale offshore windfarms.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The most commonly used security types in project financings in the Netherlands include mortgages, pledge of shares, pledge of movable assets, and pledge of receivables (including bank accounts and insurance and project contracts).

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities

or procedure to be followed for establishing or perfecting a share pledge?

Shares of a company can be pledged as a security to the benefit of lenders. A Dutch notarial deed of pledge of shares is required.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Enforcement of a share pledge can take place by means of a private sale either (a) with the agreement of the pledgor provided as of the time enforcement becomes possible or (b) with the approval of the relevant Dutch court. Typically BV type of companies are used in project finance which only have registered shares and no share certificates.

6. Can security interest be established over future assets, rights and receivables of the borrower?

A pledge can be established over future movable assets. A pledge can be established over future receivables where the debtor has been notified of the right of pledge. An undisclosed pledge cannot be established over receivables (not arising out of an existing legal relationship). A mortgage cannot be established over future immovable property. A pledge can be established over future shares.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

In case of payment default (and in case of occurrence of any other additional agreed enforcement trigger), a pledgor or mortgagee can enforce its security interest by means of a (a) public auction sale, (b) private sale with the agreement of the security provider or (c) private sale with the agreement of the relevant court. The enforcement can take place regardless of the bankruptcy of the security provider (provided that the bankruptcy trustee may require the mortgagee/pledgee to apply a limited cooling-down period of maximum 4 months). In case of a pledge of receivables, the pledgee may notify the debtor to pay to its account and apply the receipts to its secured claim.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The security trustee concept is not considered enforceable in the Netherlands. The parallel debt structure is normally used in joint security arrangements.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

The most widespread current incentive supporting Dutch project financings is the Dutch renewable energy subsidy scheme.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Not specific or relevant to project financings.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency in the Netherlands other than in respect of consumers, i.e., where amounts are greater than EUR 100,000.

12. Are there any restrictions for foreign investments in your jurisdiction?

Generally, there are no restrictions for foreign investments in the Netherlands. There are certain (limited) foreign direct investment screening and restriction mechanisms in place and coming into place.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no minimum equity requirement, under the legislation for project financings in the Netherlands. In practice, project financiers will have minimum equity requirements.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

There are only limited formal requirements for project finance documents in the Netherlands. These include amongst other (a) mortgages need to occur by means of a notarial deed of mortgage with registration in the Dutch land registry, (b) pledges of shares need to occur by means of a Dutch notarial deed and (c) non-possessory pledges of movable assets and undisclosed pledges of receivables need to be registered with the relevant Dutch tax authorities (for time-stamping purposes).

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Local insurance policies can be governed by a foreign law.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Security assignments are not available under Dutch law. There is no Dutch law restriction on pledging insurance proceeds provided these do not insure liability towards third parties. Pledge or transfer restrictions in the insurance policies will limit the possibility to provide valid pledges thereover.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

No specific ones worth mentioning in our view.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

PPP is a permitted method of developing projects in the Netherlands and there have been several successful PPP projects developed in the country, particularly in the infrastructure and public services sectors.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between public authorities and lenders are permissible under local law and are commonly seen in the project finance market in the Netherlands.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

Host government supports available in the Netherlands include Dutch development

bank financing, Dutch state backed export guarantee, and the renewable energy subsidy scheme.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Political risk events are usually the responsibility of the private party under PPP agreements in the Netherlands.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Investors and lenders are usually not protected against changes in law passing subsequent to the signing of the relevant concession agreement in the Netherlands. They may have certain protections under bilateral investment treaties.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is provided for under Dutch contract law, but can and is normally contractually agreed upon specifically.

24. What are the general environmental and social requirements in project financings?

The environmental and social requirements for project financings will depend on the specifics of the project financing. Generally, projects will need to be assessed to determine possible environmental effects. Before development consent is granted, projects likely to have significant effects on the environment by virtue of their nature, size or location must undergo an Environmental Impact Assessment ("EIA"). The developer will be required to submit an EIA to the competent authority when applying for development consent. Additional assessments may apply depending on the specifics. Specific environmental licences may apply depending on the project specifics.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Submission to a foreign law and the waiver of immunity provisions are generally enforceable in the Netherlands.

26. Can financing documents provide for arbitration clauses?

Yes.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

Currently, the main trend in project financings in the Netherlands is a focus on renewable energy projects.

28. Are any significant development or change expected in the near future in the project finance market?

No.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

Dutch project financings are mainly EURIBOR based.

NIGERIA

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A. Overview

1. What are the main legislation and international treaties governing project financing in your jurisdiction?

In Nigeria, project financing is governed by a plethora of sector-specific laws and general corporate legislation. No legislation specifically applies to or governs project finance, and the list below is not exhaustive:

a. Companies and Allied Matters Act ("**CAMA**") 2020
b. Investment and Securities Act (ISA) 2025
c. Nigeria Tax Act ("**NTA**") 2025
d. Finance Act, 2023
e. Bureau of Public Enterprises (Privatisation and Commercialisation Act), 1999
f. Business Facilitation (Miscellaneous Provision) Act, 2023
g. The Central Bank of Nigeria Act, 2007
h. Public Procurement Act, 2007
i. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 2004
j. Infrastructure Concession Regulatory Commission (Establishment) Act, 2005 (the "**ICRC Act**")
k. Secured Transactions in Moveable Assets Act, 2017
l. Double Taxation Treaties
m. Public Finance Management Act 2024
n. Nigerian Investment Promotion Commission (NIPC) Act

Sectoral legislation also plays a critical role in structuring project finance deals. The Petroleum Industry Act (PIA) 2021 and Electricity Act 2023 (as amended) govern oil, gas and power sector financing.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The projects finance market in Nigeria is relatively mature, with significant activity in sectors such as oil and gas, power,

technology, infrastructure, and real estate. Despite economic and foreign exchange challenges, there has been improved participation by international banks and development finance institutions in the market.

There have been some significant project financings closed in Nigeria over the last 12 months, some of which are:

a. The Lagos-Calabar Coastal Highway construction Phase 1, Section 2 financing of US$1,126,000,000 underwritten by First Abu Dhabi Bank and Afreximbank. Section 1 of Phase 1 closed a syndicated loan of US$747,000,000 led by Deutsche Bank

b. The Federal Government of Nigeria Sovereign Green Bond III (N50 billion), designed to finance renewable energy, clean transport, sustainable water management and climate adaptation projects.

c. The Sun King debt facility of US$80,000,000 to fund the expansion of its solar energy business in Nigeria, backed by World Bank (IFC) and Stanbic IBTC.

d. The World Bank US$500,000,000 concessional financing tranche for the *Building Resilient Digital Infrastructure for Growth (BRIDGE) Project* aimed at expanding the national fiber backbone from 35,000 to 125,000 kilometers in Nigeria.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The most commonly used security types in project financings in Nigeria are fixed or floating charge over project assets, mortgages, assignments of project revenues and receivables, liens, leases, guarantees (corporate, bank, or personal), assignments of interest in contracts and letters of credit, amongst others.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

The shares of a Nigerian company cannot be pledged as security in favour of lenders because shares are not transferable by mere deposit or delivery.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Yes, private sale is a recognized method for enforcing a share pledge in Nigeria, as long as it is explicitly provided for in the security document. If the borrower defaults, the lender may exercise the power of sale without seeking court intervention, provided the agreement authorizes it.

There are no endorsement types for share certificates in Nigeria. Share certificates (which are in registered form) are prima facie evidence of the title of a shareholder in a company. Upon the enforcement of a share pledge, the Lender will file the undated but executed share transfer instrument with the Corporate Affairs Commission ("**CAC**") and submit the acknowledgement from CAC as well as the share certificate of the borrower to the company. The company once satisfied that the interest in the shares has passed to the Lender will enter the name of the member in the register of members, cancel the previous share certificate of the borrower and issue a new certificate in the name of the Lender.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, under Nigerian law, security interests can be created over the future assets, rights, and receivables of a borrower. This is most commonly achieved by way of a floating charge over a specified category of assets or a fixed charge where the future assets in question are clearly identifiable.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Where the borrower becomes insolvent, is technically insolvent and/or commences the composition process, the lender is only able to enforce its security interest in accordance with the enforcement provisions and other terms of the finance and security documents, and as provided by applicable law. Security documents governed by Nigerian law typically specify the events that allow the security interest to be enforced. Once the lender is entitled to enforce the security in accordance with its terms, the security documents typically provide for enforcement through either the: (i) creditor's or security trustee/agent's exercise of a power of sale to dispose of the secured assets; or (ii) appointment of a receiver or a receiver/manager in respect of the secured assets. If the power of sale has arisen and is exercised, the sale of the secured assets can be by public auction or, if expressly provided in the security document, by private sale. The appointment of a receiver or a receiver/manager needs to be registered at the CAC. However, where the security interest is a mortgage on a real property, the lender as mortgagee can also: (i) apply for a court order to extinguish the mortgagor's equity of redemption and vest the mortgagor's entire interest in the mortgagee; or (ii) enter into and take possession of the mortgaged property.

The lender is not obligated to maximise the proceeds from enforcement of the security, but must act in good faith in realising such proceeds. The lender also becomes a trustee of the borrower for any proceeds from the sale of the secured assets and has a duty to deliver to the borrower the balance of the proceeds of enforcement.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Yes, the concept of security trustee is enforceable in Nigeria. The trustee holds the securities created on a trust for the lender/ investors in project financing.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

In Nigeria, several key incentives and exemptions are available to encourage project financing. The main incentives available include tax holidays or credits for qualifying projects, accelerated capital allowances, import duty exemptions on capital equipment, and value added tax reliefs. Some of the Incentives are outlined below:

a. **The Economic Development Tax Incentive** ("**EDTI**"): Under the NTA 2025, there is the newly introduced Economic Development Tax Incentive ("**EDTI**"), where selected companies listed in the NTA can earn a tax credit on profits made on their priority products or services for five (5) years.

b. **Oil & Gas Incentives:** Under the NTA, production tax credits ("**PTC**") apply to gas projects involving the sale of non-associated gas from Non-Associated Gas Greenfield developments in

onshore and shallow water terrains that reach their first commercial gas production from the commencement of the NTA to 1st January 2029[7].

Furthermore, Section 80 of the NTA grants investors in gas pipelines a five (5) year tax free period, commencing after the expiration of their EDTI certificate[8].

In terms of petroleum-based projects, Section 104 of the NTA provides for an investment tax allowance of fifty percent (50%) on qualifying capital expenditure incurred deep offshore or inland basin petroleum operations under production sharing contracts, claimable in the accounting period when the asset is first deployed for such petroleum operations.

c. **Export Processing and Free Trade Zones:** Under the NTA, profits of an export processing zone entity are fully exempt from tax provided that its total sales arise from the export of goods or services or serve as inputs for such exports.

d. **Small Project Incentives:** Under the NTA, small project companies (SPVs) with a gross turnover of Hundred Million Naira (N100,000,000) or less per annum with total fixed assets not exceeding Two Hundred and Fifty Million Naira (N250,000,000) are now completely exempt from Companies Income Tax and the new four percent (4%) Development Levy.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Please refer to the answer to question 9.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no restrictions for borrowing bank loans and shareholder loan from abroad and in a foreign currency. However, for a company accessing foreign currency to be able to repatriate the same to the country of source at the Central Bank of Nigeria ("**CBN**") official exchange rate, the company is required to bring in its foreign currency into Nigeria through an authorized dealer using a Certificate of Capital Importation ("**CCI**"). An authorized dealer must issue the company an electronic CCI ("**E-CCI**") within twenty-four (24) hours of capital importation. The e-CCI allows the company the right to the repatriation of capital and access to foreign exchange ("**FX**") at the CBN official exchange rate.

Shareholder loans in foreign currency are treated the same way as other external borrowings and also benefit from repatriation and FX.

12. Are there any restrictions for foreign investments in your jurisdiction?

Yes, there are certain restrictions on foreign investments in Nigeria, primarily governed by the Nigerian Investment Promotion Commission (NIPC) Act and the Companies and Allied Matters Act ("**CAMA**"). Direct foreign investment may require incorporating a company, except it falls within the exemptions listed in Section 80 of CAMA as amended by the Business Facilitation Act 2022. Exemptions include a company invited into Nigeria to execute any specified individual project and foreign companies in Nigeria for the execution of specific individual loan projects on behalf of a donor country, foreign government

7 Section 85 of the NTA 2025

8 Section 80 NTA 2025

owned companies engaged solely in export promotional activities, engineering consultant and technical experts engaged by any government agency for the execution of a specified individual project, and any other company exempted by other Acts of the National Assembly.

Further, foreign investors are prohibited from incorporating a company that will venture into businesses listed as the 'negative list' under the Nigerian Investment Promotion Commission Act. These businesses are as follows:

- production of arms and ammunitions.
- production of and dealing in narcotic drugs and psychotropic substances.
- production of military and para-military wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services.
- such other items as the Federal Executive Council may, from time to time, determine.

Finally, foreign investors are subject to restrictions on repatriation of funds. Please refer to the answer to question 11.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

No, there is no statutory minimum equity requirement for project financings in Nigeria.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In Nigeria, project finance documents including loan agreements, debentures, charges, mortgages, and assignments, must comply with specific registration and filing requirements to be valid and enforceable. Examples of such requirements are outlined below:

Concession Agreement: The Infrastructure Concession Regulatory Commission, under the ICRC Act, is required to take custody of every concession agreement made under the Act and monitor compliance with the terms and conditions of such agreement.

Foreign Technology Transfer Agreement: the National Office for Technology Acquisition and Promotion Act requires that all contracts and agreements for the transfer of foreign technology to Nigerian partners be registered with the National Office for Technology Acquisition and Promotion.

Security Document relating to Immoveable Property such as Land: For security interests created on land such as a mortgage and assignment amongst others to be valid, the consent of the appropriate regulatory authority must be first be sought and obtained, the document must be stamped under the Nigerian Tax Act (NTA) 2025, with ad valorem or nominal duties assessed based on the transaction document. Land documents are also registered at the relevant land registry (to constitute a valid notice of any encumbrance created on the land to the public).

Finance Documents such as loan agreements and security documents: Under Nigerian law, Section 123 of the NTA 2025 imposes duties on instruments that are either first executed in Nigeria or executed outside Nigeria but relate to property situated in, or any matter or thing to be done in, Nigeria.

Thus, Finance Documents will be liable to stamp duty. Where they are executed within Nigeria, they must be stamped not later than thirty (30) days after execution by the person responsible for payment.

In instances where the documents are executed outside Nigeria, they remain subject to stamp duty.

Generally, not stamping an instrument that is required to be stamped will not render it or the security interest created thereunder void or invalid. However, a court in Nigeria may not admit an unstamped instrument for the purpose of proving the content of such document and any security document that is required to be registered with the CAC (as further discussed below) must be stamped prior to its submission for registration.

Similarly, Section 222 of CAMA provides that any security document or instrument under which a company creates a charge must be registered with CAC. Any registrable charge that is not registered with the CAC within 90 days of its creation will be void against a liquidator (appointed for the company) and any creditor of the company. In other words, the risk of not registering any registrable security document is that the security purported to be created in the document would be void against a liquidator appointed for the chargor and any other creditor of the chargor. Also, the registration of a charge with the CAC serves as constructive notice to a third party that intend to take security over an asset of a company.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

In Nigeria, under the Nigerian Insurance Industry Reform Act 2025 ("NIIRA"), local insurance policies may be governed by a foreign law based on the principle of contractual autonomy recognized in Nigerian common law, as the NIIRA does not expressly prohibit or restrict this choice.

However, this is subject to limitations, as policies covering risks in Nigeria must comply with mandatory provisions of the NIIRA 2025 including those on insurable interest, disclosure, consumer protection, and claims settlement.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

In Nigeria, insurance proceeds under insurance policies can generally be assigned to the benefit of lenders as security in project finance transactions. For an assignment to be legally binding and to establish priority over other potential claimants, a formal notification process must be followed. For instance, section 72 of the NIIRA stipulates that an assignment of a life assurance policy does not confer the right to sue for the insured money unless a written notice of the date and purpose of the assignment is delivered to the insurer at its principal place of business.

Special rules apply to different classes of insurance. For marine insurance, which is frequently used for projects involving offshore infrastructure or imported equipment. Section 163 of the NIIRA confirms that a marine policy is generally assignable either before or after a loss occurs, unless the policy specifically contains terms that prohibit such a transfer.

Furthermore, the NIIRA imposes certain restrictions on how insurance and reinsurance can be placed, particularly with foreign entities. Section 204 mandates that insurance for domestic risks, including fire, life, engineering, and energy risks, must be placed with insurers licensed under NIIRA unless National Insurance Commission ("**NAICOM**") grants a specific exemption due to the exceptional nature of the risk.

In addition, the Central Bank of Nigeria prohibits a Nigerian resident (whether a corporate or a natural person) from assigning Nigerian residents' annuities and insurance policies to non-residents.

If a non-resident lender proposes to take security over residents' insurance policies, that lender would either: (i) appoint a local security agent/trustee to which the insurance proceeds are assigned on the lender's behalf, or (ii) require the borrower to establish an insurance proceeds account into which all insurance proceeds are paid, and then take security over that account. In practice, many foreign lenders choose to use a local security trustee. By assigning the proceeds to a local entity that then holds them for the benefit of the offshore lender, the transaction remains compliant with Nigerian law while still providing the necessary security for the foreign debt.

The National Insurance Commission ("**NAICOM**") prohibits the assignment of reinsurance policies generally.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

A concern to consider is the restriction on the use of foreign insurance contracts in Nigeria. Under Section 204 (1-4) NIIRA, domestic insurance risks, including critical projects like energy, engineering, and liability insurance, must be placed with locally licensed insurers. Local capacity must be fully exhausted before procuring insurance abroad, with prior approval from NAICOM. Contravention of these rules can result in heavy penalties, sometimes up to five times the total premium involved.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, Public-Private Partnership ("**PPP**") is a permitted and legally recognised method of developing infrastructure projects in Nigeria. The primary legal framework for PPPs at the federal level is the ICRC Act. This Act established the Infrastructure Concession Regulatory Commission (ICRC), which is mandated to regulate and monitor PPP endeavors aimed at addressing the country's physical infrastructure deficit.

Numerous PPP projects have been successfully developed and are operational to date. Notable examples include the Lekki Deep Sea Port, the 30KM long Lekki-Epe Expressway, Lagos, the 614-kilometre Ajaokuta-Kaduna-Kano natural gas pipeline by the Nigerian National Petroleum Company Limited (NNPC Limited), the integrated refinery and petrochemical complex being constructed by Dangote Group in the Lekki Free Zone, Build Operate and Transfer (BOT) Public Private Partnership arrangement with AJW Consortium for the establishment of a Maintenance, Repairs and Overhaul (MRO) centre on a 30-year concession, the Federal Executive council approved project for the construction and management of 9 highway corridors as part of the Highway Development and Management Initiative (HDMI) for a concession period of 25 years, amongst others.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Yes, direct agreements between public authorities and lenders are recognized. In practice, direct agreements are standard in Nigerian project finance, particularly for PPP and concession-based infrastructure projects. They are commonly required by international banks, development finance institutions, and export credit agencies, and typically provide for lender recognition, step-in and cure rights, direct notice to lenders, and restrictions on termination without the lender's consent.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The types of government support available in Nigeria under PPP including:

- Sovereign guarantees;
- Debt assumption, which may be in the form of an irrevocable standing payment order
- Letters of support or comfort

However, certain regulatory approval must be obtained prior to the host government providing any support. For instance, the ICRC Act mandates any Federal Government Ministry, agency, corporation or body seeking to give any guarantee, comfort or undertaking in respect of any concession agreement to obtain the prior approval of the Federal Executive Council.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Political risks are generally allocated to the public sector and are often mitigated through a combination of contractual protections, government support instruments, and political risk insurance.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Yes, investors and lenders are protected against change in law subsequent to the execution of a concession agreement. Situations such as this are referred to as political force majeure events, which are typically included in project finance documents.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is not comprehensively codified under Nigerian law. It is primarily governed by contractual provisions and supplemented by common law doctrines such as frustration. PPP agreements usually contain detailed force majeure regimes distinguishing between natural, political and indirect force majeure events.

24. What are the general environmental and social requirements in project financings?

In Nigeria, project finance transactions, particularly those involving international lenders, and multilateral development banks are subject to rigorous environmental and social (E&S) requirements. These obligations are designed to ensure that projects comply with both Nigerian national laws and internationally recognized standards, to mitigate adverse impacts on the environment, communities, and workers.

The primary national legal framework includes the Environmental Impact Assessment (EIA) Act 1992 (Cap E12 LFN 2004), which mandates that any project likely to have significant environmental effects must undergo an EIA process, obtain approval from the Federal Ministry of Environment (or state environmental agencies), and implement an Environmental Management Plan. Additional key laws are the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, which sets standards for air, water, waste, noise, and biodiversity protection, the National Oil Spill Detection and Response Agency (NOSDRA) Act 2006 for oil and gas projects, and sector-specific regulations such as the Petroleum Industry Act 2021.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Yes. Nigerian courts generally uphold choice of foreign law and waiver of sovereign immunity clauses, provided they are clear, express, and relate to commercial transactions. Nigerian court will give effect to the provisions of any project finance document except where such will lead to absurdity and contravene public policy.

26. Can financing documents provide for arbitration clauses?

Yes, financing documents in Nigeria can and commonly provide for arbitration clauses. Arbitration is widely recognized and enforceable under Nigerian law, and it is a preferred dispute resolution mechanism in most project finance, syndicated loan, and commercial financing agreements.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

One of the main trends in project finance in Nigeria is infrastructural deficit and the need for more public-private partnerships to bridge the gap. Project finance in Nigeria is being increasingly shaped by renewable energy and sustainable infrastructure, driven by energy transition goals and growing investor interest in green assets. Solar Photovoltaics, mini-grids, and battery storage dominate deal activity, supported by green bonds, and blended finance. Also, the tax environment in Nigeria is constantly evolving and new structuring challenges are sometimes triggered by changes in the tax regimes.

28. Are any significant development or change expected in the near future in the project finance market?

Yes, ethical funds such as Islamic finance are increasingly being utilized for project financing.

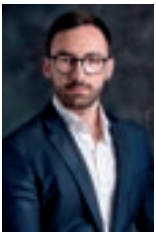
The energy sector, particularly energy transition, is also poised for accelerated growth. Domestic green bonds are expected to catalyse investment in renewable energy, climate-resilient infrastructure, and emissions reduction projects under Nigeria's ambitious Energy Transition Plans.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

The Secured Overnight Financing Rate ("**SOFR**") has become the primary alternative reference interest rate. Nigerian participants commonly use SOFR or use locally agreed benchmarks such as the Nigerian Inter-Bank Offered Rate (NIBOR) for Naira-denominated transactions.

NORTH MACEDONIA

POLENAK LAW FIRM



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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

In North Macedonia, project financing falls under a package of general commercial and financial laws, including:

- Law on Obligations – regulates general contracts as well as financial agreements, establishes principles of contractual obligations, damages, performance and breach of obligations, unjust enrichment and enforceability and applies when Macedonian law is the governing law of the transaction;
- Law on International Private Law – regulates conflict-of-laws rules and determines the applicable law to contractual and non-contractual obligations with an international element, jurisdiction of Macedonian courts, recognition and enforcement of foreign judgments and arbitral awards, allowing also for a foreign law to be a governing law;
- Law on Contractual Pledge – establishes a framework for creating and registering collateral over movable assets, rights, receivables, securities, etc.;
- Law on Foreign Exchange Operations and FX rules - regulates cross-border financial transactions, including capital movements, external borrowing and lending, issuance of guarantees in favour of non-residents, payments and collections in foreign currency, as well as reporting obligations toward the National Bank (especially for cross-border loans, guarantees and payments), capital movements, external borrowing/guarantees, payments/collections in FX, reporting/limitations;

- Law on Banks, and related financial legislation - regulating banking operations;
- Law on Insurance Supervision - governs insurance and reinsurance;
- Law on Enforcement – regulates compulsory enforcement of enforceable titles (court judgments, arbitral awards and notarized instruments), defines the powers of enforcement agents, and governs seizure and sale of assets, enforcement over rights and receivables, priority of claims and distribution of proceeds;
- Bankruptcy Law – regulates insolvency and reorganization proceedings, including grounds for opening bankruptcy, effects on debtor management and creditor enforcement, filing and ranking of claims, avoidance actions, adoption of reorganization plans and distribution of the bankruptcy estate;
- Law on Concessions and Public-Private Partnership - regulates the award and implementation of concession and Public-Private Partnership projects, including the procedures for selection of a private partner, content and legal nature of concession/ agreements, allocation of rights and obligations between the public and private partner, permissible forms of project financing and security, duration and termination of the contract, state support measures, and supervision and dispute resolution mechanisms.

Almost all of the project financing in the country is cross border, and we see a lot of foreign lenders participating on the market either as a standalone lender or through a syndicate of banks, usually with a local commercial bank as a facility and security agent. International treaties include relevant bilateral investment treaties for investor protections, EU accession-related financial commitments, and treaties with international financial institutions (e.g., EBRD, EIB) underpinning sovereign or public project financing.

Furthermore, North Macedonia is a party to the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards. Thereby foreign arbitration awards are generally recognized and enforceable in North Macedonia, provided the conditions of enforcement set out in the Convention and in the Law on International Private Law are met.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

North Macedonia's project finance market is on the rise, although it remains less developed compared to larger EU markets. Project finance is typically utilized for substantial infrastructure, energy, and transport initiatives, often with the support of international financial institutions and state guarantees. Recent developments include:

- Legislative acts authorizing sovereign guarantees and project financing (e.g., solar plant and hydro revitalization projects)
- Large transport corridor financing cooperation with EBRD/EIB

Private, highly structured project financings are less frequent but are increasing, especially in energy, renewables, and transportation sectors, usually with IFI participation or with syndicated lending.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

- Mortgages over real estate;
- Pledges on movable assets, receivables, and rights;
- Pledge over financial instruments and securities.

Fiduciary transfer of ownership and financial collateral are yet to confirm their significance in the practice. Considering that the most common types of security granted in practice are the registered pledge and mortgage, this Guide will further elaborate on the specifics of the granting, establishment.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, shares of a company can be pledged as security. Creation and perfection requirements include a written pledge agreement certified by a local notary, and registration of the pledge in the Pledge Registry maintained by the Central Registry of Republic of North Macedonia. Depending on the form of the company, the pledge on the shares is further registered either with the Central Securities Depositary that maintain shareholders book of a JSC or in the book of shares maintained by the manager of an LLC.

Though the Law on Contractual Pledge allows for the pledge agreement to be entered in written form, without the capacity of an enforcement deed, such manner in entering the pledge agreement is rarely seen, if not at all, in practice. A pledge agreement with the capacity of enforcement deed enables the creditor to initiate a direct enforcement procedure for the collection of outstanding claims without the need to obtain final and binding court decision, order or writ through extensive litigation procedure.

5. Is private sale a recognized method for the enforcement of share pledge? What are the endorsement types typically used for the share certificates?

Under Macedonian law, enforcement of a pledge over shares is subject to the Law on Contractual Pledge and, where compulsory enforcement is required, the Enforcement Law. While private sale is in principle a recognized enforcement method if contractually agreed, the realization of a pledge over shares must comply with the strict procedures outlined in the Enforcement Law.

In particular, where the pledged asset (including shares) has an estimated value of up to EUR 5,000, realization may be carried out through direct sale. However, even in such case, the enforcement procedure must strictly follow the rules and formalities prescribed by the Enforcement Law, including involvement of a competent enforcement agent where applicable. Therefore, private sale is not an entirely free contractual mechanism, but one that operates within the statutory enforcement regime.

With respect to endorsement types, this is not applicable in the context of joint stock companies in North Macedonia. Shares are dematerialized and no physical share certificates are issued. Shares are recorded in book-entry form and evidenced through the shareholders' book maintained by the company, while ownership and transfers are registered and maintained electronically with the Central Securities Depository. Accordingly, no endorsement mechanisms are used in practice.

6. Can security interest be established over future assets, rights and receivables of the borrower?

In general, domestic legislation allows for a pledge over future assets/receivables, provided they are sufficiently defined and identifiable in the pledge agreement and comply with collateral registration rules.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

If the borrower becomes insolvent or enters composition, secured creditors may enforce collateral through enforcement agents or notaries in accordance with the Law on Contractual Pledge and Enforcement Law provisions.

The steps include affixing the due debt on the pledge document by a notary public (on the basis of unilateral statement of the creditor), filing for enforcement to an enforcement agent, assessment of the collateral value, sale of assets via tender or auction.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The formal concept of a security trustee, as known in some common-law jurisdictions, is not explicitly recognized in North Macedonia. Instead, lenders may contractually appoint an agent or use a "parallel debt" structure to achieve similar collective enforcement.

Detailed rules are determined contractually and by practice rather than by statutory trustee regimes.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

There are no particular incentives re. project financing.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Foreign investors are generally subject to the same regime as domestic investors under governmental grant/investment support schemes, provided they meet the required eligibility criteria.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

No, subject to the applicable FX rules.

12. Are there any restrictions for foreign investments in your jurisdiction?

Foreign entities may invest and hold shares in Macedonian companies without restrictions, except where sector-specific limitations apply (e.g., national security or regulated sectors such as games of chance).

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no specific statutory minimum equity requirement for project financing; these requirements depend on corporate law and banking regulations applicable to lenders, as well as the commercial terms of the financing.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

There are no particular registration requirements for the financing documents. It is not required that the loan agreement be notarized or filed, registered or recorded in a public office or elsewhere, or that any other instrument, document or notice relating thereto be executed, delivered, filed, registered, recorded or served. A notification to the central bank regarding

the loan agreement as a credit transaction with a non-resident is required, but only for statistical purposes. It is important to note that for security agreements, notarization and perfection requirements apply.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Local insurance contracts cannot be governed by foreign law if coverage is to be recognized under the Law on Insurance Supervision. Policies must comply with local statutory requirements.

In project finance, the insurance policies regarding project assets and liabilities must be placed with insurers licensed in North Macedonia. Clearly, the local insurer usually covers the exposure with major reinsurance companies.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Assignment of insurance proceeds is commonly permitted, provided the assignment complies with the Law on Insurance Supervision and is notified to the insurer. Such assignments are standard in project finance structures.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

In North Macedonia, insurance provisions in project finance transactions are significantly affected by the mandatory nature of the domestic insurance regulatory framework. Insurance policies covering risks located in North Macedonia and issued by locally licensed insurers must adhere strictly to the Law on Insurance Supervision and related mandatory insurance legislation. Any contractual arrangements that deviate from these statutory requirements (whether regarding the content of policies, the risks covered, or the rights of the insured) may not be legally binding. This is especially important when international project finance standards attempt to introduce foreign governing laws, non-standard claims procedures, or assignment structures that conflict with local regulations.

Another significant issue concerns the effectiveness of assignments of insurance rights and proceeds in favour of lenders. Although such assignments are generally permissible, they must be expressly provided for in the policy and duly notified and accepted by the insurer. Otherwise, lenders may not acquire enforceable direct rights against the insurer, especially in enforcement or insolvency scenarios. In addition, foreign exchange regulation may affect the currency and repatriation of insurance proceeds, which is relevant where project debt service is denominated in foreign currency. Lastly, the limited underwriting capacity of the domestic insurance market for large infrastructure risks often necessitates co-insurance or reinsurance with foreign insurers, which must be structured in compliance with local supervision rules to avoid challenges to policy validity or claims payment.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, public-private partnership arrangements are permitted in North Macedonia in accordance with the Law on Concessions and Public-Private Partnership, which expressly provides for awarding concession and PPP contracts and sets the framework for their implementation. This law has been in force (with amendments) since 2012, replacing the 2008 Law on

Concessions and Public Private Partnership, and defines public partners, private partners, the procedures for award, content of agreements, and eligibility.

Multiple PPP or concession projects have been pursued, particularly in infrastructure and energy.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Local law does not prohibit direct agreements (e.g., direct agreements between lenders and public authorities in PPP contracts). Although the law does not expressly require or detail direct agreements, the underlying public-private contracts can include such arrangements if negotiated by the parties.

Direct agreements between public authorities and lenders are not prohibited by the Law on Concessions and Public-Private Partnership, and can be used in project finance structures. but they are not expressly regulated by that law. Their viability is derived from the general contractual freedom to structure assignments or transfers in favour of lenders and to include such terms in PPP contracts, subject to any applicable public debt/finance rules.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

This type of support is primarily oriented towards local industries and investors in the free-trade zones. These include:

- Exemption from profit tax for a period of ten years;
- Exemption from personal income tax on employees' salaries;
- Exemption from customs duties and VAT for import of goods;
- Aid for training and improvement;
- Participation in the costs for construction of a facility;
- Exemption from paying the land development fee;
- Etc.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

In many cases, the management of political risk events – such as expropriation, regulatory shifts, and political force majeure - is addressed through contractual means. Entities often take on certain political risks, such as the potential for regulatory changes that could negatively impact project viability.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Investors and lenders typically do not have guaranteed statutory protections against changes in legislation. Nevertheless, the law makes it clear that PPP contracts may be amended if subsequent legal changes materially impact the rights and obligations of the private partner. This means the parties involved need to adjust the contract to align with any legal updates. While this provides a legal foundation for protections concerning contractual changes due to new laws, the actual level of protection is primarily determined by what is agreed upon in each PPP agreement. However, investors are protected under the international legal framework, such as BITs.

23. Is force majeure specifically regulated under the local legislation?

Yes, in North Macedonia the concept of force majeure is recognized under the Law on Obligations, which forms the general basis of contract law in the country. In accordance with this law, if an extraordinary event occurs after a contract has been concluded, and that event could not have been foreseen or prevented, and is not attributable to the party invoking it, the obligation is considered void. If any part of the obligation has already been performed, there may be grounds for restitution based on unjust enrichment principles. This statutory doctrine operates independently of, but still alongside contractual force majeure clauses.

In practice, project finance and PPP contracts contain detailed force majeure provisions that define qualifying events, procedural requirements, and consequences such as suspension, extension of time, or termination of the contract. Such clauses are enforceable as long as they are consistent with the general principles of the Law on Obligations.

24. What are the general environmental and social requirements in project financings?

Environmental and social compliance in project financings in North Macedonia derives from mandatory statutory regimes that apply to the development, construction, and operation of projects. The Law on Environment along with sector related legislation require that the environmental impact assessments be conducted and environmental permits obtained for projects that meet certain criteria—typically encompassing large infrastructure, industrial, and energy initiatives. Successfully completing the environmental assessment process and adhering to its stipulations are necessary steps for securing construction and operational permits. Failure to comply may lead to administrative penalties or a halt in operations.

Additionally, projects involving land development or use of natural resources must adhere to various regulations regarding planning, land use, water, and mineral resources, all of which incorporate environmental protection. Environmental legislation also provides for public participation and disclosure during the assessment process, which can affect project timelines and permitting risk.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Contractual choice of foreign law is permitted in commercial agreements; North Macedonian courts will generally enforce contractual choice of law provisions, subject to mandatory public policy restrictions (e.g., consumer protection, insurance).

Regarding waiver of immunity, parties can agree to waive sovereign or state immunity to the extent permitted by law; waivers that conflict with statutory immunity provisions may not be enforceable beyond the extent permitted by domestic law.

Under the laws of North Macedonia:

(i) the choice of foreign laws to govern the financial agreement is a valid and binding choice of law;

(ii) the submission by the borrower of any dispute, controversy or claim arising out of or relating to the agreement to arbitration is a valid and binding submission to arbitration; and

(iii) the irrevocable submission by the borrower to the jurisdiction of the courts ofof foreign country is a valid and binding submission to the jurisdiction of such courts.

Subject to compliance with the 1958 New York Convention on the Recognition of Enforcement of Foreign Arbitral Awards, an arbitral award obtained against the borrower in an arbitration proceeding in an action based on or in connection with the loan agreement will be enforced by the courts in North Macedonia without re-examination or re-litigation of the matters thereby adjudicated.

The courts in North Macedonia will recognize a final judgment in a civil proceeding rendered by the court of a foreign country in accordance with the procedure and under the conditions for recognition and enforcement of a foreign court judgment, provided in the Law on International Private Law ("Official Gazette of the Republic of North Macedonia" no. 32/2020).

Upon recognition, the foreign court judgment has equal legal force as a judgement of a court of the Republic of North Macedonia and will be enforced without re-examination or relitigation of the matters thereby adjudicated.

Waiver of sovereign immunity must be specifically included in a contract with a governmental entity.

26. Can financing documents provide for arbitration clauses?

The financing documents can provide for arbitration clauses. Arbitration clauses are enforceable and commonly used in financing and PPP documentation. North Macedonia is a party to the NY Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and courts generally uphold arbitration agreements, making arbitration a standard dispute resolution mechanism in cross-border project finance.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

Current market trends include:

- Increased use of PPP/concession frameworks for infrastructure and renewable energy projects against a backdrop of legal and institutional reforms;

- Integration with international financial standards;

- Focus on environmental and social governance requirements due to international finance involvement.

28. Are any significant development or change expected in the near future in the project finance market?

Potential future developments would include reform and modernization of PPP legislation and practice, including alignment with EU standards and transparency commitments, greater transparency initiatives aimed at publishing PPP contracts in order to support accountability, and continued involvement of international finance institutions in structuring complex project financings.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

During the LIBOR transition period, North Macedonia's financial sector adopted several alternative reference rates, depending on the currency and the nature of the financing, but largely mirrored international trends, with a strong reliance on EURIBOR for euro-denominated loans and the adoption of globally recognized risk-free rates (SOFR, SONIA, SARON) for other major currencies. Local currency lending uses SKIBOR and MKDONIA as benchmarks.

EURIBOR (1M/3M/6M) remains the standard benchmark for EUR loan pricing, especially for bank and international financial institution (IFI) facilities.

In retail, banks may reference National Bank of the Republic of North Macedonia (NBRM) linked objective factors (such as treasury bill or reference-type rates) for periodic repricing.

QATAR

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

There is no specific legislation and international treaties that governs project finance, *per se*. Provisions that deal with aspects of project finance arrangements may be picked up from, *inter alia*, Law No. 22 of 2004 ("**Civil Code**"), Law No. 11 of 2015 ("**Commercial Companies Law**"), Law No. 27 of 2006 ("**Trade Law**"), Law No. 13 of 2012 ("**QCB Law**"), and Law No. 8 of 2012 (QFMA Law), Law No. 16 of 2021 (Movable Assets Security Law), Law No. 12 of 2020 ("**PPP Law**") along with the other legislations.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

It is relatively mature considering the development of large-scale energy, oil and gas, infrastructure, construction, leisure and hotels, etc. projects that have been carried out in the past decade in preparation for hosting the FIFA World Cup Qatar 2022™, and which are currently being carried out to achieve the Qatar National Vision 2030.

In Qatar, there is no official platform or source that publishes reports pertaining to project financings that have been closed.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

Based on our experience, the form of the assignment of contractual rights such as receivables in favor of a lender is the most commonly used security type. Mortgages of real estate, bank account pledges, LCs, bank guarantees, PCGs are also common in the Qatari market.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes.

Pledge of Shares of Companies not Listed on the Qatar Stock Exchange ("**QSE**")

We set out below the steps required for registering a pledge of shares of a company in the Commercial Register at the Ministry of Commerce and Industry ("**MOCI**"):

An application to pledge the shares of the company should be submitted to the MOCI. Along with the application, a shareholder's resolution unanimously approving the registration of the pledge, a letter from the chairman or vice-chairman or delegated member requesting the registration of the pledge with the approval of the Corporate Affairs Department at the MOCI should be submitted for joint-stock companies, a letter from the pledgor consenting the registration of the pledge, copies of IDs of partners, authorised signatories and the applicant, should also be submitted.

After obtaining MOCI's approval, a request to attest the shares pledge agreement would need to be submitted online to the Attestation Department of the Ministry of Justice ("**MOJ**") via SAK Portal (an e-services platform of the MOJ that provides, among other things, registration and authentication services) ("**SAK Portal**"). Information including the relevant parties (i.e., the pledgor and pledgee), contract details (i.e., commercial registration number, company name, P.O Box number, telephone number, expiry date, pledge period from, pledge period to, pledge value, MOCI's approval, etc.), proof of shares ownership, is required.

Pledge of Shares of Companies Listed on the Qatar Stock Exchange

The registration of the pledgee (the natural or legal person to whom the shares are pledged) with the Qatar Central Securities Depository ("**QCSD**"), an entity established by the Qatar Central Bank, is required.

Foreign banks are also permitted to register pledges over shares of companies listed on the QSE.

As per the procedural guide issued by QCSD, which sets out the procedures for pledging securities (including shares), a shareholder (pledgor) should submit to the pledgee a pledge application relating to those shares to be pledged. The pledge application should include the following documents:

· For individuals:

a- A pledge contract attested by the Attestation Department at the Ministry of Justice;

b- A copy of the ID of the pledgor;

c- In the case of minors, a copy of the minor's birth certificate and a copy of the guardian's ID; and

d- Where a power of attorney has been issued, the pledge application should also include a true copy of the valid power of attorney authorising the attorney to pledge the shares, and a copy of the attorney's ID.

· In the case of companies:

a- A true copy of a valid Commercial Registration ("**CR**") and Establishment Card of the pledgor; and

b- A document evidencing the approval of the pledge by all of the partners listed on the CR, or a document authorising a single representative to act on behalf of the partners.

Where the pledgor company is a shareholding company, the pledge contract should be signed by the chairman or all members of the board of directors, or by a representative authorised to act on their behalf.

Further, the pledgee must submit a letter to the QCSD requesting the pledge of those shares that are identified in the pledge contract. The letter should be signed by the authorised signatories, stamped by the seal of the entity, and should include the number of securities to be pledged, the company name if applicable, and the shareholder's number. The application should be accompanied by the shareholder (pledgor) approval on the pledge, an ID copy, and a copy of the pledge contract, if applicable.

Upon request of the pledgee and with approval of the pledgor, the QCSD will then register the pledge details on the electronic record of the company and will inform the pledgee of the same once the process is completed.

If the shares to be pledged appear in the shareholder's account that is managed by a QCSD trading member, the trading member should be contacted to arrange for the return of the shares to the shareholder's account to complete the pledge. If the relevant shares are being traded in the market, the system will only approve the pledge once the trading member cancels the selling order.

The pledged shares will be released upon the pledgee's request under an official letter signed and sealed by the pledgee, accompanied by the following information:

·The number of shares to be released;

·The name of the shareholder (pledgor);

·The shareholder's (pledgor) number; and

·The payment of fees for each pledge release.

Note: Under Article 24 of the PPP Law, the shares of the project company (i.e. a company established by virtue of the PPP Law) may not be pledged for any other than the purpose of financing or refinancing the partnership project, any action to the contrary shall be null and void.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

No. In Qatar, enforcement of share pledge may only be carried out through court proceedings. Article 247 of the Trade Law prescribes that "*any agreement concluded at the time of the mortgage decision or after the decision shall be invalid. In the event of failure to pay the debt at maturity, the mortgagee shall have the right to own the mortgaged property or sell the same without reference to the procedures set out in Articles 241 to 243 herein.*

However, after the debt or an installment thereof becomes payable the creditor may agree with his debtor that the mortgaged property or part thereof may be credited against the debt, and the court may order that the mortgagee owns the mortgaged property or part thereof in payment of the debt provided that its market value is estimated by an expert."

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes. This can be contractually arranged by entering into the assignment of rights legal instruments.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

As per Articles 606 *et seq.* of the Trade Law, any creditor, can request from the

competent court to issue a judgement declaring the debtor as bankrupt in the event the latter ceases to pay its commercial debts. The creditor may request declaring the bankruptcy of the debtor by the normal procedures of filing a lawsuit. Where urgency is called for, an order on petition may be submitted to the President of the Court containing evidence of the failure to pay and the grounds for urgency.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Yes. A security trustee concept is recognized and enforceable in Qatar.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Pursuant to Article 36 of Law No. 24 of 2018 (Income Tax Law), an application for a tax exemption may be made for certain projects that are considered to be strategically significant to the Qatar economy. The exemptions are generally granted for a period of five or ten years. Applications for an exemption are assessed based on certain criteria set out in the Qatar tax law.

Other than the mainland, there are 2 (two) special jurisdictions in Qatar that provide for tax exemptions subject to fulfilling certain criteria, these are the Qatar Science and Technology Park ("**QSTP**") and Qatar Free Zones ("**QFZ**"). For example, entities set up in the QFZ can benefit from 20-year tax holiday.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Yes. Please see our response to question 9 above.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

No. We do not foresee any legal impediments in this regard.

12. Are there any restrictions for foreign investments in your jurisdiction?

Yes. Law No. 1 of 2019 ("**Foreign Investment Law**") and its Executive Regulations No. 44 of 2020 ("**Executive Regulations**") contemplate that foreign investors can hold up to 100%, of the shareholdings in Qatari company. Under the Foreign Investment Law and Executive Regulations, the following sectors are excluded: professional firms (e.g., engineering and law firms), banks, insurance companies, commercial agents, and any other industry as decided by the Council of Ministers.

We understand that MoCI is considering applications on an *ad hoc* basis and, accordingly, there remains uncertainty as to what commercial activities the MoCI will permit to be conducted by a 100% foreign owned Qatari company and whether any conditions or restrictions might apply.

Companies established in the Qatar Financial Centre, QSTP or the QFZ can be 100% foreign-owned.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

No. It depends on the requirements of the bank (i.e., lender).

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

Finance documents are not required to be registered or filed in Qatar in order to be valid and enforceable.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

There is no specific legal provision that prescribes the obligation that local insurance policies should be governed by local laws. However, the insurance sector is regulated in Qatar and insurance and reinsurance companies and transactions are dealt with by the Civil Code, Trade Law and QCB Law. Under Article 95 of the QCB Law, it is not permissible to insure outside the State on funds or properties located within the State or on responsibilities arising therein, and it is not permissible to mediate insurance on these funds, properties or responsibilities except with one of the authorized and companies subject to this law.

Further, Article 103 of the QCB prescribes that insurance and reinsurance companies are obligated to obtain QCB's approval on the forms of insurance policies that they wish to issue, as well as on every amendment that occurs to them.

In light of the foregoing, and based on our experience with the authorities and regulators in Qatar, we find it very difficult, if not impossible, that the QCB approves that local insurance policies be governed by a foreign law.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes. We do not foresee any issues in this regard.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

We do not foresee any issues.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes. PPP is a permitted method of developing projects and is regulated by the PPP Law. In Qatar, there is no official platform or source that publishes reports pertaining to PPP projects that have been developed to date in Qatar.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

No. However, indirect agreements can be carried out pursuant to Article 20 of the PPP Law which stipulates that the project company may, after the approval of the contracting party and the provision of sufficient guarantees, obtain a loan from banks operating inside or outside the State by guaranteeing its contractual rights and assets.

Further, quasi-governmental entities or companies that are mostly established by virtue of the Commercial Companies Law can enter into direct agreements with lenders.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

- *Government Bonds* are considered as one of the major government debt instruments used by the government to provide the necessary liquidity for project funding. They are considered one of the monetary policy instruments and low-risk investment instruments as well. These are issued with medium to long-term maturities.
- *Treasury Bills (T-Bills)* are government debt instruments issued with maturities ranging from 3 (three) months to 1 (one) year. T-Bills are known as low-risk financial instruments, i.e., they are easy to operate without causing any capital loss to their holders. T-Bills are usually sold at discount, i.e., at lower price than their nominal value. Upon maturity, the government is committed to pay the nominal value of those T-Bills. They are considered as one of the monetary policy instruments for domestic liquidity management.
- *Sukuk* is considered as one of the major government debt instruments used by the government to provide the necessary liquidity for project funding. Sukuk are considered as one of the monetary policy instruments and low-risk investment instruments as well. These instruments are issued with medium to long-term maturities.
- Debt assumption is also available in Qatar. For example, under Emiri Decree No. 61 of 2020, the Government of Qatar guaranteed the financial obligations arising from the loans and financial facilities agreements executed by Qatar Airways with banks and financial institutions.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

It should be agreed to by the public party and the private party in the PPP agreement. Article 17 of the PPP Law prescribes that the PPP agreement must include, *inter alia*, types and amounts of project insurance, the risks of its operation or exploitation, execution guarantees issued in favor of the contracting party, and provisions and procedures for recovering them. It should also determine the bases for distributing risks associated with amending laws, sudden accidents, or force majeure, and the prescribed compensations, as the case may be.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Yes, provided that the provisions of the new law relate to public policy. Article 3(2) of the Civil Code prescribes that the effects of acts shall remain subject to the law applicable at the time on which it was concluded, unless the provisions of the new law relate to public policy, it shall then apply to such effects after the date on which it becomes effective.

23. Is force majeure specifically regulated under the local legislation?

There is no expressly specific definition of force majeure in the Qatari legislation, however the force majeure principle is recognized in the Civil Code. Article 188 of the Civil Code reads as follows:

"*1. In the contracts which are binding on both parties, if the performance of the obligations of one of the contracting parties becomes impossible for an extraneous cause beyond his control, this obligation shall extinguish together with its corresponding obligations. The contract shall be per se dissolved.*

2. *If the impossibility is partial, the creditor as per the circumstances may depend on the contract with regard to the remaining obligation which can be performed, or request the dissolution of the contract."*

Further, Article 402 of the Civil Code reads as follows:

"The obligation shall be extinguished if the debtor proves that its performance by him has become impossible for an extraneous cause beyond his control."

24. What are the general environmental and social requirements in project financings?

In addition to the international treaties that relates to the environmental protection that Qatar is a party to, such as the United Nation Framework Convention on Climate Change (UNFCCC), Vienna Convention for the Protection of the Ozone Layer (1985), etc., Article 6 of Law No. 3 of 2002 (Environment Protection Law) provides that "*all administrative and private agencies are obligated to include the condition of protecting the environment and combating pollution in all local and foreign agreements and contracts whose implementation may result in harmful effects on the environment. These contracts must include penalty clauses and undertakings to pay the costs of removing environmental damage and compensation therefor.*".

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Yes. Qatari law upholds the general principle of the sanctity of contracts. Article 171 of the Civil Code describes the contract as the law of the contracting parties. Qatari law respects the will of the parties and enforces their agreement to the extent that it is neither prohibited by law nor conflicts with the public order in Qatar.

Additionally, Article 38 of the Civil Code provides that for a court to apply a foreign law, the relevant law must not violate public order and morals in Qatar. In such case, the court will apply Qatari law.

26. Can financing documents provide for arbitration clauses?

Yes. There is no legal impediment in the Qatari legislation that precludes incorporating arbitration clauses in financing documentation.

It is worth mentioning that the State of Qatar is a party to the New York Convention and does recognize arbitral awards and enforce them pursuant to the New York Convention and the procedures set forth in Law No. 13 of 1990 (Civil and Commercial Procedures Law) as amended by Law No. 2 of 2017 (Civil and Commercial Arbitration Law).

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

To accommodate the various upcoming events, PPP entities, governmental-owned companies and private companies are generally conducting studies and analyses, and approaching local and international banks and other lenders to fund major projects based on several project financing structures.

Project finance is currently being utilized for, amongst others, large-scale energy, oil and gas, infrastructure, construction, telecommunications, and more specifically, leisure and hotel projects.

28. Are any significant development or change expected in the near future in the project finance market?

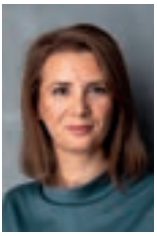
We are not aware of any expected changes in the project finance market in the near future.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

Secured Overnight Financing Rate (SOFR).

ROMANIA

ȚUCA ZBÂRCEA & ASOCIAȚII



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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The main local legislation for project finance is the Romanian Civil Code (which regulates the civil and commercial contracts, including loan agreements and security agreements) and the banking legislation (including professional lending and FX regulations, etc.). For cross-border financing transactions, there are certain EU regulations which may apply, such as with regard to passporting banking licenses across EU Member States, eIDAS (with regard to using electronic signatures, etc.).

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The Romanian banks and the EU banks which are lending to Romania are financing on a project finance basis for almost 20 years. From this perspective, the market is mature and there are established players lending by way of club lending or syndicated lending. The financing documentation is aligned, to a large extent, with LMA standards.

In the past 12 months, we have advised the lenders and the borrowers) in project financing in several fields, such as energy, healthcare, agriculture and real estate.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The standard security package for a project finance transaction includes: (i) a mortgage on the shares of the project company; (ii) a mortgage on the accounts of the project company; (iii) a mortgage on the receivables, insurances and other contractual rights of the project company; (iv) a mortgage on the real estate owned by the project company; (v) a subordination agreement; and (vi) sponsors' undertakings or guarantees, which may vary in scope and coverage.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, the shares of the project company are typically mortgaged in favour of the lenders by way of a movable mortgage. The share mortgage must be signed as a private deed and then it must be registered with the shareholders' register and with the National Register for Movable Assets Publicity (a public electronic register which is used for publicity and security ranking purposes).

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Generally yes, the share mortgage may be enforced by way of a private sale, if the share mortgage agreement gives the security creditor such a right. The method for transferring ownership over the shares of a company depends on the type of company. For example, for limited liability companies, the shares are transferred by way of a private agreement or an enforcement deed, which must be registered in the shareholders register and the Trade Registry. However, in the case of a limited liability company, any shares transfer must be approved in advance by a certain majority of the existing shareholders.

In case of limited liability companies, if the share transfer results in a change of control of the company, a tax clearance certificate from the tax authorities must be submitted to the Trade Registry to verify whether the limited liability company has any outstanding liabilities to the state budget.

Bearer shares have been prohibited in Romania as part of the AML rules.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, the Romanian Civil Code expressly allows the creation of security interests on future assets, including on future contractual rights and future receivables.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Any enforcement proceedings are suspended on the date when the insolvency proceedings are opened against the security provider. Thus, the secured creditors may only pursue their rights within the insolvency proceedings, by registering their claim as a secured claim, voting in the creditors assembly, etc.. Prior to the opening of the insolvency proceedings, the creditors may enforce their security according to the security agreements and the applicable legislation (Civil Code, Civil Procedure Code, etc.).

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The concept of security agent is used in our jurisdiction on a regular basis. The Romanian Civil Code regulates the "security agent" concept with regard to movable security rights but not with regard to immovable security rights. The "trustee" concept is partially recognized in Romanian Civil Code through the institution of is also regulated fiduciary agreement, however this is not used in practice. We would not give a clean legal opinion on a parallel debt structure created under Romanian law but we have worked in transactions where the parallel debt structure was created under a different law (such as English law) while

the security agreements were governed by Romanian law (such a structure would work as long as the parallel debt is created under a law which recognizes the concept).

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Romania provides certain incentives and exemptions for businesses, such as:

(i) tax exemption for reinvested profits - the profit invested in technological equipment, computers, software used for the purpose of pursuing the economic activity of the company is tax exempt under certain conditions;

(ii) 50% deduction of eligible expenses for R&D activities;

(iii) full exemption from profit tax for 10 (ten) years for companies that exclusively perform innovation and R&D activities on scientific research and technological development;

(iv) local tax exemption for immovable assets and lands related to industrial parks.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Exemptions specifically applicable to foreign investors are tax credits for taxes paid to a foreign state. Such tax credits may be obtained only if the Double Taxation Treaty concluded between Romania and that foreign state is applicable.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

No, the Romanian law does not provide for such restrictions regarding loans, movement of capital and/or transactions conducted in a foreign currency involving non-residents. Loans which are borrowed by Romanian entities from foreign companies must be notified to the National Bank of Romania, for statistical purposes. Restrictions related to AML and international sanctions do apply.

Lending on a professional basis in Romania require the authorisation from the National Bank of Romania, or the license passporting in case of EU institutions.

12. Are there any restrictions for foreign investments in your jurisdiction?

Foreign direct investments in Romanian are subject to the screening of the Commission for the Examination of Foreign Direct Investments, for state security purposes.

The FDI Commission prior approval is required in case the investments is made in areas relevant for state security (including, among others, sectors like the security of citizens, energy, agriculture, industry, IT and telecommunications, insurance and banking/financial services, etc.) and the value of the investment exceeds EUR 2 million.

Romania applies sanctions adopted at the level of the European Union, as well as anti-money laundering procedures.

There is a fine of up to 10% of the total worldwide turnover and relevant agreements are deemed null and void if a transaction falling under the FDI scope of application is implemented without the FDI approval.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

Newly established limited liability companies must have a minimum share capital of RON 500 (approximately EUR 100). Furthermore, all limited liability

companies with a net turnover exceeding RON 400,000 (approx. EUR 80,000) must have a minimum share capital of RON 5,000 (approx. EUR 1,000).

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

The security rights must be registered in order to make that security enforceable against third parties and for ranking purposes.

The movable security rights must be registered with the electronic Publicity Register (the costs for such registration involve fees in the hundreds of RON (and possibly into the low thousands of RON depending on volume and number of registrations). The registration fees are not calculated by reference to the amount secured by the hypothec, but may vary depending on the total number of assets registered).

The immovable security rights must be registered with the relevant Land Book. The authentication and registration costs are calculated by the notary public who authenticates the mortgage agreement. The Land Book (ANCPI) fee is typically 0.1% of the secured amount plus RON 100 per Land Book, and notarial fees are progressive and commonly range from 0.85% of the secured amount, but not less than RON 150 (for amounts up to RON 50,000) to approximately RON 1,778 plus 0.10% of the secured amount (for amounts above RON 500,001).

D. Insurance

15. Can local insurance policies be governed by a foreign law?

Yes, as a rule the parties may choose the applicable law in case of insurance contracts relevant for the project finance transactions..

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes, the Romanian law allows for the proceeds of the insurance and reinsurance policies to be assigned to third parties, such as the lenders. This is a market practice in project financing transactions.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

We are not aware of any complications or concerns in relation to insurance provisions under project financing documentation in Romania.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

The legal framework applicable to PPP projects is regulated by Government Emergency Ordinance no. 39/2018 on public-private partnership. However, despite the existing legal framework and the fact that, at a political level, there have been numerous intentions expressed with regard to PPP projects, only a few projects have been approved and realized.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Yes, direct agreements are permitted, and such agreements have been used in PPP and Project Finance. The international standards for direct agreements have been generally observed, especially in Project Finance which does not have a public element.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

There are various types of public support that may be used in PPP Projects. For instance, the public partner may contribute to the financing of the development phase of the project from public funds (including EU funds). Also, another public authority than the public partner (such as the Ministry of Finances) may undertake various forms of support (direct payment obligation to the private partner, issuance of sovereign guarantees or letters of comfort etc.). This is subject to such other public authority entering into the PPP agreement/an addendum to it, pursuant to the terms of the tender documents for the award of the PPP agreement.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Usually, political risks are borne by the public partner under PPP agreements.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

While, generally, the risk of specific changes of law affecting projects of certain types or various sectors of economy is borne by the public partner, the risk of general changes in law may be either taken by the private partner (given that such change in law would affect the private partner in the same manner as any other entity doing business in the country) or by the public partner, depending on the particular features of each PPP Project.

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure is regulated by the Romanian Civil Code and it is customary to have force majeure provisions in the commercial contracts (but not so much in loan agreements).

24. What are the general environmental and social requirements in project financings?

Romania has implemented in 2024 the EU Directive on corporate sustainability reporting (CSRD), introducing detailed ESG disclosure standards. It requires firms to report on their environmental and social impacts, governance practices, and climate risks in a structured, comparable format.

Romania has integrated the ESG requirements into national accounting rules, which apply to large companies, listed SMEs, and certain non-EU businesses operating in the EU.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

The submission of an agreement to a foreign law is permissible and enforceable. Typically, the agreements concluded between Romanian entities are governed by Romanian law, while the foreign law (such as English law) is most commonly used for transactions involving a foreign entity. The security documents over assets located in Romania (regardless of the nationality of the parties) are also governed by Romanian law.

The waiver of immunity provisions (which are applicable in respect of the Romanian state and its authorities) is permissible to

the extent the Romanian state is acting in a commercial nature. In cases where the Romanian state is acting in its sovereign capacity, the waiver of immunity provisions are not enforceable.

26. Can financing documents provide for arbitration clauses?

Yes, financing documents may provide for arbitration clauses.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

In terms of PPP projects, Romania still lags behind other European countries. Efforts have been made on the legislative level in order to offer a proper legal basis for project-financed PPP projects, but such efforts should be completed by the preparation of a robust project of a medium size which, if successful, will pave the way for the implementation of additional project-financed PPP projects.

28. Are any significant development or change expected in the near future in the project finance market?

Romania adopted its National Recovery and Resilience Plan (PNRR) for the management of European funds allocated to Romania through the Recovery and Resilience Mechanism. Romania's PNRR establishes the investment priorities based on 6 main pillars: (i) green transition; (ii) digital transformation; (iii) smart, sustainable and inclusive growth; (iv) social and territorial cohesion; (v) health, economic, social and institutional resilience and (vi) policies for the new generation. There are over 21,000 projects supported by 21.41 billion EUR total funding, out of which 10.7 billion are EU grants. In Romania, the Ministry of Investments and European Projects (MIPE) is the national coordinator.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

The most commonly used reference interest rates in Romania are EURIBOR and ROBOR, both of which are not affected by the LIBOR transition. In instances where parties were using the LIBOR reference rate, the parties are switching to risk-free rates, such as SOFR.

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

There is no main legislation or international treaties governing project financing in Senegal.

Usually referring to the financing of assets, the development or exploitation of natural resources, project financing applies to different sectors like the energy, telecom, agricultural, Transportation / infrastructure & public private partnerships, mining, oil & gas…sectors.

The laws applicable to different sectors will apply, it is sector based.

Project financing in Senegal is governed by the following legislation and international treaties:

- Regulation n°06/2024/CM/UEMOA relating to the external financial relations of the Member States of the West African Economic and Monetary Union (Regulation 06/2024).
- Notice No. 001-01-2024 setting the minimum share capital of banks and financial credit institutions in the member states of the West African Monetary Union (**WAMU**)
- Senegalese Banking Law No. 2008-26 of July 28, 2008 on banking regulation (Law of 2008).
- Uniform Act on Commercial Companies and Economic Interest Groups, 2014 (**AUSCGIE**)
- PPP Law no 2021-23 dated March 2, 2021
- Senegalese Investment Code Law No 2004-06 of February 6, 2004
- Anti-money laundering Law: Uniform law relating to AML / CFT deriving from Directive No. 02/2015 adopted on July 2, 2015 by the WAEMU Council of Ministers

- Uniform Act on Securities adopted on December 15, 2010 ("**UAS**")
- Uniform Act on Bankruptcy Proceedings, September 25, 2015
- The new General Tax Code (GTC) was published under Law No. 2012/31 of December 31, 2012

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in Senegal is at its infancy. It's not really a mature market.

The most significant project financings closed during the last 12 months are:

the Dakar - Diamniadio toll motorway, the Taïba Ndiaye Wind Farm ("**PETN**") and the Blaise Diagne International Airport.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The most commonly used security types in project financings in Senegal are personal securities, transferable securities and mortgages.

- Personal securities as they apply to project finance consist of autonomous guarantees.
- Transferable securities consisting of possessory lien, assets held or transferred as security, pledge of real property, pledge of intangible assets and privileges.

Transferable securities refer to title retention and property transferred as Security consisting of an assignment of a debt as security and the fiduciary transfer of money.

They also consist of pledge of tangible property and intangible property.

Pledge of tangible property may consist of pledge of professional equipment and motor vehicles and pledge of stocks.

The pledge of intangible property shall mean a contract whereby existing or future intangible property is allocated as security for one or more existing or future debts on condition that the said debts are certain or ascertainable.

Such a pledge may be by agreement or imposed by a court.

The following may be pledged:

- Debts;
- Bank accounts;
- Partnership rights, transferable securities, Portfolios
- Business property;
- Intellectual property rights.

Preferential rights consist of general and special liens.

A general lien shall confer on the holder a right of preference in accordance with the provisions of articles 225 and 226 of the Uniform Act.

The special law creating general liens shall specify their ranks while classifying them in relation to the dispositions of article 180 of this Uniform Act. Failing that, these liens shall be ranked lowest following the said article 180 of this Uniform Act.

As for special liens, creditors holding a special lien shall have a right of preference over any asset legally transferred to them as a base which they shall exercise upon distrain in conformity with the measures provided for in article 226 below.

As long as the insured amount of the asset is unpaid the right of preference may also be exercised by subrogation of that amount where the asset has perished or disappeared (ARTICLE 182).

– Mortgages

There are 2 (two) main types of mortgages: contractual mortgages and forcible mortgages.

A mortgage is the transfer of any determined or determinable real property belonging to a settlor to secure one or more existing or future debts provided said debts are certain or ascertainable.

A mortgage may be legal, conventional or judicial.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes. The shares of a company can be pledged as a security to the benefit of lenders.

The transferee shall consent to the transfer of shares in case of the compulsory liquidation of regularly pledged company shares.

Instead, the company may prefer, after the transfer, to immediately redeem said shares in order to reduce its capital.

In order to render the share pledge binding on third parties, the pledging of shares may be established by notarial deed or by private deed notified to the company and published in the Trade and Personal Property Rights Register (ARTICLE 322 of the AUSCGIE).

5. Is private sale a recognized method for the enforcement of share pledge? What are the endorsement types typically used for share certificates?

Yes, a private sale is a recognized method for the enforcement of share pledge. Such a possibility is provided for under, among others, article 104 of the UAS which provides that the lack of payment by the due date allows the pledgee-creditor, in possession of a writ of execution, to proceed to the forceful sale of the collateral 8 (eight) days after notice has been duly served on the debtor and, where necessary, on the third party settlor under the conditions laid down by the provisions organizing measures of execution from which no pledge may derogate. Under such a situation, he/she/it shall exercise his preference right on the price of the collateral sold based on article 226 of this Uniform Act.

The endorsement types typically used for the share certificates are the bearer or registered forms.

Shares and bonds shall be in the form of bearer bond or registered securities irrespective of whether they are issued against non-cash contributions or cash contributions. However, registered securities may be the exclusive form imposed by the provisions of this Uniform Act or by the Articles of Association (ARTICLE 745).

The owner of securities which are part of an issue comprising bearer bonds shall have the option, notwithstanding any clause to the contrary, to convert his bearer bonds into registered securities and vice-versa (ARTICLE 746).

6. Can a security interest be established over future assets, rights and receivables of the borrower?

Yes. This is reflected in the definition of mortgage which provides for the possibility to transfer any determined or determinable real property belonging to a settlor to secure one or more existing or future debts provided said debts are certain or ascertainable.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Security interests are registered against third parties by filing at the appropriate RCCM and for mortgages in accordance with local laws. To enforce their security interest, lenders may take the following steps:

Where there is a default, non-payment by a pledgor, a secured creditor can resort to forced sale at a public auction or can request the judicial attribution of the pledged assets up to the amount of the secured obligations.

The pledge being binding on third parties either by its registration in the RCCM or by the handing over of the collateral to the pledgee creditor or any third party agreed upon by the parties, the pledgee-creditor may pursue the collateral in their hands for the enforcement of its claim.

Moreover, in the case of a financial bond and any sum of money appearing in the pledged account, a secured creditor, holder of an unquestionable liquid and due claim may liquidate the security within 8 (eight) days or at the expiration of any other time limit it and the holder of the account had beforehand agreed upon.

The secured creditor may do so after notice is served personally or by registered mail on the debtor.

Said notice shall also be served on the settlor of the pledge where it is not the debtor and to the account keeper where the latter is the secured creditor of the pledged debt.

Where not being the keeper of the pledged account if the secured creditor considers that all the requirements have been met for the liquidation of the security, he/she/it shall in writing ask the account keeper to proceed with the liquidation as provided for in article 154 of this UAS (ARTICLE 155).

Where a business property is sold or liquidated, any unsecured creditor may obtain, through a court, the foreclosure of the debt and the distribution of the proceeds from said liquidation (ARTICLE. 174).

The registered creditor shall be entitled to:

- A right to pursue in accordance with article 97(2) of this Uniform Act;

- A right to liquidate in accordance with article 104(1) of this Uniform Act;

- A right of preference in accordance with article 226 of this Uniform Act (ARTICLE 178).

8. Is the security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The security trustee concept is not, per se, enforceable in Senegal, under OHADA.

The concept of security agent is used instead. That security agent's function is provided for under article 5 of the U.A.S as follows: "Any security or other guarantee to secure the discharge of an obligation may be made, registered, managed and executed by a financial institution or a national or foreign credit company acting in its own name and as surety agent appointed for that purpose by the creditor of the secured debt".

A parallel debt concept exists as an alternative mechanism. It produces, pretty much, the same result.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction? Are there any incentives or exemptions specifically applicable to foreign investors?

The main incentives and exemptions for project financing in Senegal are mainly tax incentives and exemptions. They can be sector specific or usually granted through Double Tax Treaties (DTTs) that Senegal may have signed with foreign partners. The Investment Code provides for exemptions from customs duties, value added tax (VAT) exoneration for a three (3) year period. The General Tax Code also provides for tax benefits subject to a certain number of conditions.

Incentives and exemptions can be also sector-based. The Free Export Enterprise Status is granted to certain specific entities. Companies in the agricultural, and telecoms industry sectors can benefit from incentives and/or exemptions when they export at least 80% of their production.

That status also allows those companies to benefit from a reduction of corporate tax (15%), an exemption from registration fees, stamp duty and subscription to business licenses, and an exemption from the duties and taxes levied on production equipment and raw materials. An exemption from wage tax is also granted.

10. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

We have not identified any general provision of the law which prevents a company incorporated under Senegalese law from contracting debts abroad.

Moreover, this possibility of contracting is even indirectly provided for under article 16: Loans Contracted by a Resident from a Non-Resident (Regulation No. 06/2024).

This article stipulates that: " Residents may freely contract loans from non-residents. All foreign loans are subject to a statistical reporting requirement to the Ministry of Finance and BCEAO in the form of a letter (a template reproduced in Appendix VII-1 of these Regulations), within a deadline set by BCEAO. The proceeds of foreign borrowing transactions by a resident are deposited with an authorized intermediary and transferred to BCEAO, under the conditions defined in Appendix II of these Regulations. Authorized intermediaries are authorized to proceed, under their responsibility, with the transfers necessary for the repayment of these loans, upon presentation of supporting documents, the nature and list of which are specified by BCEAO" .

However, some minor restrictions for borrowing bank loans from abroad, that may be characterized as procedural include:

- the mandatory declaration to the External Finance Directorate (Ministry of Finance) and the BCEAO (the Waemu Central Bank).

All foreign loans are subject to mandatory declaration to the External Finance Directorate and the BCEAO, for statistical purposes as provided for under Article 16: Loans Contracted by a Resident from a Non-Resident (Regulation No. 06/2024).

The repayment of any foreign loan, either by purchase and transfer of foreign currencies or by crediting foreign accounts in Francs or in Euros, must be declared for statistical purposes to the External Finance Directorate and the BCEAO and said transactions must be carried out through a licensed intermediary. (Article 11: Loan transactions (Regulation No. 09/2010/Cm/WAEMU/ on External Financial Relations of Member States of the WAEMU.

There are no restrictions for borrowing in a foreign currency except as provided for under Regulation No. 06/2024.

In the context of commercial transactions and debts denominated in foreign currencies are converted into the monetary unit having legal tender in the State party, on the basis of the exchange rate to the date of formalization of the agreement by the parties on the transaction, or in the

context of financial transactions on the date on which the currencies are made available (Article 52, Uniform Act relating to Accounting Law and Financial Reporting).

11. Are there any restrictions on foreign investments in your jurisdiction?

The Senegalese Investment Code provides for equal treatment of foreign investors. Foreign investors are granted equal access to ownership of property and no general limits on foreign control of investments exist.

In principle, there is no problem with a 100% ownership by foreign investors.

There are, however, some exceptions for a limited number of sectors such as the electricity distribution, port and water services.

There are some restrictions on foreign capital applicable to specific sectors.

The Oil and Gas sector provides for some main limitations on foreign participation in the capital of an oil or gas company. There is, for example, a 10% free carried interest to the national oil company, Petrosen, during the exploration phase of projects and up to 30 percent interest in the development and exploitation stage projects.

Restrictions do also apply for certain aspects and areas such as local content requirements.

Oil companies have to use local labor and materials and provide training funds for local workers. A local content requirement does exist, however, the regulating decrees are yet to be promulgated.

The participation percentage in the capital of a printing media company is set at 51% by one or more national public or private persons. Moreover, the foreign company may not directly or indirectly hold more than 20% of the capital of a printing media company.

12. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no minimum equity requirement for project financings in Senegal.

13. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

The registration and filing requirements applicable for project finance documents to be valid and enforceable in Senegal depend on the types of projects.

It is necessary to have a legal status, to create a local entity.

The most commonly created forms of company are the Limited Liability Company (SARL) and the Limited Company (SA).

The statutes of the company to be created are signed before a notary to whom the capital is paid.

The notary carries out the registration of the company and proceeds to the publication of the notice of creation after the withdrawal of the registration documents.

The investor will open a bank account as soon as he/she/it receives the registered documents from the notary.

In land acquisitions, for example, foreign investors may have to deal with property titles and registration systems that exist in Senegal.

D. Insurance

14. Can local insurance policies be governed by a foreign law?

Some aspects of local insurance policies are governed by the Code of the Inter African Insurance Market Conference ("**CIMA**").

Some re-insurance aspects can be governed by a foreign law.

15. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes, insurance proceeds under the insurance and reinsurance policies can be assigned to the benefit of the lenders

16. Is there any legal background for cut-through provisions under the insurance policies in your jurisdiction?

There is a legal background for retrocession provisions under the insurance policies in Senegal under the CIMA Code, through some articles: 307, Article 334-11, 417….

Cut-through clauses are valid from the point of view of Senegalese law based on the facts that local insurance companies are not always able to underwrite or retain certain exposures.

The cut-through clause will allow the international reinsurer to settle losses directly with the insured party without involvement of the local insurance company.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

There is a minimum percentage that must be insured within the CIMA Zone.

There are obligatory cessions with state owned insurers that apply in Senegal provided for during the FINAL COMMUNIQUÉ OF THE 10th GENERAL ASSEMBLY OF THE MEMBER STATES OF THE COMMON REINSURANCE COMPANY OF THE MEMBER STATES OF CIMA ("**CICA-RE**")"

They reorganized the legal transfer to the CICA-RE, as proposed by the Board and consisting of the reduction of the transfer rate on the treaty from 15% to 10% combined with the institution of a transfer on the first franc at the rate of 5% for all insurance companies, with the exception of the health branch and savings premiums in life insurance. Final statement from the member states of CICA-RE.

In Senegal, there is an obligatory cession on the premiums and treaties of insurance companies under Senegalese national law and on the premiums of foreign companies, in favor of the Senegalese reinsurance company ("**SenRe**").

The mandatory cessions with the state-owned (and /or sub-regional) insurer apply in Senegal to the benefit of the African Reinsurance Corporation (Africa-Re), the regional reinsurance company (CICA-RE) and the SENRE. The mandatory cessions with the state-owned insurer apply in Senegal to the benefit of SEN-RE.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, PPP is a permitted method of developing projects.

Some PPP projects have been developed in Senegal, among which we can name projects such as the Dakar - Diamniadio toll motorway, PETN and the Blaise Diagne International Airport, the Comasel Project which is a Construction and operation (BO) project on the electricity distribution network in rural areas, 71% of which is connected to the network and 29% is of photovoltaic origin.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Yes, a direct agreement procedure is provided for in the PPP law (provisions of article 28 of Law 2021-23 on public-private partnership contracts). It is one of the derogatory procedures, the conditions and modalities of which are set by decree.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The types of host government supports available in Senegal are:

- Sovereign guarantees existing mainly under articles 39 to 49 of the UAS.
- Host Government Agreement (HGA)

An agreement between a foreign investor and a local or host government governing the rights and obligations of the foreign investor and the host government with respect to the development, construction, and operation of a project by the foreign investor.

A public-private partnership support fund has been created to support and finance the preparation, procurement and implementation of PPP projects.

Also, the holder may, with the authorization of the contracting authority and in compliance with the legal provisions in force, grant securities to the financing organizations on the assets acquired or realized in the context of the execution of the PPP contract, by pledging the proceeds and receivables arising from the contract or by constituting any other appropriate security, without prejudice to any legislative provision prohibiting the constitution of a security on a public asset or part of the public domain (art. 16 of the law on PPPs).

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

In general, it is the contract that sets out the conditions under which the sharing and transfer of risk between the contracting authority and the contractor are established.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

The change of law has no effect on the contract which continues under the same conditions and according to the legislation in force at the time of its conclusion.

Changes in law will not have retrospective effect unless stated expressly in the law itself.

The legislator may expressly provide that the new law will be of immediate application.

The judge can also rule out the survival of the old law in contractual matters when he considers that:

- the particularly imperative nature of public order of the new law justifies its immediate application to the future effects of the contract.

- or that the content of the contract is so imperatively fixed by law, that the contract must be assimilated to a legal situation justifying that its effects are governed by the new law.

Investors and lenders may seek compensation if the change of law is applied against them.

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure is expressly provided for by law. It is defined as an extraneous cause that lead to the occurrence of the damage. It may be due to a third party or under any situation.

In any event, force majeure must be an unforeseeable, insurmountable and irresistible event. It constitutes a cause of total exemption.

24. What are the general environmental and social requirements in project financing?

The environmental requirements are that in accordance with the provisions of the Environmental Code: "any development project or activity, likely to harm the environment, as well as policies, plans, programs, regional and sectoral studies must be subject to an environmental assessment.

In its provisions relating to health also, Law No. 97-17 of December 1, 1997 establishing the Labor Code sets working conditions, in particular with regard to working hours, which must not exceed 40 hours per week, working of night, the contract of women and children and the weekly rest which is obligatory. The text also deals with Hygiene and Safety in the workplace and indicates the measures that must be taken under any activity to ensure hygiene and safety guaranteeing a healthy environment and safe working conditions.

F. Jurisdiction, Waiver of Immunity

25. Are submissions to a foreign law and the waiver of immunity provisions enforceable?

Yes, subjection to foreign law and waiver of immunity provisions are enforceable subject to compliance with public order.

26. Can financing documents provide for arbitration clauses?

Yes, financing contracts may include arbitration clauses.

G. Trends and Projections

27. What are the main current trends in project financing in your jurisdiction?

Public-private partnership contracts are the main trend in project financing by the State and other public entities.

A public-private partnership contract is a written contract concluded for consideration for a fixed period between a contracting authority and an economic operator, which is, according to its purpose, the terms of remuneration of the holder and the risks transferred, qualified as a public partnership contract -private with public payment or public-private partnership contract with payment by users.

A public-private partnership contract with public payment is a public-private partnership contract by which a contracting authority entrusts, to an economic operator, whose remuneration comes mainly from payments from the contracting authority throughout the duration of the contract, all or part of the missions having for the object, the design, the construction or the transformation, the upkeep, the maintenance, the exploitation or the management of works, services, equipment or immaterial goods necessary for the general interest of which the contracting authority is responsible for, as well as all or part of their financing.

A public-private partnership contract payable by users is a public-private partnership contract by which a contracting authority entrusts the management of a service of general interest for which it is responsible, or the design, financing, implementation, rehabilitation, operation, upkeep and maintenance of works, equipment or intangible assets to an economic operator whose remuneration comes mainly from user payments. The

concession, leasing and management concerned are public-private partnership contracts paid for by users.

A concession is a contract by which a contracting authority entrusts the concessionaire with the mission either to carry out a public work or to make investments relating to such a work and to operate it with a view to providing a service of general interest. In all cases, the concessionaire operates the service in its name and at its own risk and peril by collecting remuneration from the users of the structure or the beneficiaries of the service granted. (Law No. 2021-23 of March 02, 2021, relating to Public-Private Partnership contracts - Decree No. 2021-1443 of October 27, 2021, implementing Law No. 2021-23 of March 02, 2021 - Decree No. 2022-2295 of December 28, 2022, on the public procurement code – Code of Administrative obligations, July 19, 1965).

The transfer methods are as follows:

- Common law procedures:

- Open tender procedure in 1 stage, preceded or not by prequalification;
- Open bidding procedure in 2 stages, preceded by prequalification.

- Exceptional procedures:

- Restricted tender procedure;
- Tender procedure with competition;
- Competitive dialogue procedure;
- Direct agreement procedure.

28. Are any significant development or change expected in the near future in the project finance market?

No, to our knowledge an evolution or a significant change is not expected in the near future on the market for financing the projects of the State and other public persons.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

As a country previously covered by LIBOR, alternative rates like ESTER, SARON, SONIA and SOFR are used.

TAJIKISTAN
GRATA

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The most relevant act is the (i) Civil Code, (ii) Tax Code, (iii) Registration of Legal Entities and Individual Entrepreneurs Act, (iv) Public Private Partnership Act, (v) Limited Liability Companies Act, (vi) Joint Stock Companies Act.

Tajikistan has entered into a number of bilateral treaties related to investment protection. That said, international treaty applicability for the time being is left to be desired.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

In Tajikistan, the market for project financing is continually growing but is still quite small.

Yet, there are a number of project funding options accessible to those who are interested; additional details may be found at http://ppp.tj/ppp-database/ and http://www.eprocurement.gov.tj/en/searchanno. The majority of these financing options are tied to the infrastructure or energy industries.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

Depending on the particulars of the project and the interests of the parties involved, different methods of security may be utilized. In project financings, common security types that might be employed include:

Mortgage: This type of security entails the sale of a property interest to the lender in exchange for loan collateral. The lender may foreclose on the property and sell it to recoup its investment if the borrower defaults on the loan.

Pledge: This type of security entails giving the lender possession of a moveable item, such as equipment or stock in a corporation, in exchange for a loan. The lender may sell the pledged asset to recoup its investment if the borrower fails on the loan.

Guarantee: This type of security entails a third party (like a parent business or a government body) assuring the lender that the borrower will pay back the loan. The guarantor is responsible for repaying the loan in the event that the borrower misses a payment.

Assignment of rights: A rights assignment is the transfer of a party's contractual rights to another party.

It is important to note that the use of security in project financings can be complicated and may require the blending of many types of protection. It will depend on the nature of the project and the lender's criteria as to which specific security types are employed in a project financing transaction. To preserve their investment in the project, lenders often attempt to get the highest level of security.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Shares can be pledged under an agreement. A written agreement between the pledgor and the pledgee is required under Tajik law. The number and kind of shares being pledged, the size of the secured debt, how long the pledge will last, and other terms must all be specified in the agreement.

The pledge agreement must be registered with the Ministry of Justice of Tajikistan for the share commitment to be perfected. Getting a login and password and filling out the necessary information online is required for the registration procedure. The registration is voluntary, and when carried out and gives priority over unregistered pledge.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Yes, private sale is a legitimate way to enforce a share agreement.The terms of the private sale can be agreed upon by the pledgor and pledgee in the pledge agreement.

The pledgee may enforce the pledge by selling the pledged shares in the event of the pledgor's default. The pledgee must notify the pledgor of the planned sale, including the date, location, and manner of sale as well as the minimum selling price, which must be equal to or higher than the total amount of the debt that is being pledged as security.

The surplus proceeds from the sale of the pledged shares must be given back to the pledgor if they exceed the amount of the outstanding obligation. The pledgor is still responsible for paying the balance of the obligation even if the shares are sold for less than the whole amount owed.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Tajik law permits the inclusion of clauses establishing security interests over future assets, rights, and receivables.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

Any claims in the event of insolvency must be made through an external manager. Additional measures and steps are decided upon and disclosed by an external management on a case-by-case basis and are not governed by laws.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

Tajik law does not envision a security trustee. However, lenders (pledgees) have the option of designating a pledge manager to act on their behalf while exercising all of their rights to the pledged property.

Tajikistan legal system does not clearly permit the implementation of a parallel debt mechanism.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Tax, customs and other benefits are provided to investors in the manner and on the terms established by laws, investment agreements, treaties and international legal acts recognized by Tajikistan.

It must be noted that specific incentives and exemptions will depend on the sector, size and project location.

That said, in some cases, obtaining such incentives can be challenging.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Please refer to the answer to question 9.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no limitations on taking out shareholder loans and bank loans from abroad or in a foreign currency.

12. Are there any restrictions for foreign investments in your jurisdiction?

With the exception of activities where investment activities are restricted or forbidden due to the necessity to protect national interests, investors have the freedom to invest in objects and types of business activities. The law does go into more detail about this, and there is no information on public sources. Therefore, an investor must personally communicate with the state agencies about a specific investment project.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no minimum equity requirement.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

Project finance documentation may need to be registered with or submitted to several government agencies in order to be enforceable and valid. The nature and structure of the project, as well as the type of document in question, will determine the registration and filing procedures that apply. Regrettably, because the laws are vague, it is necessary to discuss specifics with the state agencies for each individual project.

It must be noted that depending on the type of project and the legal structure of the transaction, different registration and filing procedures may apply to project finance documents.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

The Civil Code gives the parties the choice to choose the applicable law, but because of the nature of the Insurance Activities Act, we infer that the policies must be governed by Tajik law despite the fact that the law is silent on the subject.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

In general, insurance law does not restrict the assignment of insurance and reinsurance proceeds under an insurance or reinsurance policies to the benefit of lenders. It's important to keep in mind that there can be limitations and restrictions on this. Reviewing the terms and conditions of any insurance contract is crucial.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

We do not foresee any complications or issues. The parties must carefully review and consider the insurance provisions in project financing documents.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

The PPP permit method is permitted and governed by the Private Public Partnership act.

There are numerous PPP projects, however, information about the completed projects is not published and is not available for third parties. PPP Authority's official website is available at http://ppp.tj/homepageen.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements are permissible:

- if there is an urgent need for the continuous provision of services, as well as in the case when the implementation of the norms established by chapter 3 of the PPP Act is inappropriate, provided that the circumstances that caused this urgent need could not be foreseen by the contracting authority, and these circumstances are not the result of slowness of the contracting authority;
- for a short term partnership project and when the expected initial investment amount does not exceed the specified amount;
- when the partnership project affects issues of national defense or public safety;
- if there is only one source capable of providing the required service, including the use of intellectual property, trade secrets or other exclusive rights that are owned or controlled by a certain person(s);
- when pre-qualification tender documents or a request for proposals have been issued but no responses have been received, or when all proposals have failed to meet the evaluation criteria specified in the request for proposals, and if, in the opinion of the contracting authority, the issuance of new preliminary tender documents selection and a new request for proposals will not result in a contract being awarded within the required time frame;
- in other cases where the PPP council approves such an exception for compelling reasons of national or public interest or in cases of recognition in the interests of a local public authority.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The PPP list can be found at http://ppp.tj/ppp-database/.

Some of the government guarantees:

- equality of investor rights;
- investor legal protection;
- right to use profits;
- investor's participation in the privatization of state property;
- investor's rights in case of expropriation and requisition;
- investor's right to export property and information abroad;
- additional guarantees and protection measures may be provided for investments, the total amount of which is the equivalent of USD 5,000,000 in national currency.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

One of the most important measures to guarantee the proper implementation of a PPP arrangement is the distribution of risk among parties. The PPP Act's Article 9 guarantees the principle of equitable risk distribution. A PPP agreement must include provisions for the division of risks between the public and private parties in accordance with Article 29 of the PPP Act.

The distribution of political risk in PPP agreements is based on both the nature of the risk and the agreement's specific conditions. Political risks are typically shared by public and private partners. In some circumstances, the public party may take on a larger portion of the political risk, especially when the project includes a public asset or function that is crucial to the government. On the other hand, in some circumstances, the private party may be required to take on greater political risk as a condition of receiving funding for the project or in exchange for bigger potential gains. As a result, how political risk is distributed in PPP agreements will vary depending on the project's unique conditions as well as the interests and preferences of the public and private parties involved.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

PPP Act provides for that the agreement specifies the private partner's right to compensation in the event that, compared to the originally estimated costs, the costs of the private partner's performance under the agreement have significantly increased or the value of such performance has substantially decreased due to changes in legislation or other measures of state regulation directly related to the partnership project.

Likewise, the PPP Act provides for re-review (revision) of the agreement in the event of changes in law or regulation that are not directly applicable to the ongoing project, provided that economic, financial, legislative or regulatory changes:

a. take place after the conclusion of the Agreement;

b. are outside the control of the private partner;

c. are of such a nature that the private partner is not able to reasonably assume and take them into account at the time of concluding the Agreement or avoid or overcome their consequences.

23. Is force majeure specifically regulated under the local legislation?

Generally, this issue is defined and regulated by a clause of an agreement. That said, paragraph 4 of article 462 of the Civil Code establishes a foundation for responsibility exclusion in the event of a force majeure. According to the aforementioned legal definition, force majeure refers to unusual and unavoidable events that happen under specified circumstances. These conditions

do not, however, include the debtor's counterparties breaching their duties, the lack of sufficient finances for the debtor to fulfill its obligations or the absence of necessary commodities from the market.

24. What are the general environmental and social requirements in project financings?

Tajik legislation states that it is forbidden to fund and carry out initiatives involving the utilization of natural resources without first receiving approval from the state's ecological experts. In particular, projects should go through the assessment procedure in accordance with the Environmental Impact Assessment Procedure to take potential environmental impacts into consideration.

There are general obligations to interact with local stakeholders and communities and to guarantee that labor laws are followed when it comes to social criteria for project finance.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Yes, according to civil laws, foreign law, arbitration provisions are enforceable.

The generally accepted action of waiving immunity is subject to some restrictions under Tajik law.

26. Can financing documents provide for arbitration clauses?

Yes, according to civil laws, financing documents can provide an arbitration clause.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

Tajikistan's economy and overall project funding are currently in the process of development. The following are some of the major trends in project financing:

- PPPs: In Tajikistan, PPP initiatives have emerged as one of the most widely used forms of project finance. PPPs are particularly common in the infrastructure, transportation, and energy industries. Renewably sourced energy should be noted as a distinct category of PPP projects that is now being examined and elevated to the top of the priority list.
- Mining: The mining industry makes up a significant portion of the Tajik economy, however project financing in this industry is typically conducted on a one-on-one basis, discreetly, and with little access to information.

We anticipate further projects and favorable future changes to the investment climate because Tajikistan's government, and particularly its president, is a strong supporter of foreign investment.

28. Are any significant development or change expected in the near future in the project finance market?

As mentioned above, the project financing is actively developing and further development and implementation of PPP projects in Tajikistan remain an important item on the Government's agenda. Likewise, renewable energy is gaining traction and is most likely to be a crucial item on the agenda and will gain the most attention in the future.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

During the LIBOR transition period, the Secured Overnight Financing Rate (SOFR) rates are commonly used in Tajikistan.

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Project financing matters under Turkish law are mainly governed by the Turkish Civil Code numbered 4721[9] ("**Turkish Civil Code**"), Turkish Code of Obligations numbered 6098[10] ("**TCO**") and Turkish Commercial Code numbered 6102[11] ("**TCC**"). In addition, (i) the establishment and enforcement of security interests are governed by the provisions of the Enforcement and Bankruptcy Law numbered 2004[12] ("**Enforcement and Bankruptcy Law**") and the Law numbered 6750 on Pledge over Movable Assets in Commercial Transactions[13] ("**Movable Pledge Law**"),

(ii) any borrower or security provider which is a "public company" (*halka açık anonim ortaklık*) or any project financing through capital markets instruments, are governed by the Capital Markets Law numbered 6362[14] ("**Capital Markets Law**") and its secondary legislation issued by the Capital Market Board.

The Banks and lending institutions are governed by the Banking Law numbered 5411[15] and its secondary legislation issued by the Banking Regulation and Supervision Agency (*Bankacılık Düzenleme ve Denetleme Kurulu*).

9 Published in the Official Gazette dated December 8, 2001 and numbered 24607.
10 Published in the Official Gazette dated February 4, 2011 and numbered 27836.
11 Published in the Official Gazette dated February 14, 2011 and numbered 27846.
12 Published in the Official Gazette dated June 19, 1932 and numbered 2128.
13 Published in the Official Gazette dated October 28, 2016 and numbered 29871.
14 Published in the Official Gazette dated December 30, 2012 and numbered 28513.
15 Published in the Official Gazette dated November 1, 2005 and numbered 25983 (Duplicate).

Further to the above, borrowers or security providers which operate in certain sectors are subject to sector-specific laws, such as in the energy sector, where the financing is subject to the restrictions imposed by the Law on Electricity Market numbered 6446 ("**Electricity Market Law**") and the Law on the Utilization of Renewable Energy Sources for the Purposes of Generating Electrical Energy numbered 5346 ("**Renewable Energy Law**").

Project financing in Türkiye is also subject to some international treaties, including mainly:

(i) Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention);

(ii) New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and

(iii) Bilateral investment treaties (BITs), double tax treaties (DTTs) and trade facilitation agreements (TFAs) with various jurisdictions.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The Turkish project finance market started to evolve following the long-term delegation of public infrastructure services to the private sector, as a result of economic liberalization movements in the late 1980s. Especially following the adoption of various public-private partnership ("**PPP**") models around 1990s and introduction of PPP projects in the transportation, healthcare and energy sectors after 2000s, the number of foreign investments and project financings swiftly increased in Türkiye. Accordingly, both Turkish banks and the investor companies established their internal project finance departments and started gaining experience in that field. Therefore, Türkiye may currently be considered as a developed project finance market.

Some of the significant project financings in Türkiye, which achieved financial closing over last 12 months include the followings:

- Financing of the Antalya - Alanya Motorway Project;
- Financing of the Ankara Delice Kırıkkale Motorway Project;
- Financing of the Florentia Village, first luxury designer outlet in Türkiye;
- Acquisition financing of a gas distribution company by an affiliate of Kazancı Holding A.Ş.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

The most commonly used security types in project financings in Türkiye include the followings:

- Assignment of the project receivables of the project company;
- Assignment of insurance proceeds of the project company;
- Assignment of subordinated receivables of the shareholders of the project company;
- Assignment of the receivables of the insurance companies under the reinsurance policies;
- Mortgage on immovables and usufruct rights of the project company related to the immovables;
- Movable asset pledge on the movables which are owned by the project company;
- Pledge on the project accounts of the project company;

- Pledge on the shares of the project company;
- Usufruct right establishment on the shares of the project company;
- Guarantee and/or suretyship given by the shareholders, the parent companies, or the host government.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, the shares of a company can be pledged as a security to the benefit of lenders with the execution of a "share pledge agreement". If the borrower has physical share certificates, then following the execution of the share pledge agreement, the relevant share certificates are endorsed by recording a blank or pledge endorsement and delivered to the lenders. The pledge shall also be recorded in the share ledger of the company. In limited liability companies (*limited şirket*), the share pledge shall be established with the execution of a share pledge agreement before a notary public. For public companies of which their share capital is registered with and regulated though relevant public entity (for Türkiye, Merkezi Saklama ve Veri Depolama Kuruluşu (Central Securities Depository & Trade Repository)), the relevant public entity should be notified of the share pledge and the borrowers and shareholders shall ensure that the share pledge is registered within the public records.

5. Is private sale a recognized method for the enforcement of share pledge? What are the endorsement types typically used for the share certificates?

Some of the security agreements provide the option for private sale, in which case, the pledged asset is offered to an individual or group of individuals by the pledgee, instead of an execution office conducting a public auction to the general public. However, the implementation of private sale mechanism is not expressly regulated under the Turkish law and may not be enforceable in practice.

On the other hand, with the new amendments in the Enforcement and Bankruptcy Law, published on November 30, 2021, the concept of "private sale through court approval" was introduced as another foreclosure method . According to this new mechanism, as opposed to public auction, the debtor may request the authorization of the court for the sale of a pledged asset within 7 (seven) days from the notification of valuation. If there is no valuation, then the debtor may request a valuation from the court. It is worth noting that, although these changes aimed to enable the sale of seized goods with the least cost and the highest price, this cannot be deemed as a private sale in the most classical sense, given that the person initiating the private sale process can only be the debtor.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes. It is possible to establish a security interest over future assets, rights and receivables of the borrower, as long as these are determinable to a certain level.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

The enforceability of the finance documents, judgment from the foreign

courts and/or the security provided under the finance documents may be limited by insolvency or technical insolvency of a borrower, its affiliates or its shareholders and/or commencement of composition process.

If a borrower is declared insolvent/technically insolvent or if a borrower is undergoing a composition process (even though it would typically be an event of default under the finance documents), the lenders may not be able to enforce their security interests and collect their debts by themselves.

If a borrower becomes insolvent before fully performing its secured obligations, then all the movable and immovable assets of the borrower, which can be seized, will form the bankruptcy estate (*iflas masası*). The bankruptcy estate will be liquidated, for the payment of creditors' receivables, through a sale by the execution office. The lenders will be entitled to enforce their security interest through the insolvency estate. Since the lenders as the pledgee have pre-emptive rights as the secured creditors, they will be entitled to receive their receivables from the foreclosure of the pledged assets in the first place before other creditors.

Article 376 of the TCC regulates technical insolvency, which is a balance sheet insolvency. If the borrower is technically insolvent, under certain circumstances it may be required to apply to a competent court for declaration of its bankruptcy.

Moreover, pursuant to Article 296 of the Enforcement and Bankruptcy Law, which is a mandatory provision under the Turkish law, contractual provisions stating that submission to concordat (*i.e.,* composition) is a ground for breach, acceleration or termination of a contract, are void.

In the foregoing scenarios, a competent court may, at its sole discretion, order protective measures to protect creditors until a finalized bankruptcy decision. Such protective measures may include: (i) notification to the bankrupt's debtors to the effect that they should not pay due debts directly to the debtor, but instead either to the commercial court or to the bankruptcy administration (*iflas idaresi*); (ii) notification to the land registries to prevent the transfer of the debtor's immovable property to third parties, etc.

There are also several other considerations that the finance parties should be aware of, such as the followings:

- there is a total block on creditors enforcing their security, during bankruptcy proceedings; and
- there is a mandatory statutory preference to certain categories of creditors.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The security trustee concept is not recognized under Turkish law. The security agent and parallel debt mechanisms are frequently used in project finance documents which are governed by a law other than Turkish law. However, these concepts are not expressly regulated under the legislation. Although we are aware of a District Court (*Bölge Adliye Mahkemesi*) decision recognising enforceability of security agent structure, we haven't seen any Court of Appeals (*Yargıtay*) decision acknowledging the enforceability of any of those concepts. Eventually, if there is a dispute about either of these concepts before Turkish courts, there may be questions on the applicability of both the security trustee and/or security agent and the parallel debt mechanisms. Moreover, it is worth noting that in the event of bankruptcy of the security/collateral agent, the security created under the finance

documents and the proceeds thereunder could fall under the security agent's bankruptcy estate and the lenders' remedy against the security agent or its bankruptcy estate would be the remedies available to the other contracting parties.

In order to avoid such risks, the lenders generally prefer to establish a joint creditorship mechanism, in Turkish law governed project financing projects, as such mechanism is accepted under Turkish laws. As per the provisions of the joint creditorship between the finance parties and the security agent, the security agent is authorized to claim and collect all the secured obligations in the name and account of the finance parties and commence the liquidation procedure for the security interests for the full amount; and the security agent is authorized to exercise the clearing/set-off rights on account of all the finance parties.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

The Ministry of Industry and Technology of the Republic of Türkiye provides investment incentives with various elements such as VAT exemption, customs duty exemption or tax discount, depending on the region and sector and/or the subject of the investment type.

The Priority Investment Incentive Program includes some incentives regardless of the region, for companies operating in the natural resources and the energy sectors such as mining and mineral exploration, natural gas storage, nuclear power plant investments, investments in turbine and generator for renewable energy production and blade manufacturing used in wind energy production.

The requirement for foreign currency earnings shall not be applicable for foreign currency loans extended to persons residing in Türkiye and borrowing loans in accordance with its investment incentive certificate and for loans extended for purchase of machinery and equipment (excluding the used ones, appurtenance, component, and accessories) listed in a certain customs tariff statistics position.

Additionally, according to the Stamp Tax Law numbered 488[16], all loan and security documentation in relation to the loans granted by banks, foreign credit institutions or international finance institutions are exempt from stamp tax.

Furthermore, all transactions and activities to be carried out between the administration and a capital company or a foreign company within the framework of the build-operate-transfer model, in relation to the construction, operation, and transfer of investments and services such as: bridges, tunnels, dams, irrigation, potable and utility water facilities, treatment plants, sewerage systems, communication facilities, convention centers, cultural and tourism investments, commercial buildings and facilities, sports facilities, dormitories, theme parks, electricity generation, transmission, distribution and trade, mining operations, factories and similar facilities, investments for the prevention of environmental pollution, motorways, heavily trafficked highways, railways and rail systems, etc. shall be exempt from stamp duty and fees under the Built Operate Transfer Law numbered 3996.

Finally, there is a specific provision in the Moveable Pledge Law numbered 6750, setting forth that the pledge agreements and transactions conducted before the movable pledge registry are exempt from taxes, duties, fees and valuable paper fees.

16 Published in the Official Gazette dated July 11, 1964 and numbered 11751.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

As the incentives are not granted based on the nationality of the investors, foreign investors may also benefit from the incentives. Please see further explanation on the incentive regime on Answer 9 above.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Turkish Government took various steps in the recent years, for the purposes of procuring that Turkish Lira gains its strength and enforced some additional restrictions for such purposes. The government implemented additional foreign currency borrowing restrictions, with recent amendments on the Decree numbered 32 on Protection of the Value of Turkish Currency ("**Decree numbered 32**") and the Turkish Capital Movements Circular. These amendments, in principle, prohibit legal entities from obtaining foreign currency loans from abroad or domestically if they are not generating any foreign currency income. However, there are also several exemptions for this prohibition, such as having more than USD 15 million credit balance, or the utilization of the loan for the financing of a PPP project.

Under the foreign exchange legislation, in principle all loans borrowed from abroad by a Turkish borrower must be utilized through a Turkish bank acting as an intermediary, subject to certain exceptions provided in the applicable legislation.

Additionally, pursuant to the Communiqué numbered 2008-32/34 on Decree numbered 32, the banks must notify Turkish Central Bank within 30 days on any wire transfers to abroad in relation to import/export activities and invisible transactions, with a balance equal to USD 50,000.

Furthermore, pursuant to the amendment to Article 49 of the Capital Movements Circular[17] (*Sermaye Hareketleri Genelgesi*) dated May 12, 2025, Turkish residents are not allowed to provide foreign currency or precious metal-denominated guarantees or sureties in favour of other Turkish residents. However, an exception applies to guarantees/sureties provided for foreign currency or precious metal-denominated loans obtained domestically, in which case the borrower's resident group companies or its direct shareholders may provide such guarantee/surety in favour of Turkish resident banks or financial institutions.

It should also be noted that the foreign currency loans, which the project companies obtain from abroad, are subject to payment of a fee called Resource Utilisation Support Fund ("**RUSF**") if the average term of the loan is less than 3 (three) years. In addition, TRY loans obtained by the project companies outside the Republic of Türkiye are also subject to the RUSF, if the average term of the loan is less than 1 (one) year. The applicable RUSF rate depends on the average term of such loans.

While RUSF was historically focused on loans from abroad, a significant amendment was introduced for domestic financing. Pursuant to Presidential Decree No. 10094[18], the RUSF rate applicable to commercial loans extended by banks and financing companies resident in Türkiye has been increased from 0% to 1% for foreign exchange and gold-denominated loans. Consequently, a 1% RUSF deduction now applies to the principal of such loans, subject to applicable exemptions,

17 Issued by the Central Bank of the Republic of Türkiye on May 2, 2018.

18 Published in the Official Gazette dated July 18, 2025 numbered 32959.

whereas Turkish lira-denominated loans remain subject to a 0% RUSF rate. In addition, foreign exchange loans extended domestically to factoring companies and financial leasing companies continue to be subject to a 0% RUSF rate.

12. Are there any restrictions for foreign investments in your jurisdiction?

According to the Direct Foreign Investments Law numbered 4875[19], the equal treatment principle applies to the foreign investors. Therefore, there is no extra restriction for the foreign investors based on their nationality.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is a 20% minimum equity contribution requirement for the Build-Operate-Transfer projects developed in accordance with the Built Operate Transfer Law numbered 3996[20] and the healthcare PPP projects developed in accordance with the Healthcare PPP Law numbered 6428[21]. Other than those, we are not aware of any minimum equity requirement for project financings. However, general practice in Turkish market is to maintain a maximum debt (70-80%) to equity (20-30%) ratio.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

Turkish law provides for certain filing or registration requirements for project finance documents, including, among others:

- Pledge on movable assets is perfected with the registration of the pledge agreement in the movable asset pledge registry, which is an online database named TARES. The pledge agreement must be either (i) in written form and signed before a TARES official or certified before the notary public; or (ii) in electronic form and signed with a secured electronic signature. This registration through TARES is required for (i) the perfection, monitoring and the public disclosure of pledged assets; (ii) the determination of the priority among the pledgees; and (iii) the registration of disposals of the pledged movable assets. Establishment of a pledge on motor vehicles, aircrafts, ships and mining rights requires a written agreement and registration of the pledge with the relevant authorities.
- Mortgage on immovables / usufruct rights is perfected with the execution of a mortgage deed before the land registry office and making a record of such mortgage in the relevant land registry.
- If a Turkish resident issues a guarantee/ surety in favor of foreign person residing abroad, that person should notify the Ministry of Treasury and Finance. This is a notification requirement solely for information purposes; there is no requirement to obtain any permits and/or approvals therefrom.

19 Published in the Official Gazette dated June 17, 2003 and numbered 25141.

20 Published in the Official Gazette dated June 13, 1994 and numbered 21959.

21 Published in the Official Gazette dated March 9, 2013 and numbered 28582.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

According to Article 15 of the Insurance Law No. 5684[22], (except the insurable interests listed in the said Article 15) local insurance policies which secure insurable interests of the Turkish residents in Türkiye are to be provided by local insurance companies.

There is no restriction under the Insurance Law regarding the applicable law for insurance and/or reinsurance policies. However, in line with the above-mentioned Article 15, when both parties are Turkish companies and the insured property is located in Türkiye, some argue that the choice of law to be applied to these policies should be Turkish law, since there is no foreign element in the relevant insurance policies. Although this is debatable in doctrine and Court of Appeals (*Yargıtay*) decisions, according to prevailing views, there is no need for an additional foreign element other than the choice of foreign law, which itself provides this foreign element. Therefore, according to the prevailing view, the parties should be free to determine the law applicable to insurance and/or reinsurance policies, such as English law.

As a general observation, while reinsurance policies used to be more subject to English law in the past, they are more and more subject to Turkish law over the recent years.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Insurance proceeds under the insurance and reinsurance policies can be assigned to the benefit of the lenders through the execution of an assignment of receivables agreement in accordance with the provisions of the TCO. In addition, the lenders usually expect the project company to annotate the lenders as co-insured and loss payee under the insurance policies and as loss payee under the reinsurance policies.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

From lenders' perspective, insurance is one of the key elements of a security package. The responsible party for arranging and maintaining the insurance differs in construction and operation phases of a project. During the construction phase, all risks are generally insured by the contractor with the contractor's all risk insurance policy, whereas during the operation phase, operational risks such as business interruption or physical damage to project assets are insured by the operation company or the project company itself.

Another important consideration in relation to the insurance provisions are the "reinstatement test" and "uninsurability" provisions included in some PPP agreements to increase the bankability of the projects.

The reinstatement test provision provides a mechanism whereby the proceeds of insurance policies are used to reinstate the project facilities provided that (a) such damaged part(s) of the project assets/facilities can be duly repaired and reinstated in accordance with the project documents and relevant legislation, (b) the project company has duly performed all of its obligations (including payment obligations) until that date and has the ability to repay the loan on the repayment dates in full until the final maturity date and

22 Published in the Official Gazette dated June 14, 2007 and numbered 26552.

(c) the project company receives enough insurance proceeds to make the necessary payments mentioned under limb (a) above.

The uninsurability provision increases the bankability of the projects by providing a mechanism whereby an uninsurability event is accepted as a force majeure event by the relevant administration in PPP projects. In circumstances where (i) the project company is unable to obtain, to maintain or to renew insurances (which it is required to obtain, to maintain and/or to renew under the financing documents or pursuant to the project agreements) in the international insurance market on commercially reasonable terms; (ii) the premia in respect of the insurance under limb (i) are, or have become, economically unreasonable, or (iii) the project company is unable to obtain offers on commercially reasonable terms from a number of insurance companies in respect of the insurances under limb (i).

Both concepts are commonly seen in Turkish PPP projects, such as the Build-Lease-Transfer **("BLT")** model healthcare projects and the Build-Operate-Transfer ("**BOT**") model motorway projects.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

PPP model is a permitted and preferred method for developing transportation, healthcare, and energy sectors. Under Turkish Law, there is no single PPP model or a PPP framework law which is applicable to all PPP projects operating in all industry sectors. Instead, there are various pieces of legislation which envisage different PPP models (i.e., BOT, BLT, Transfer of Operation Rights (TOR) and Build-Operate (BO)) in different industry sectors. As of the date of this questionnaire, Türkiye has invested in more than 277 PPP projects as also stated in Answer 20 below.

19. Are direct agreements between the public authorities and the lenders permissible under the local law, and if so, commonly seen in the project finance market in your jurisdiction?

Direct agreements are permissible under the Turkish law. In most of the PPP projects, the project company, the lenders and the relevant third party (which may be an administrative body in the case of implementation contract direct agreements or private company in the case of EPC/O&M direct agreements) sign direct agreements to have control over certain actions of such third parties which may impact the project, through the step-in and substitution rights.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The PPP projects in Türkiye are supported by the relevant public institutions through different types of government guarantees or debt assumption mechanism. As per the data published on the website of the Presidency of the Republic of Türkiye Presidency of Strategy and Budget[23], implementation agreements of more than 277 PPP projects, using four different PPP models, were executed in Türkiye since 1986. Among these models, the most frequently used model is Build-Operate-Transfer (BOT) model with 132 projects, followed by the Transfer of Operation Rights (TOR) model with 122 projects, the Build-Lease-Transfer (BLT) model with 18 projects and the Build-Operate (BO) model with 5 (five) projects.

23 Available at https://koi.sbb.gov.tr/, updated as of November 2022.

- ***Transportation Projects***:

In motorway projects which are structured through the BOT model, the project companies are granted with minimum traffic guarantee by the General Directorate of Highways (KGM) of Türkiye.

The details of such guarantee are included in the project agreement between the project company and the relevant public institution. In addition to the traffic guarantee, the project company executes a debt assumption agreement with the lenders and the relevant public institution (i.e., the Ministry of Treasury and Finance and/or the Ministry of Transportation and Infrastructure) for the purposes of setting forth the terms and conditions in relation to public institution's debt assumption or debt payment undertaking upon termination of the underlying project agreement.

- ***Healthcare Projects***:

In healthcare projects, the Ministry of Health, which is the relevant public institution, guarantees the availability payments and the service payments, and a termination compensation, which includes both the equity and the senior debt as well as all financing costs in all termination scenarios including project company default termination.

- ***Energy Projects***:

Renewable energy generation companies (wind power, solar power, biomass) benefit from a specific support mechanism, called as YEKDEM (Renewable Energy Sources Support Mechanism – *Yenilenebilir Enerji Kaynakları Destekleme Mekanizması*). Under the YEKDEM scheme, EPİAŞ (Energy Market Operations Co.) acts as the market operator and organizes the balance between the supply and demand in the electricity market. Any company which is an actor in the electricity market (as a generator, supplier, buyer, distributor etc.), may be registered with this mechanism, which provides comfort for (i) the sellers by means of a guaranteed market price and (ii) for the buyers by means of sufficient energy to continue their business without enfacing any energy shortages.

YEKDEM has helped the energy market become more stabilized and predictable. The payments made to the generation companies were denominated in USD until recently, nevertheless it is now denominated in Turkish Liras.

In addition to the YEKDEM mechanism, Türkiye also adopted the "Regulation on Renewable Energy Resource Area" scheme ("**YEKA Regulation**") in 2016 to further incentivize the renewable energy and to encourage the development and use of domestic manufacture of equipment required for large scale renewable energy generation facilities. While the YEKDEM scheme has encouraged local of equipment manufacturing by offering an increase in feed-in tariffs for projects that utilise local equipment, the YEKA scheme goes one step further by mandating the use of local equipment in projects that are tendered under the YEKA regulation. The scope of the local equipment support has also been expanded pursuant to the amendments to the Local Equipment Regulation dated December 13, 2025, bringing solar and wind power plants with storage units, pumped-storage hydroelectric power plants, floating solar power plants, and wave and current energy facilities within the scope of the support mechanism. The YEKA Regulation provides for two methods of site determination to be used for YEKA projects. Firstly, the General Directorate of Energy Affairs (GDEA) may propose a site to be declared as YEKA. Then, that site undergoes an Environmental Impact Assessment (EIA) process and further investigations. Accordingly, if deemed suitable, the site is declared as YEKA. Secondly, a site may be declared as

YEKA post-tender, as a result of the studies conducted by the winning bidder. In such case, the winning bidder proposes potential sites, which are then evaluated and approved by the GDEA and the Ministry of Energy and Natural Resources. In each case, once the site is declared as YEKA, the tender for usage rights is announced, including technical specifications, bidding conditions, and domestic component requirements. The developers are required to abide by the local content requirements set forth in the specifications for the facility to be able to start operation. Under the most recent YEKA tenders, the winners are paid the pre-determined unit electricity purchase price during a specific purchase period as specified in the YEKA agreement. In the latest YEKA tender concluded in December 2025, this payment has been denominated in EUR, which has contributed to the bankability of the YEKA projects while also providing stability and predictability in the energy market.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Political risks arise from events, such as governmental actions which may jeopardize the bankability or commercial viability of the projects (e.g., expropriation, nationalization or restrictions on foreign currency income or change in law which prevents the project to continue with the agreed terms or causes an increase in the project costs), or political force majeure events such as wars, riots, civil disturbances, terrorist attacks or nationwide strikes.

As such risks are mostly related to the competence of the public party and the public party is more capable of minimizing such risks rather than the private party, these risks are generally undertaken by the public party under the PPP agreements (or the direct agreements to such PPP agreement) and the private party is protected. Political risks are also sometimes named as non-natural force majeure event.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

The lenders and investors are usually protected against the risk in change in law, falling within the scope of political risk, which is more likely to be attributable to the public party, as explained under Answer 21.

23. Is force majeure specifically regulated under the local legislation?

Force majeure is not specifically regulated under the Turkish legislation (other than some sector specific regulations such as the Renewable Energy Resource Area (YEKA) Regulation[24]). However, the concept is defined within the framework of the doctrine and decisions of the Court of Appeals (*Yargıtay*). A force majeure event may be described as an event which cannot be prevented or avoided by a party exercising reasonable and prudent care. Force majeure events refer to the events which occur due to a natural cause or human act or omission beyond control on a non-exhaustive basis. The most common force majeure event examples listed in Turkish law governed project financing documents are acts of God, pandemics and epidemics, wars, legal strikes, public uprisings, declaration of mobilization and sabotage.

24. What are the general environmental and social requirements in project financings?

24 Published in the Official Gazette dated October 9, 2016 and numbered 29852.

Pursuant to Article 10 of the Environmental Law numbered 2872 (the "**Environmental Law**"), "institutions, organizations and establishments which may cause environmental issues because of their scope of activity, are under the obligation to prepare an Environmental Impact Assessment (EIA) Report or a project information file. Unless an EIA Affirmative Decision or EIA Not Required Decision is obtained, then other approval, consent, incentive, construction and use permits are not granted for the projects and investment cannot be commenced or tendered". Therefore, the project companies cannot commence construction until the EIA process is finalized. The Environmental Impact Assessment Regulation regulates the administrative and technical procedures and principles to be followed in the EIA process. The Environmental Law stipulates certain measures and penalties for the projects of which construction and/or operation phase commences before the finalization of the EIA process. Pursuant to Article 15 of the Environmental Law, the activities initiated without conducting EIA inspection or preparing the project information file, shall be suspended.

The project companies should also act in accordance with occupational health and safety provisions under Law numbered 6331 on Occupational Health and Safety (the "**Occupational Health and Safety Law**"). Preventing occupational risks, taking all kinds of measures, (such as training of its employees, monitoring whether the occupational health and safety measures are taken in the workplace), adapting health and safety measures to the changing conditions in the workplace, are some of the obligations of the employers, arising from the Occupational Health and Safety Law.

Other than these general provisions, there are secondary legislation with special requirements as well which is applicable to specific type of the project financings.

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Pursuant to the International Private and Procedural Law numbered 5718[25], parties may agree on a foreign law as the governing law, as long as the relevant agreement embodies a "foreign element" and unless the subject matter of the dispute is within the exclusive jurisdiction of the courts of Türkiye.

According to prevailing opinion in the doctrine and the Court of Appeals (*Yargıtay*), the selection of a foreign law by the parties of a contract, is deemed as a foreign element and there is no need for other (objective) foreign elements such as foreign party, foreign location, etc. However, there are exceptional court precedents suggesting the opposite too. Therefore, if there are no objective foreign elements in an agreement, but nevertheless foreign courts' jurisdiction is stated, it is still allegeable that there is foreign element based on the selection of foreign law. However, it is worth putting a qualification saying that there are exceptional court precedents on the opposite view as well.

Waiver from immunity clauses is valid under Turkish law. However, there is a certain restriction regarding the seizure of public assets under the Enforcement and Bankruptcy Law, which are considered as related with public order, and therefore, cannot be waived. In very broad terms, assets of the public entities which are

25 Published in the Official Gazette dated December 12, 2007 and numbered 26728.

allocated to the performance of a public service (as opposed to commercial assets) cannot be seized.

26. Can financing documents provide for arbitration clauses?

Yes. The validity of arbitration clauses in finance documents shall be interpreted in accordance with the governing law of the relevant finance document. If the governing law is the law of jurisdiction other than Türkiye, Turkish law shall only become applicable if there is a public policy concern.

Türkiye is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides that an arbitral award issued outside Türkiye and within the territory of a state which is a party to such convention, will be recognized and enforced by the Turkish courts, without re-examination of the merits of the case, subject to the criteria and the procedures set forth in the said Convention.

The Turkish Court of Appeals (*Yargıtay*), in its reviews of Turkish law governed arbitration clauses, previously indicated that the choice of arbitration in an agreement shall be exclusive, not an alternative. Asymmetric arbitration clauses may not be enforceable before Turkish courts.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

In order to reduce the nation's greenhouse gas emissions, Türkiye is highly focused on increasing the renewable energy supply. The Ministry of Energy and Natural Resources is making its preparations before launching offshore-wind power plants in the next years. The renewables are expected to supply almost a quarter of the nation's energy by 2035 according to the Government's expectation. In particular, sustainability and other environmental and social concerns are expected to be the driving factors in the project financing over the coming years in Türkiye. Solar and wind power plant projects with electricity storage units, as well as standalone electricity storage facilities, remain popular in Türkiye. As of February 2026, approximately 34,000 MW of preliminary licences have been granted for solar and wind power plants with storage units. Notably, Türkiye's first licensed grid-connected solar power plant with electricity storage unit has recently been commissioned, marking a significant milestone for the sector. In the project finance landscape, small modular reactors (SMRs) also remain a prominent topic within the nuclear energy sector.

In addition, for the first time this year, a floating solar power plant was included within the scope of a YEKA tender. In parallel, the Regulation on the Procedures and Principles Regarding the Use and Leasing of Water Surfaces in the Installation of Floating Solar Power Plants[26] has entered into force. These developments are expected to pave the way for an increasing number of floating solar power plant projects in the coming period, as the regulatory framework governing the use of water surfaces has now been formally clarified.

28. Are any significant development or change expected in the near future in the project finance market?

There are ongoing discussions in relation to the alternative project financing sources, such as the project finance funds introduced under the Capital Markets Law and the Communiqué on Project Finance

26 Published in the Official Gazette dated December 10, 2025, numbered 33103.

Funds and Bonds issued by the Capital Markets Board, in order to differentiate the available funding sources for project financings in Türkiye. One of the most prominent trends in project finance is the increasing prevalence of private credit structures, reflecting growing demand for flexible and tailored capital solutions.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

SOFR has been considered as the main alternative reference rate during the LIBOR transition period.

UKRAINE

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***Disclaimer**: As a result of martial law currently in force in Ukraine (which is likely to be extended if the hostilities from Russia continue) and force majeure events being triggered in the jurisdiction, activity with Ukrainian clients may be subject to restrictions which are not addressed in these guidelines e.g., the National Bank of Ukraine (NBU) has significantly limited cross-border FX payments (repayment of cross-border loans, performance of guaranty (suretyship) obligations, dividends repatriation and acceleration of loans are not permitted, etc.).*

A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

Ukraine has a complex legal system, which includes an extensive range of laws and regulations governing investment activity. In addition to the general legal framework, the key piece of legislation governing foreign investment is the Law of Ukraine "On the Foreign Investment Regime," which regulates the conditions for investment, the rights and obligations of foreign investors, and the procedure for investing in Ukraine.

It is important to note that there are other laws and regulations that apply to specific investment projects. For example, environmental and construction laws may be relevant to certain projects.

Apart from the domestic legal framework, Ukraine has also signed various international treaties and agreements that play a significant role in project financing in Ukraine. Ukraine has ratified the Convention on the Procedure for the Resolution of Investment Disputes between States and Foreign Persons in 2000, which is commonly known as the ICSID Convention. This Convention provides for the settlement of investment disputes between investors

and states through arbitration. It offers a neutral and transparent mechanism for resolving disputes that arise between foreign investors and the state of Ukraine.

Moreover, Ukraine has concluded over 70 bilateral investment agreements with other countries, which provide favorable conditions for foreign investors and govern the investment process between Ukraine and the signatory state. These agreements typically provide for the protection of investors' rights, including the protection of investments from expropriation, fair and equitable treatment of investors, and the free transfer of funds. The agreements also contain provisions for the resolution of investment disputes through arbitration.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in Ukraine is relatively undeveloped but it has significantly grown and evolved over recent years. The full-scale war has slowed down the pace of project finance in Ukraine in 2022 and refocused the public and private sectors on supporting resilience of the economy during the war time crisis as well as rebuilding efforts. Exchange and capital controls which remain quite restrictive make it challenging for the parties to implement traditional project finance structures.

Over the recent years the most notable project financings implemented in Ukraine include[27]:

- EUR 67 million finance to DTEK for the construction of one of the largest energy storage facilities in Eastern Europe;
- EUR 157 million from IFC to OKKO Group, project finance debt to a private wind power project that aims to boost Ukraine's energy security;
- EUR 36.4 million loan from the EBRD to Naftogaz to modernize its drilling equipment;
- EUR 900 million unfunded portfolio risk-sharing facilities from EBRD to PrivatBank and Ukrgasbank;
- EUR 372 million non-recourse financing for the construction of the 250 MW Syvash wind farm near the Azov Sea;
- USD 150 million limited recourse financing for the constructions of the first 98 MW phase and second 402 MW phase of the 500 MW wind farm in Zaporizhia region;
- EUR 138 million project relating to repair of the Kyiv-Chop highway (financed by EBRD);
- EUR 1150 million project relating to improvement of the transport and operational condition of roads on the approaches to the city of Kyiv (financed by EBRD and EIB);
- EUR 182 million project relating to improvement a road that goes from Lviv in western Ukraine to Rava-Ruska on the border with Poland (within the European Solidarity Lanes project);
- EUR 9,6 million project relating to expansion of a rail terminal near the Polish border and building a grain transshipments complex by Agrosem;
- EUR 300 million project to Ukrainian Railways to finance the acquisition of electric locomotives;.
- -EUR 267 million project to relating to emergency repairs on sections of the M-06 road heading west from Kyiv

27 https://mtu.gov.ua/content/infrastrukturni-proekti-z-ebrr-ta-eib.html

towards the Slovak and Hungarian borders;

- -EUR 40 million finance package to Ukrainian pet food producer Kormotech to expand its export operations and geographical diversification by building a second pet food plant in Lithuania;
- -EUR 70 million finance to Nova Post, a leading private postal and courier operator in Ukraine, to finance its investment programme for 2024 and expand its delivery services;.
- -USD 10 million finance in the construction of a plant for the production of industrial power equipment in Bilohorodka (Kyiv region);
- EUR 110 million finance to Vitagro for the development of biomethane plant in Khmelnytsky region;
- EUR 12.8 million from the Export and Investment Fund of Denmark to Nibulon for the purchase of 74 units of modern agricultural machinery.

Ukraine is also actively working with its foreign partners to ensure that agreements on assistance reflect the most current needs, regularly holding international conventions and forums with its partners. Recently, the following agreements have been reached both in the public and private sectors[28]:

- The European Union has launched an investment framework for Ukraine, signing the first guarantee agreements worth EUR 1.89 billion to support economic and infrastructure development, demonstrating a strong commitment to bolstering Ukraine's recovery and growth;
- The World Bank and the Ukrainian government have launched a joint program, PREPARE Ukraine, to advance renewable energy development, which will involve scaling up projects and attracting private companies. In July 2025 the Government of Ukraine signed an agreement with the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) to launch a five-year USD 200 million program;
- The European Investment Bank (EIB) is launching a credit program with a budget of over EUR 1 billion to support small and medium-sized enterprises (SMEs) in Ukraine, aiming to enhance their resilience and recovery amid the ongoing war;
- Ukraine has secured EUR 190 million in guarantees and EUR 10 million in investment grants through agreements with the EIB to expand financing for small and medium-sized enterprises and support companies affected by the war;
- Agreements with the International Finance Corporation will see EUR 350 million in guarantees and EUR 17.5 million in technical assistance for Ukraine, focusing on accelerating investments in renewable energy, including wind projects, energy storage, and various industrial sectors;
- Ukraine has obtained EUR 140 million in guarantees, EUR 30 million in investment grants, and EUR 7 million in technical assistance from the EBRD to enhance financing access and invest in the production capacities of small and medium-sized enterprises;
- The EBRD has provided Ukraine with EUR 150 million in guarantees and EUR 7.5 million in technical assistance

28 https://www.kmu.gov.ua/news/yes-pidpysav-pershi-harantiini-uhody-na-14-mlrd-ievro-u-ramkakh-investytsiinoho-komponenta-prohramy-ukraine-facility-iuliia-svyrydenko

to remove barriers and accelerate the transition of the energy sector to net-zero emissions;

- Ukraine has secured EUR 150 million in guarantees, EUR 25 million in investment grants, and EUR 7.5 million in technical assistance from the EBRD to support urgent needs and reconstruction efforts across various sectors;
- Agreements with KfW will provide Ukraine with EUR 45 million in first-loss capital, EUR 7 million in investment grants, and EUR 3 million in technical assistance to expand financing for small and medium-sized enterprises, green economy businesses, and those adapting to energy efficiency and environmental transitions. (Promoting Green Lending via the Green for Growth Fund);
- KfW agreements will support Ukraine with EUR 45 million in first-loss capital, EUR 9 million in investment grants, and EUR 1 million in technical assistance to aid the recovery and relocation of war-affected companies and businesses in deoccupied and frontline regions. (EU4Business, Lending to Micro and Small Enterprises via the EFSE Fund);
- Ukraine will receive EUR 100 million in investment grants from KfW to enhance the resilience of power transmission by repairing and reconstructing damaged energy infrastructure and restoring electricity supply to critical areas. (Reconstruction and Rehabilitation of Electricity Transmission Infrastructure Programme);
- Agreements with Bank Gospodarstwa Krajowego will provide Ukraine with EUR 20 million in guarantees to expand financing for micro, small, and medium-sized enterprises affected by the war, including those in deoccupied and frontline regions. (Support for Ukrainian MSMEs Programme);
- The European Investment Bank will offer Ukraine EUR 10 million in technical assistance to build capacity for large infrastructure projects and provide advisory services for prioritizing investments in critical recovery sectors. (Immediate Ukraine Extension of JASPERS (Joint Assistance to Support Projects in European Regions));
- Ukraine has obtained EUR 50 million in guarantees from the EBRD and an additional EUR 60 million from other donors to address risk coverage, initially focusing on military insurance for movable assets like internal cargo transport;
- Ukrzaliznytsia has formalized its agreement with the European Bank for Reconstruction and Development (EBRD) for a EUR 300 million loan to purchase 80 modern freight electric locomotives, aiming to enhance the efficiency of freight transportation;
- Naftogaz Group has secured grant funding for the development of a decarbonization strategy from the European Investment Bank[29];
- EBRD has signed a Memorandum of Understanding in 2023 to provide EUR 200 mln of new financing for Ukrhydroenergo, the national hydropower entity[30].
- Japan allocated USD 188 million in grants under a technology transfer project to support Ukrainian businesses, aiming to enhance technological capabilities and drive economic growth in the country;

29 https://www.naftogaz.com/en/news/technical-assistance-grant-decarbonization-strategy

30 https://www.ebrd.com/work-with-us/projects/psd/54753.html

- The EBRD and IFC invested USD 435 million in the merged data group Volya and Lifecell, underscoring the significance of this funding in advancing crucial infrastructure and operational improvements that will boost their competitiveness and service quality;
- Ukraine's Ministry of Economy, DFC, and Citibank have signed a memorandum to advance the mortgage housing market in Ukraine by promoting affordable housing and strategic investments.
- A EUR160 million loan to Ukrainian state-owned oil and gas company Ukrnafta to finance 250 MW of small-scale gas-fired distributed power generation capacity around the country and boost the power sector's resilience in the face of heavy Russian attacks.
- A EUR 100 million financial package to agribusiness products producer MHP with British International Investment and Sweden's Swedfund, of which the EBRD is lending €40 million.
- A EUR 50 million loan to Ukrainian postal and courier operator Nova Post to finance its 2025-26 investment plans and continued growth.
- A USD 25 million loan to Ukrainian food retailer Varus to finance its sustainable, energy-efficient expansion.
- A EUR 6.5 million equity investment in FlyerOne Ventures Fund V – a venture capital fund that will invest in early-stage tech companies from Ukraine and across central and eastern Europe. Together with the International Finance Corporation, the EBRD plans to further develop investable private equity initiatives with Ukrainian fund managers to mobilise capital.
- To unlock new renewable energy capacity in Ukraine, the EBRD and development partners are creating a mechanism that will incentivise investments in renewable energy by stabilising revenues for developers. Named the Ukraine Renewable Energy Risk Mitigation Mechanism, it is expected to support up to 1.5 GW of new renewable energy projects, potentially mobilising EUR 2 billion in investments. The Bank also intends to lend EUR 60 million to Galnaftogaz to develop wind energy projects, having signed a mandate letter with the developer at the URC.
- To advance the development of capital markets, the EBRD signed a memorandum of understanding (MoU) with the National Bank of Ukraine, Ukraine's Ministry of Economy and Ministry of Finance, and the National Securities and Stock Market Commission supporting the creation of a more effective, vertically integrated capital market infrastructure.
- European Commission & EIB signed a EUR 2 billion guarantee agreement under the EU's Ukraine Facility to support reconstruction and resilience projects (energy, transport, water, housing, essential services).

International finance institutions remain the largest institutional investors in Ukrainian projects: for instance, in 2025, the total commitments of European Bank for Reconstruction and Development deployed in wartime Ukraine, amounted EUR 76 billion[31].

It is important to note that the war and high political violence risk remain to be the biggest obstacle for the international investors and financial institutions to finance the projects in Ukraine, even if

31 https://www.ebrd.com/home/news-and-events/news/2025/ebrdsupport-for-wartime-ukraine-hits7-6-billion-as-bank-commits-new-funding-at-recovery-conference.html

the projects are located in the Western part of Ukraine and remain untouched by the war. Political risk insurance ("PRI") and political violence insurance ("PVI") coverage have been available to the limited extent only due to inability of the international reinsurers to absorb the excessive political risks currently present at the Ukrainian market. While the regulator and the key stakeholders are planning a reform of this instrument to attract more international financing, the main PRI/PVI coverage providers remain Multilateral Investment Guarantee Agency ("MIGA") and DFC. The German business may benefit from the investment guarantees of the German Federal Government providing the protection of new investments made in Ukraine against war risks.

In April 2024, the Cabinet of Ministers of Ukraine expanded the capabilities of Export Credit Agency ("**ECA**") by approving the list of war and political risks that ECA can insure, as well as the relevant terms of their insurance (reinsurance). In particular, war risks include the following insurance risks that may arise on the territory of Ukraine:

- military conflict, including war or armed conflict, armed aggression, hostilities, mass riots;
- violent change or overthrow of the constitutional order or seizure of state power;
- acts of terrorism and/or sabotage;
- occupation, annexation.

Political risks include:

- compulsory alienation of property/ seizure of property of a business entity/ private entrepreneur (deprivation of property rights) by the state authorities of Ukraine;
- unreasonable (illegal) revocation of a license by a market regulator or forced termination (suspension) of a business entity's activities by state authorities, as established by a court decision that has entered into force, unless such termination is caused by the business entity's failure to comply with the requirements of the law;
- failure or refusal of the state to fulfill its obligations under the legislation, strategic or program documents approved in accordance with the procedure established by law, and/or an investment agreement, provided that the business entity has the right to demand fulfillment of such obligations;
- imposition by the state of a ban (payment embargo, moratorium) on payments;
- currency inconvertability or prohibition of transfer abroad by a business entity, except as provided by law.
- Other export credit agencies (for example, Bpifrance, UK Export Finance, KUKE etc.) similarly offer the coverage against political risks in Ukraine for their national businesses.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

In project finance deals in Ukraine, lenders typically require security over the folowing types of assets:

- **Real Estate:** Quite often project financing deals relate to construction or renovation of real estate objects which may include energy and energy infrastructure, commercial and residential buildings, logistical objects, etc. In relation to such objects lenders would typically require a mortgage over the existing immovable property, mortgage over the unfinished construction and/or future assets upon their completion and commissioning. Land plots owned by the obligors may also be

subject to mortgage (including but not limited to rights of use, servitudes, etc). Unlike most of the other types of security interests, mortgages require notarization and state registration.

- **Shares:** In project finance transactions lenders typically require collateral over the shares in the relevant project and/or holding companies. This is being done due to the fact that the project companies might not have sufficient assets to cover the indebtedness in case of enforcement. In such cases it is recommended to carry out a preliminary due diligence of the target to ensure clear title to collateral and possibility to carry out judicial and extra-judicial enforcement.

- **Fixed assets and other movable property:** A pledge may be concluded in respect of various types of fixed and other moveable assets, including commodities (Pledges over certain assets require mandatory notarisation (e.g., vehicles).

- **Contract proceeds and receivables:** Pledge is usually enforced though assignment of the obligor's rights and interests (often, in project agreements) in favour of the lenders which would normally be conditional on occurrence of a default. This type of pledge is often used in respect of offtake contracts, especially in industries such as mining, energy (including renewables), and agriculture. Note that assignment is different from a novation which under Ukrainian laws is a substitution of an existing obligation with a new obligation between the same parties. Another method of assigning the benefit of an offtake agreement to the creditor is conclusion of direct agreements whereby the offtaker undertakes to make payments and perform its obligations directly to the creditor. However, it must be noted that in certain cases direct agreements, although lawful and valid, may be hardly enforceable (for example, where state-owned enterprises are involved, like e.g., the Guaranteed Buyer who is responsible for purchasing electricity from producers of electricity from renewable energy sources (RES) under the feed-in tariff (FiT) scheme).

- **Bank accounts:** Being categorically one of the types of pledge over movable assets, bank accounts pledge agreements have specific features deriving from the peculiarities of functioning and legal status of bank accounts in Ukraine. Current and savings accounts are subject to different legal regimes and regulations, leading to distinct enforcement methods. Also, as a matter of law, the obligor's servicing bank must be notified about the pledge in order for it to be enforceable.

Suretyship and guarantees are another type of security under Ukrainian laws, and the scope of rights, obligations and liability thereunder varies by virtue of law.

Suretyship is a secondary (ancillary) obligation and does not survive termination or cancellation of a principal obligation.

A guarantee, as opposed to a suretyship, is considered as fully autonomous bond and it can be issued solely by financial institutions such as banks and credit unions. Guarantee is usually independent of the secured obligation and can survive its termination or cancellation.

In Ukraine, a non-recourse financing is very rare compared to the limited recourse deals where the sponsor issues the guarantee with respect to a portion of financing extended to the project company or undertakes to provide necessary financial support for the project company in case it is unable to meet its payment obligations.

It is worth noting that the security types used in project financings in Ukraine may vary depending on the nature and complexity of the project, as well as the preferences of the lenders and

borrowers involved. As a general note, extensive security coverage requirements applicable to domestic banks in Ukraine are considered to be one of the reasons why local banks are not very active in project financings. Strict provisioning requirements make it commercially unviable for the local banks to act as lenders, although sometimes they might act as local security agents to the foreign lenders.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, the shares of a company can be pledged as security to the benefit of lenders. The procedure for establishing and perfecting a share pledge is regulated by the Civil Code of Ukraine, the Law of Ukraine "On Pledges", the Law of Ukraine "On capital markets and organized commodity markets" and the Law of Ukraine "On protection of creditors' rights and registration of encumbrances". The most common types of shares are the stock in the joint stock companies and the shares in limited liability companies.

A pledge of shares must be made in writing and signed by the parties. The pledge agreement must include a description of the pledged shares, the main terms of the principal obligation, and usually contains the rights and obligations of the parties.

Notarization and state registration of a share pledge is not mandatory, but in many cases are advisable, particularly, to ensure the first priority of the pledge over security interests or other creditors. Note that if the securities (stock) in a joint stock company are subject to pledge such agreement shall usually involve a depositary institution and perfection (as well as enforcement) would include making respective entries in the depository system.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Under Ukrainian law, private sale is a recognized method for the enforcement of a share pledge. If the borrower defaults on the principal obligation, the lender may enforce the share pledge by selling the pledged shares privately or through a public auction. The specific method for enforcing a share pledge will depend on the terms of the pledge agreement, the type of collateral and the lender's preference.

Note that in Ukraine stock in a joint stock company exists in electronic form only. Share certificates in a paper form are not usually issued and are rarely required in security transactions. Title to stock is evidenced by a statement from the depository system and a depository institution plays an important role in the process of enforcement of such security interests.

It should be noted that in practice, the enforcement of a share pledge can be a complex process, especially if there are disputes or litigation involved. It is recommended that parties seek legal advice and follow the appropriate procedures for the enforcement of a share pledge.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, security interest can be established over future assets, rights, and receivables of the borrower in Ukraine. The Civil Code of Ukraine provides for the possibility of creating security over future assets, including future property rights and claims (receivables).

In order to create a pledge over future assets, it is necessary to specify the subject matter of the pledge in the pledge agreement in sufficient detail to ensure its identification in the future. Note that no full equivalent of an English law 'debenture' is available in Ukraine, meaning that each collateral must be identified in every security instrument quite thoroughly. It is also possible to secure the claims which the lender will hold in the future.

In general, the creation of security over future assets and receivables requires careful drafting of the pledge agreement to ensure that the security interest is enforceable and that the pledged assets or receivables can be identified in the future.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

That would depend on the type of security interest that has been established.

If the security interest is a mortgage or a pledge, the lender can either take possession of the collateral or sell it in accordance with the procedures established by the agreement and the law. The law provides for specific procedures and timelines for taking possession and sale of the pledged assets. Note that during insolvency proceedings the claims of a creditor secured by pledge or mortgage can only be satisfied out of the value of respective collateral. Once the insolvency proceedings commence the collateral can only be sold within the supervision of respective court dealing with the case.

In all other cases, for example when security interest is constituted pursuant to a suretyship or guarantee, respective creditor's claims will be considered together with all other (unsecured) creditors and, in case of their satisfaction, such creditor will receive a payment directly from the debtor.

If the borrower enters into a composition process, the lender may be required to participate in the process and negotiate with other creditors to reach a compromise agreement. If a compromise agreement is reached, the lender will receive a share of the proceeds from the sale of the borrower's assets. If a compromise agreement cannot be reached, the lender may be entitled to file a claim in the bankruptcy proceedings.

In any case, the lender must follow the procedures established by the law to enforce its security interest.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The Civil Code of Ukraine does not provide for a distinct concept of a security trustee, however in the recent years steps have been taken to approximate Ukrainian legislation to the commonly spread legal practices in this regard. The concept of 'trust ownership' has been introduced, however, court precedents enforcing it remains quite scarce.

A parallel debt structure can be used as an alternative mechanism to a security trustee. In this structure, the borrower creates a parallel debt to the lenders that is equal to the amount of the debt owed to them. The parallel debt is secured by the same collateral as the original debt and is treated as a separate debt owed to the lenders. This structure allows the lenders to take enforcement actions on their own behalf without the need for a security trustee.

More often in project financings in Ukraine the lenders act as co-pledgees within the same mortgage or pledge agreement; further relations between them in case of

enforcement should then be governed by a separate intercreditor agreement (usually governed by foreign law).

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Ukraine offers various incentives and exemptions to support investment projects with significant investments. Some of these incentives are provided under the Law of Ukraine "On State Support for Investment Projects with Significant Investments in Ukraine" and related regulations. Investment projects that meet the criteria established by the Law can benefit from the following incentives:

- Stable legislation guarantees: Investment projects can receive state guarantees on stable legislation for 15 years and compensation for losses caused by state bodies.
- State support: Investment projects can receive state support of up to 30% of the amount of significant investments in the form of exemptions and other benefits.
- Tax incentives: Investment projects can benefit from a corporate income tax exemption for 5 (five) years from the moment of filing the application (except for projects in the sphere of extraction for further processing and/or enrichment of minerals). They can also be exempted from land tax and receive reduced rates of rent payments for land of state and communal property.
- Customs and Value Added Tax ("**VAT**") exemptions: Investment projects can benefit from exemptions from customs duties and VAT payments for the import of new equipment and components, subject to certain conditions.
- Infrastructure support: Investment projects can benefit from the construction of related infrastructure (such as highways, communication lines, and utilities) necessary for the realization of the project.
- Land use rights: Investment projects can benefit from a simplified procedure for granting the right to use (lease) of land plots of state or communal property with the pre-emptive right for acquisition of such a land plot to the property after the expiration of a special investment agreement.
- Network connection assistance: If an investment project requires connection to the networks of heat, gas, water and electricity supply, utilities, etc., the state may assist the investor with significant investments in the process of such connection within the framework of a special investment agreement.

It is important to note that the availability and applicability of these incentives and exemptions may vary depending on the specific project and circumstances, and investors should consult with legal and financial advisors to determine the most advantageous financing structure and incentives for their project.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Please refer to the answer to question 9.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

Legal entities that are residents of Ukraine may receive loans from non-residents in foreign currency, including revolving financial assistance, under contracts. Any operations under cross-border loans (including disbursements and repayments)

are subject to initial notification of the loan agreement to the National Bank of Ukraine though the local bank, and notification about subsequent major amendments. Each loan agreement should be serviced through authorized bank, which is indicated in the extract from the National Bank of Ukraine's automated information system "Loan agreements with non-residents."

In terms of shareholder loans, Ukrainian law allows for the provision of such loans by foreign shareholders, subject to certain restrictions. For example, the amount of the loan cannot exceed the amount of the shareholder's equity investment in the borrower, and the loan must be provided on an arm's length basis.

Cross-border loans are also subject to some other restrictions, for example, the interest rate thereunder shall align with the market rates. As at July 2024 the following types of loan operations are permitted:

- payments and transfers for the Ukrainian bank's own account (but certain operations were capped, such as payments under letter of credit / guarantee / counter-guarantee dated 24 February 2022 and after, long and short FX positions etc.) and for the account of foreign subsidiaries and branches of the companies owned by Ukrainian companies;
- obligations to international financial institutions or guaranteed by the State of Ukraine;
- payment of fees to foreign banks in connection with arranging sovereign or sub-sovereign loans within the framework of inter-governmental agreements;
- transfers by resident borrowers abroad of funds to fulfil obligations under cross-border credits and loans, which are:
  - provided with the participation of international finance organisations ("IFO") (by way of a guarantee or suretyship);
  - provided with the participation (by way of lending, insurance, guarantee or suretyship) of a foreign export credit agency or a foreign state through an institution authorized by it or through a foreign legal entity which has among its participants a foreign state or a foreign bank (provided that the foreign state is a participant (shareholder) of such bank) ("qualified foreign loans");
- in all other cases transfers by resident borrowers abroad of funds to fulfil obligations under cross-border credits and loans are subject to the certain restrictions inter alia:
  - a loan has been credited to the borrower's bank account at a Ukrainian bank after June 20, 2023;
  - interest payments (including fees, charges and other payables) shall not exceed 12% per annum;
  - for loans and borrowings with a maturity of more than one (1) year, the principal amount may be repaid only from the borrower's own foreign currency proceeds during the first year after the first drawdown, and thereafter - with the purchased foreign currency.

During 2025-2026 the regulator has amended regulations in order to implement several new refinancing options for older cross border debt, directly linked to fresh foreign funding, namely:

- Investment limit – resident legal entities may to conduct certain foreign exchange transactions in favour of non-residents within the so-called investment limit, i.e. to the extent of funds invested in the resident's charter

capital by foreign investors in Ukraine from abroad (starting from 12 May 2025).

- Loan limit - from 14 January 2026 legacy loans (i.e., loans received before 20 June 2023, or "old" loans) may be repaid in an extended volume - up to the amount of new funds which are provided as loans by foreign lenders. The amount of the loan limit equals the volume of foreign currency funds received under a loan from abroad, and credited to the resident borrower's account with a Ukrainian bank after 1 January 2026. This is a new mechanism operating in parallel with the investment limit, but without the requirement to inject funds into the authorized capital of a resident company. Under the loan limit the residents may also carry out certain types of transactions related to settlements for the import of goods, refunds to non resident buyers of advance payments, financing of own foreign divisions/representative offices above the and repatriation of dividends.

Since July 2024 the regulator has permitted payments under letters of credit, guarantees and counter-guarantees issued / confirmed by Ukrainian banks starting from 24 February 2022 to the benefit of foreign lenders as security for the performance of payment obligations by local borrowers under the qualified foreign loans or suretyship agreements. Transfer of funds by local entities to foreign lenders / creditors under guarantees or suretyships issued as security for the payment obligations of local borrowers under qualified foreign loans has also been permitted. In addition, the residents may also make payments under the crecourserecourse claims - compensation of amounts paid by foreign guarantors or insurers under the guarantees or insurances issued to the benefit of foreign or local lenders as security for the payment obligations of local borrowers under qualified foreign loans.

Additionally, on 13 January 2026 the NBU has clarified the settlement deadlines for exports, in particular, settlement deadline requirements do not longer apply to goods exported under a foreign economic agreement where the right of claim has been transferred to Export Credit Agency PrJSC (the ECA) in the amount of insurance indemnity paid by the ECA to the exporter. Also, the NBU has permitted domestic sellers and manufacturers to transfer foreign currency to individuals' accounts with foreign banks to refund for returned or undelivered goods, subject to several conditions.

Overall, while it is possible to borrow bank loans and shareholder loans from abroad and/or in a foreign currency in Ukraine, there are restrictions and requirements that must be followed in order to do so.

12. Are there any restrictions for foreign investments in your jurisdiction?

Foreign investments in Ukraine are generally allowed and welcome. However, there are certain restrictions and limitations that apply to certain types of activities and industries, including strategic industries, such as defense, aerospace, and telecommunications.

On top of that, investments in objects whose creation and use do not meet the requirements of sanitary and hygienic, radiation, environmental, architectural and other standards established by the legislation of Ukraine, as well as violates the rights and interests of citizens, legal entities, and the state that is protected by law, are prohibited

In addition, foreign investors may face certain restrictions related to land ownership, natural resources, and other

areas. For example, foreign natural persons are generally not allowed to acquire agricultural land in Ukraine, and foreign legal entities are required to obtain a special permit to acquire ownership or use rights over agricultural land. However, the legislation on land ownership evolves and these restrictions are expected to be gradually relaxed. For instance, starting from January 1, 2024 Ukrainian legal entities have the right to acquire up to 10,000 ha of agricultural land into ownership.

Furthermore, foreign investors may face certain restrictions related to the registration and operation of their businesses in Ukraine, including licensing requirements and limitations on foreign ownership in certain sectors. It is therefore advisable for foreign investors to seek legal advice before investing in Ukraine.

After the full-scale Russian invasion in Ukraine in 2022, investments from Russia and Belarus are no longer tolerated. As a result, any investment proposals from Russian or Belarusian companies will be rejected by the Ukrainian authorities. This policy reflects the Ukrainian government's commitment to defend its sovereignty and territorial integrity, and to promote economic ties with countries that respect Ukraine's independence and territorial integrity.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

There is no specific minimum equity requirement for project financings in Ukraine under the legislation. However, in practice, lenders may require a certain level of equity contribution from the borrower as a condition for providing financing. This equity contribution can vary depending on the size and risk profile of the project, as well as the overall financial strength of the borrower. The equity contribution is usually determined based on the project's capital expenditure, and may range from 30% to 50% of the total project cost. It is also common for lenders to require that the equity contribution be provided by the sponsor or a group of sponsors, rather than the borrower itself.

As to the minimum amount of the authorized capital, for joint-stock companies it is 200 amounts of the minimum wage (based on the amount of the minimum wage effective on the day of creation (registration) of the joint-stock company), i.e., approximately USD 33,700 as at the beginning of 2026. No limit applies to authorized capital of other types of companies, and their capital can be as high as 1 Hryvnia.

Payment of dividends offshore that accrued after 1 January 2023 are allowed, provided transfers are direct and use the depositary system of Ukraine. The amount of dividends to be paid per calendar month cannot exceed EUR 1,000,000 or equivalent in other currency. Transferring hard currency to a foreign shareholder's overseas bank account is not allowed.

Starting from July 2024 the regulator has permitted payment of dividends to foreign shareholder / participant with the purpose of making further payments on international debt securities admitted to trading on foreign stock exchanges (Eurobonds) subject to certain conditions.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In Ukraine, there are certain registration and filing requirements that must be met in order for project finance documents to be valid and enforceable. These requirements may vary depending on the type of

document and the underlying asset or transaction.

Unless otherwise agreed by the parties, pledge agreements become effective upon execution by the parties (or notarisation, if agreed by the parties or required by law). Note, however, that pledges over certain assets require mandatory notarisation (e.g., vehicles). Although perfection of pledges is not strictly required by law, it is necessary in order for the security interest to be valid and effective against third parties and rank in priority to the claims of other creditors.

Mortgages are subject to mandatory registration at the State Register of Title to Immovable Property. Encumbrances which are subject to state registration (as well as the title to real estate itself) shall be valid from the time of such registration. In practice, mortgages are registered simultaneously with notarisation of the underlying mortgage agreement (usually on the day of signing).

In addition, the registration of the security interest should be accompanied by payment of a state fee. The amount of the fee depends on the value of the collateral, and the fee must be paid within 10 (ten) days of registration.

Other project finance documents, such as loan agreements, joint venture agreements or shareholder agreements, do not need to be registered or filed with any government authority. However, parties may choose to have these agreements notarized in order to provide greater certainty and evidentiary weight.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

In general, local insurance policies must comply with the laws and regulations of the jurisdiction where they are issued.

In Ukraine, the statute provides that foreign law may be chosen to govern insurance contracts if the contract has a foreign element, such as the nationality or residence of one of the parties, the location of the subject matter insured, or the place of performance. However, the choice of foreign law cannot conflict with mandatory provisions of Ukrainian law, and local regulatory requirements for insurance policies must still be complied with.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Assuming that the policy is issued by a local insurer (and reinsured by a foreign reinsurance company), there are no restrictions from insurance legislation standpoint for a local insurer to transfer an insurance indemnity in favour of a foreign designated beneficiary, provided that all supporting documents are presented to the insurer and the bank processing the payment. Depending on the type of policy and loss occurred the required documents might consist of: the insurance policy, certificates from state bodies confirming natural hazards, a loss adjuster's report, the insurer's decision to pay under the policy, the relevant lender's bank account details, etc. Since, the currency control rules applicable in Ukraine often prevent an insurer from transferring indemnification abroad, the parties to reinsurance policies may opt for such indemnification to be paid outside of Ukraine.

If the policy is not issued by a local insurer and reinsured by a foreign reinsurance company, the payment procedure shall be regulated by the FX rules applicable in the home jurisdiction of the insurer.

Note that, although security assignments are not expressly prohibited, local insurers are usually reluctant to enter into such agreements in respect of the reinsurance

claim due to the fact that it is not clear that such security assignments are permitted under Ukrainian law.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

Currency restrictions: following enaction of the martial law in Ukraine, Ukrainian entities and individuals are limited in their ability to purchase foreign currency and make cross-border payments outside of Ukraine. Ukrainian insurers are allowed, subject to applicable terms and limitations, to carry out payment of insurance premium under most reinsurance contracts concluded with non-resident reinsurers. Payment of insurance indemnification abroad may be protracted. Please seek a specific advice.

As a matter of law, foreign licensed insurance companies are allowed to perform insurance activities in Ukraine, only for (i) insuring of: aircrafts, watercrafts (seagoing vessels, inland navigation vessels and other self-propelled or non-self-propelled floating structures), transported property (including cargo and baggage), liability arising from the use of the aircraft or watercraft (including carrier liability); (ii) reinsurance. The following requirements apply to foreign insurers carrying out activities in Ukraine:

(a) a country of incorporation of a foreign entity:

(i) has not been subject to any warnings from international bodies regarding its compliance with international standards in the area of preventing and combating money laundering, terrorist financing and proliferation of weapons of mass destruction. For instance, is not added to the FATF's list of a high-risk jurisdictions which are subject to a Call for Action and Increased Monitoring. Those lists are often externally referred to as the "black list", and "grey list" respectively;

(ii) is not recognized as an offshore jurisdiction pursuant to the laws of Ukraine;

(iii) does not commit an act of armed aggression against Ukraine; and

(iv) has adopted necessary legislation to regulate reinsurance and insurance activities;

(b) there is a treaty on preventing tax evasion and avoiding double taxation between Ukraine and a country where the foreign reinsurer is incorporated; and

(c) a foreign entity holds all necessary licenses, permits and approvals and duly authorized to conduct reinsurance activity in the country of its incorporation.

Foreign licensed insurance companies may operate in Ukraine that fulfil all of the above requirements, and are otherwise in compliance with the laws of Ukraine, may operate in Ukraine (within the said types of insurance activities) without opening a representative office in the territory of Ukraine, without obtaining a license from the regulator to carry out insurance activities, and regardless of the territory of the insured event.

With effect from July 2024, a Ukrainian insurer is expressly entitled to pay the reinsurance premium and other amounts under the reinsurance agreement to foreign entity providing that the reinsurance involves the protection against loss of, or damage to, the property located in Ukraine or loss (whether full or partial) of income from such property resulting from the armed aggression of the Russian Federation against Ukraine, including acts of war, hostilities, warfare, terrorist acts and sabotage.

In addition, in order for a local insurer to pay a reinsurance premium overseas, such insurer must be added to the list of insurers that have the right to carry out reinsurance operations with non-resident reinsurers, and shall meet the following requirements, both as at the date of application for inclusion in the List of Approved Insurers and during the listing period:

- its ownership structure must be transparent and meet other requirements specified in the Regulation on requirements for the ownership structure of financial service providers, approved by the Resolution of the Board of the National Bank of Ukraine No. 30 dated April 14, 2021;
- the insurer must comply with the criteria of solvency and capital adequacy and the requirements to riskiness of operations as of the last calendar day of the month preceding the date of submission of the application for inclusion in the List of Approved Insurers, as well as the last calendar day of each month during the period of being listed;
- the business reputation of the insurer, its owners of significant participation and managers, the chief accountant, key persons, must be impeccable in accordance with NBU Resolution No. 199, of 29 December 2023; and
- within one year prior to the date of submission of the application and during the period of being listed, no measures of influence were applied to the insurer, except for a written warning, for violating the requirements of the anti-money laundering legislation sanctions.

Foreign licensed insurance companies are permitted to establish branches subject to compliance with the requirements mentioned above and subject to fulfilment of the following additional requirements:

- the legislation of the country where the foreign licensed insurance company is registered does not contain provisions that may impede/restrict the interaction of the regulator and supervisory/controlling authorities of such state and/or prevent the regulator from exercising its supervisory powers over such a branch;
- the amount of the authorised capital (*prypysnyi kapital*) of such branch is not less than 32 million hryvnas – for non-life insurers, or UAH 48 million - for life insurers, re-insurers, and insurers which carry out some other types of insurance (part 3 of article 40 of the Law of Ukraine «On insurance»);
- issuance of a written irrevocable obligation by the foreign insurance parent company to unconditionally fulfil the obligations arising from the activities of its branch in Ukraine;

Foreign licensed insurance companies must operate in Ukraine in the form and manner prescribed by Law of Ukraine "On Insurance" and regulatory legal acts of the NBU

Insurance payments (payout or premium) originating from Ukraine are considered as Ukraine sourced income for non-residents of Ukraine; and basically such payments are subject to withholding tax.

Reinsurance obligations arise out of mandatory criteria and standards of capital adequacy and the solvency and liquidity of the insurer. The insurer is obliged to form technical reserves for all liabilities under insurance (reinsurance) contracts, evaluate the size of the formed technical reserves and the methods applied, as well as assumptions for their calculation, including using statistical data, in the manner prescribed by the regulatory acts of the NBU (article 43 of the Law of Ukraine "On

Insurance". The insurer, following entering into a reinsurance agreement, remains fully responsible before a policyholder.

In practice, most of the local insurers reinsure their risks with international reinsurers due to the lack of insurance reserves.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Public-private partnership ("**PPP**") is a long-term cooperation between the state and private companies, with the aim of creating, updating and further effective management of public facilities and socially significant services traditionally provided by the state.

Yes, PPP is a permitted method of developing projects in Ukraine. In fact, the Ukrainian government has been actively promoting PPP projects in various sectors, including transportation, energy, healthcare, and infrastructure.

The Ukraine PPP statutes establish the organizational and legal framework of the interaction of public partners with private partners and the basic principles of the public-private partnership on a contractual basis, while Resolution No. 384 regulates each step of the tender procedure. In 2025, a new Public-Private Partnership Law (the PPP Law) has been enacted to modernize the public-private partnership framework in Ukraine and to expand the opportunities for the using this form of cooperation in the implementation of state projects.

Article 5 of the PPP Law states that PPPs may be concluded as concession agreements, or in the form of PPP agreement. The selection of a private partner for the purpose of entering into a public-private partnership agreement shall be carried out on a competitive basis by applying one of the following competitive procedures:

- restricted tendering;
- open tendering;
- competitive dialogue.

The same applies to concession agreements.

In the event of only one application in the bidding, the PPP contract may be concluded between the state partner with this applicant by agreeing with him on the essential terms of the contract, provided that such applicant meets the main qualification requirements for the participants of the competition, unless otherwise specified laws regulating relations that arise in the process of concluding public-private partnership contracts.

It is common practice when the procuring authority conducts a pre-bid conference where potential bidders can get additional information on PPP project.

The state partner controls the PPP contract implementation but cannot, however, interfere with the economic activities of the private partner or third parties.

Private partners shall provide the public partners with information on the contract performance as specified in the PPP contract, the public partner shall keep this information confidential.

Officers of the public partners monitor the PPP contract performance in accordance with their authority under the law and the PPP contract.

There is no explicit legislative provision stating that PPP implementation must be prioritized against other government investment priorities. At the same time, state targeted programs, the purpose of which is to promote the implementation of state policy in priority areas of state

development, in accordance with the Law of Ukraine "On State Targeted Programs", can be implemented by use of the PPP mechanism.

In addition, the strategy for reforming the public procurement system for 2024-2026 was approved by the Cabinet of Ministers of Ukraine. Among other things, the strategy includes an analysis of the issues arising during the conclusion of contracts and the implementation of PPP and concession projects, with the aim of preparing the necessary amendments to legislation to enhance the effectiveness of PPP activities.

Several PPP projects have been developed in Ukraine in recent years, including concession of seaports: Chernomorsk, Izmail Sea Port, Reni Port and others, concession of airports, construction of industrial parks, concession of railway stations, construction of highways and bridges, etc. Please review the full list here https://pppagency.gov.ua/projects/

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between public authorities and lenders are generally permissible under law of Ukraine.

In Ukraine, direct agreements are commonly seen in project financings, including those involving public-private partnerships (PPPs).

The statute provides grounds for replacement of a private partner in PPP:

- if initiated by the state partner upon material breach of the PPP contract by the private partner;
- if initiated by the creditor (financier) upon foreclosure of security (the property rights of the private partner under the PPP contract); whether after an event of material default or on other grounds in the financing documents.

The replacement shall be made in accordance with the stipulated procedure. Also, direct negotiation is an available option under the concession agreements for the procuring authority to proceed with direct negotiation with the tenant of state-owned property of concession agreement.,

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

In Ukraine, the implementation of public-private partnership projects may be state supported (state budget, local budgets) Such support may be granted, inter alia, in the following forms:

- provision of state and\or local guarantees;
- co-financing of construction costs (including new construction, reconstruction, restoration, capital repairs, and technical re-equipment) and/or the creation of a PPP facility, and/or payment to the private partner of amounts provided by the PPP agreement, including availability payments, financed from the state budget or funds of state-owned enterprises;
- co-financing of construction-related costs and/or availability payments financed from local budgets or funds of municipal enterprises;
- co-financing of construction-related costs and/or availability payments financed from funds of public-sector business entities;
- acquisition by the public partner, or by an entity acting on its behalf (including a central executive authority or a state-owned enterprise), of goods, works,

or services produced, performed, or provided by the private partner under the PPP agreement, in full or in part;

- assumption by the public partner, or by an entity acting on its behalf, of obligations to make payments to the private partner to buycalculated to compensate for the difference between a certain amount of minimum guaranteed level of demand and the actual level of demand for goods, works, or services provided under the PPP project (demand guarantee);
- supply by the public partner, or by an entity acting on its behalf, of raw materials (including waste) and/or goods and services from the private partner or provide the goods, works, or services required for the implementation of the PPP project.;
- construction by the public partner, or by an entity acting on its behalf, of engineering and transport infrastructure facilities (including roads, communication lines, heat, gas, water, and electricity supply systems, engineering networks, and railway infrastructure) that do not form part of the PPP facility but are necessary for the performance of the PPP agreement;
- provision of grants to the private partner for PPP projects, with funds transferred to the state or local budget or to a bank account of a public-sector business entity for subsequent payment to the private partner;
- assistance by the public partner in attracting investments or financing from individuals and legal entities, under the terms and conditions set out in the PPP agreement, for the implementation of housing construction PPP projects;
- other forms of support as provided by law.

The availability of government support for project financing in Ukraine is subject to the relevant laws and regulations, and the terms and conditions of such support are typically negotiated on a case-by-case basis.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

The allocation of political risk events between the public and private parties under PPP agreements in Ukraine may vary and depend on the terms of each specific contract. In general, political risk events are typically addressed in the PPP agreement, and the allocation of risks may be negotiated and agreed between the parties. The risks may be allocated to the party best able to manage and mitigate the risk, or to the party that is better suited to bear the risk based on its expertise, access to financing, and risk appetite. In some cases, political risk events may be shared between the public and private parties, and in other cases, the risks may be covered by insurance or other risk management mechanisms.

Evidently, it is quite difficult to purchase new policies to cover military risks during active hostilities, even if the region (district of a separate oblast, for example) has not been the object of aggression. If a policy covering war risks had been purchased before February 24, 2022, or such coverage is incorporated into existing one, then it is necessary to analyze in detail the relevant provisions. Specialised political/war risk insurance policies in a similar fashion contain a list of insurance events and a number of exclusions. That is, not every loss, even caused by warfare, is guaranteed to be reimbursed. For example, the policy may cover only the direct material damage, and does not cover the seizure of the enterprise, or other deprivation of use of the insured property.

Limited number of PVI instruments are available to projects located in Ukraine. IFC has launched USD 2 billion response package in financing and guarantees to support Ukrainian private sector. DFC, the U.S. development finance institution, has committed to provide debt financing and credit risk coverage for Ukrainian private projects. Aon, one of the world's largest insurance brokers, in collaboration with DFC, announced an unprecedented USD 350 million insurance program for war risks in Ukraine, aimed at securing foreign investments during the ongoing conflict[32]. Marsh McLennan together with the Ukrainian financial institutions ("Unity") provides affordable insurance supporting the export of grain and other critical food supplies globally from Ukraine's Black Sea ports. Since the start of the Russian invasion in February 2022, MIGA has actively provided insurance in Ukraine, issuing over USD 448 million in PRI guarantees[33]. It was also reported that the UK was to contribute £20 million to a newly established support fund, created with the support of MIGA, to assist Ukraine in recovering from war-related damages, supporting the reconstruction of critical infrastructure, and enhancing economic stability[34]. In addition, the EBRD, the EIB and other development banks and institutions have committed to provide financing and support for Ukraine.

In September 2025, during consultations with the business community, representatives of the National Bank of Ukraine and the Ministry of Economy presented the draft Law of Ukraine "On War Risk Insurance System." It is expected to be adopted in 2026. The law aims to protect the insurance interests of individuals and legal entities and ensure compensation for losses caused by war risks in Ukraine. The system is about to be funded through mandatory insurance contributions and donor support. A State Agency for War Risk Insurance will be established to oversee risk assessment policies, develop standardized products, set pricing approaches, and manage a centralized database. It is suggested that the system should cover physical damage caused by war, including mandatory insurance for collateralized property and residential construction. Consultations are ongoing regarding the list of objects to be insured, with plans for future expansion.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

In Ukraine, investors and lenders may be protected through a stabilization clause.

The Government guarantees the stability of the conditions for investment activities, observance of the rights and legitimate interests of its entities. Terms of contracts concluded between investment entities remain in force for the entire duration of these contracts, and in cases where after their conclusion by law (except for tax, customs, and currency legislation, as well as legislation on licensing of certain economic activity types) conditions that worsen the position of the entities or limit their rights are set up, if these entities have not agreed to change the contract term. The Government guarantees the protection of investments, as well as foreign investments, regardless of ownership. Investment

32 https://www.kmu.gov.ua/news/minekonomiky-dfc-rozshyryla-instrumenty-strakhuvannia-vid-voiennykh-ryzykiv-ta-oholosyla-pro-novi-uhody

33 https://www.kmu.gov.ua/en/news/miga-zastrakhuvala-185-mln-investytsii-mizhnarodnykh-bankiv-u-dochirni-struktury-v-ukraini

34 https://www.kmu.gov.ua/en/news/velykobrytaniia-pratsiuvatyme-razom-z-iebrr-nad-proektom-strakhuvannia-voiennykh-ryzykiv-v-ukraini

protection is provided by the legislation of Ukraine, as well as international treaties of Ukraine. Investors, including foreign ones, are provided with equal treatment that excludes the application of discriminatory measures that could hinder the investment management, use, and liquidation, as well as the conditions and procedure for the export of invested valuables and investment results.

However, the availability of protection depends on the area of the investment. For example, the Government of Ukraine has taken various steps to ensure that the Ukrainian electricity market is attractive to foreign investors. The most important step is the stabilisation clause, which is an undertaking by the state to preserve the favourable legal framework for renewable energy and to refrain from introducing changes that would be disadvantageous to renewable energy producers, except where changes are required in the interests of defence, national security, tax regime, public order and environment protection.

However, the effectiveness of stabilization clauses in Ukraine has been the subject of some debate, as the Ukrainian government has been known to challenge such clauses in the past. As such, investors and lenders need to carefully negotiate and draft stabilization clauses to ensure that they are enforceable and provide the desired level of protection.

23. Is force majeure specifically regulated under the local legislation?

Yes, force majeure is specifically regulated under Ukrainian legislation. The Civil Code of Ukraine defines force majeure as extraordinary and unavoidable circumstances that cannot be foreseen or prevented by reasonable measures. Examples of force majeure events are natural disasters, military actions, strikes, epidemics, and other events beyond the control of the parties.

Under Ukrainian law, force majeure events may excuse a party's non-performance of its contractual obligations, provided that such events render performance impossible. The affected party must notify the other party of the force majeure event as soon as possible, and must take reasonable steps to mitigate the impact of the event on its performance.

It should be noted that the occurrence of a force majeure event does not automatically terminate the contract, but may suspend its performance for the duration of the force majeure event. If the force majeure event continues for a prolonged period of time, the parties may be entitled to terminate the contract based on the provisions of the contract or on the grounds of material breach of contract.

It is an established rule of business customs and statutory law that a person is released from liability for breach of contract if he/she proves that a breach was caused due to accident or force majeure. Article 14-1 of Law of Ukraine 'On Chambers of Commerce and Industry of Ukraine' (dubbed by Regulation on certification of force majeure by the Chambers of Commerce and Industry of Ukraine) provides for the list of such circumstances: war or threat of war, armed conflict or serious threat of such conflict, hostile attacks, blockades (including the closure of ducts), a ban on exports or imports, military embargoes, mobilization, armed forces actions, riots (including elements of hybrid aggression), acts of terrorism, sabotage, piracy, invasion, curfew, requisition (seizure), fire, explosion, flood, illegal actions of third parties (illegal seizure of an enterprise), quarantine, etc.

The list of statutory force majeure grounds coincides in many respects with the situations invoked by martial law or during other special periods (see the table).

Lack of funds, short supply of services or commodities, exchange rate volatility is generally not considered force majeure. Therefore, the behavior of the markets should greatly impress the judges before they allow any exception to this rule. Theoretically, this may be an objective impossibility to make a payment as a result, if the bank does not work, in particular, due to the lack of electricity supply in the region, destruction of equipment, unauthorized interference with the operation of the bank's computer networks or the bank is closed in connection with the risk of physical seizure or destruction of branches - in case of blocking the relevant settlement by the enemy; legislative restriction of payments, in particular cross-border currency transfers - as currently introduced by the National Bank of Ukraine; bankruptcy of a systemically important bank or large clearing house member of an organized commodity market, such as electricity, fuel; The physical inability of a director or accountant to make a payment if they are under occupation or shelling without access to a client-bank system and unable to move to a safe place where there is an operating bank.

Certification of force majeure

The Ukranian Chamber of Commerce and Industry ("**CCI**") and its regional divisions are authorized to issue a certificate of force majeure, which is sufficient evidence under the Ukrainian law. A breaching party must apply to the CCI for a certificate and, establish, to the contemplation of the CCI expert, the causal link between the force majeure and non-performance of the contract.

With the extreme situation caused by the initiation of the war, the CCI has published on its website a general official letter certifying force majeure of Russia's aggression against Ukraine – from February 24, 2022 until the end. Thus, the procedure for the martial law period had been simplified: a business no longer needs to apply to the CCI with a bundle of documents to certify force majeure on each contract. The only thing one must do is to establish the respective causal link with the non-performance of the agreement.

Moreover, the contract may contain a provision, if force majeure lasts more than a certain period (for example, 90, or 180 days), the contract may be terminated at the initiative of one of the parties.

24. What are the general environmental and social requirements in project financings?

In project financings, environmental and social requirements are often included in project financing agreements, and they aim to ensure that the project is developed and operated in a manner that is consistent with sustainable development principles.

There are no environmental requirements in private project financings as such, however the restrictions or obligations might be applicable to the operating project (e.g., plant or factory) itself.

The environmental and social requirements are those mostly dictated by lenders.

However, for PPP obligatory projects assessments conducted when identifying and preparing a PPP:

- Socio-economic analysis
- Fiscal affordability assessment
- Risks assessment
- Comparative assessment of PPP v. non-PPP procurement
- Financial viability assessment
- Environmental impact assessment
- Social impact assessment
- Market sounding for private sector interest
- Market sounding for technological solutions

The procuring authority entity does not provide or facilitate obtaining of the environmental permits, such as emission permit, permit for felling green areas etc.

Instead, the procuring authority, as the investor in the construction (site owner), must procure an environmental impact assessment as a prerequisite to commence the construction works.

Article 4 (2) of the Law on Concession puts a burden of the environmental impact assessment (EIA) on a concessionaire (private partner) after the concession contract has been signed.

This norm conflicts with Article 2 (3) of the Law of Ukraine on Environmental Impact Assessment, which stipulates that state authorities, local self-government bodies (i.e., public partner) are the subjects of the EIA whenever such public partner is a customer of the planned activity. Their role under the concession contract can be designated as a customer (procuress' of the public service).

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

As a matter of principle, Ukrainian law permits the parties to a contract to freely select the law which shall govern their agreement, provided that (i) such agreement is an "international contract", and (ii) such selection is made in good faith, i.e., without the intention of avoiding application of any mandatory provisions of Ukrainian law which would have otherwise applied to such agreement.

The matter of immunity usually applies to the Ukrainian State and state entities; it is complex and is not expressly regulated by the laws of Ukraine. On the one hand, the legal system of Ukraine seems to accept and consistently apply the principle par in parem non habet imperium, by virtue of which one state could not be subject to the jurisdiction of another. On the other hand, the Supreme Court of Ukraine has ruled that restrictive immunity applies in Ukraine by virtue of the international customary law. At that, the laws allow the State of Ukraine to participate in civil relations and foreign economic activity, as well as to choose foreign law as the governing law of the contracts and to submit disputes to international arbitration.

The state is liable for its obligations with its property, except for property which is unrecoverable as a matter of law. In other words, by virtue of law certain property owned by the state cannot be subject to foreclosure towards the obligations of the state, for example, water and other natural resources, continental shelf, exclusive maritime zone, property transferred into operating control and economic management of corporate entities, land, property withdrawn from civil circulation, or which is under a moratorium.

It is worth noting that the enforcement of submission to a foreign law and waiver of immunity provisions may be subject to the terms of any relevant bilateral or multilateral treaties to which Ukraine is a party.

26. Can financing documents provide for arbitration clauses?

Financing agreements in Ukraine are typically governed by Ukrainian law where the parties are Ukrainian. If the financing agreement involves a foreign party, it can be governed by the law chosen by the parties. In practice, foreign law will typically be chosen by the parties.

Ukrainian law will apply if it is chosen by the parties and where the rules of the Ukrainian private international law is so

direct (in the absence of the parties' choice). In that case, the parties' agreement to refer their disputes to arbitration is effective and enforceable in accordance with Article II of the New York Convention.

Where there is no foreign element present in a relationship, including where all of the parties are Ukrainian, the parties are not free to choose a foreign law. Mandatory rules of Ukrainian law will apply irrespective of the parties' choice of law.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

A full-scale Russia's invasion of Ukraine has badly impacted the economy and led to suspension of infrastructure and energy projects, not to mention that a severe damage has been caused to social, energy and transportation infrastructure of Ukraine.

However, even during the wartime, a number of social projects such as the construction of child hospitals or residential properties for displaced are being financed by international financial institutions. Energy independence and energy resilience (including decentralised energy production and storage) are also among the top popular areas for project finance in Ukraine, considering constant russian attacks on energy infrastructure.

The war and high political violence risk remain to be the biggest obstacle for the international investors and financial institutions to finance the projects in Ukraine, even if the projects are located in the Western part of Ukraine and remain untouched by the war. Therefore, most of the construction or renovation projects are structured through the participation of sovereign which either acts as direct borrower or issues the sovereign guarantee in order to cover the political violence risk for the financiers and investors. It is therefore anticipated that all projects during the war time will be driven or supported by the state until the war ends.

28. Are any significant development or change expected in the near future in the project finance market?

There is a growing interest of international donors, international financial institutions, development banks and equity funds in the future recovery and reconstruction in Ukraine after the war is over.

For instance, the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD) are preparing private equity initiatives to mobilize institutional capital in infrastructure, private equity and venture capital, with targeted capital raising expected to exceed €600 million. This could unlock new types of project finance structures and longer-term funding sources. IFC, EBRD and other multilaterals have also increased guarantees and risk-sharing mechanisms intended to mitigate investor and lender risk, particularly in volatile contexts.

Given the foregoing, it is excpected that a massive financing for the Ukrainian energy, housing, healthcare and infrastructure projects will be unleashed by international financial institutions and donors once the war is over.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

In order to depart from LIBOR and apply new benchmarks, the National Bank of Ukraine has advised that Ukrainian banks and non-banking financial institutions to refrain from concluding agreements and using financial instruments that

reference LIBOR and switch instead to benchmarks that have been published on the official websites of central banks, including the Federal Reserve System, the European Central Bank, and international institutions[35].

35 https://bank.gov.ua/ua/news/all/vidhid-vid-vikoristannya-indikatoriv-libor-na-svitovih-finansovih-rinkah-vidbudetsya-pislya-31-grudnya-2021-roku

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A. Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The central piece of legislation in the area of project financing in Uzbekistan is the Civil Code effective from 1 March 1997 as amended ("**Civil Code**"). A few other normative legal acts that are applied in the project financing transactions are as follows:

- Law on Nature Protection dated 9 December 1992 (the "Law on Nature Protection");
- Law on Foreign Borrowings dated 29 August 1996;
- Law on Pledge dated 1 May 1998;
- Law on Foreign Economic Activity dated 26 May 2000;
- Law on Mortgage dated 4 October 2006;
- Law on Public-Private Partnership dated 10 May 2019 (the "PPP Law");
- Law on Currency Regulation (new edition) dated 22 October 2019;
- Law on Investments and Investment Activity dated 25 December 2019
- Law on Environmental Expertise, Environmental Impact Assessment, and Strategic Environmental Assessment dated 24 February 2025, etc.

In addition, in 2023, the Cabinet of Ministers of the Republic of Uzbekistan adopted a Regulation[36] on the management of fiscal liabilities of the state in PPP projects which addresses identification, assessment and reporting on direct and contingent liabilities of Uzbekistan in PPP projects. Also, in 2024, the Cabinet of Ministers adopted Resolution No. 720 "On Measures for the Further Improvement and Comprehensive

36 Regulation "On the Management of Fiscal Liabilities of the State in PPP Projects" approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated October, 23 2023.

Systematization of the PPP Sector"[37] which approves the Regulation on the Procedure for Implementation of PPP Projects (instead of the former Regulation No. 259) and the Regulation on the Procedure for Financing PPP Projects (instead of the former Regulation No. 509).

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

Uzbek market as well as its legislative framework are still undergoing structural developments and constant changes where Uzbek Government is an important factor in defining the market development.

Uzbekistan has been consistently commended by the IMF, ADB and World Bank for its tight monetary policy and resilience to the global economic downturn. This is largely attributed to the country's selective approach to foreign borrowings and the conservative level of reliance on world capital markets for generating domestic growth.

The government of Uzbekistan is keen to see domestic banks and financial institutions play a more prominent role in propelling the economy towards the targeted objectives. Project finance is increasingly becoming a popular instrument of implementing large strategic investment projects across different government priorities.

The most significant project financings closed in the last 12 months in Uzbekistan are a project financing for 300 MW Guzar solar power plant project in Kashkadarya region of Uzbekistan and a project financing for the 200 MW Nukus wind power plant project in Karakalpakstan, Uzbekistan.

B. Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

Among the most commonly used security types in project financing in Uzbekistan are pledges over movable and immovable property as well as property rights (e.g., contractual rights, receivables and bank accounts).

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, shares in both limited liability company ("**LLC**") and joint stock company ("**JSC**") can be pledged to lenders. We note that in LLC, its owners as such do not own "shares" but rather they own "participating interests" in the LLC.

A shareholder in both LLC and JSC is entitled to pledge its participating interest/ shares provided that:

(a) the charter of the company does not prohibit the pledge of participating interests in favour of a third party;

(b) a resolution approving this pledge is adopted by a general meeting of participants of the LLC / of shareholders of the JSC; and

(c) pledge of participating interest /shares in state owned companies is allowed if there is a relevant government resolution approving such pledge.

We also note that the pledge of participating interest/shares in state-owned companies is not allowed if such participating interest/shares are not subject to privatization.

37 Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 720 "On Measures for the Further Improvement and Comprehensive Systematization of the PPP Sector" dated 30 October 2024.

A pledge of participating interest shall be made in a simple written form, no registration is required for its validity and effectiveness. The pledge of shares is subject to registration with the relevant shares depository's office.

As a non-mandatory perfection step, the pledges are registered with the local Pledges Register under the Central Bank of Uzbekistan in order to establish a prior-ranking security in favour of the creditors.

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

Private sale is not recognised as a method for the enforcement of pledge of shares/ participating interest under Uzbek law. Enforcement of the pledge of shares/ participating interest can be executed through the public online-auction, assignment or via stock exchange, as applicable.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Uzbek law permits the creation of a pledge over assets that the pledgor will acquire in future. However, in practice, such pledges are rarely used due to difficulties in identifying the pledged asset, given that a clear identification is a mandatory element of a valid pledge.

Future receivables of the pledgor can be pledged in favor of the pledgee provided that the parties can define the future receivables substantially enough so that it allows to distinguish it in the future, e.g., Uzbek law allows creation over future receivables from the contract which already exists at the moment of pledge execution.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

The concept of technical insolvency is not defined and recognized under Uzbek laws. Thereby, enforcement of security in such cases should be agreed by the parties under the security documents.

Enforcement of Security Interest in case of Insolvency of the Borrower.

In accordance with local legislation, the legal entity can be declared as a bankrupt (insolvent) only upon the decision of a court. After the bankruptcy procedures have been commenced by the court, the interests of the creditors are represented by the committee of creditors or creditors meeting and all further actions on behalf of the creditors are carried out only by the committee/meeting of creditors. The creditors shall register with the registry of creditors, where all claims of the creditors are reflected.

The process of enforcement of the security interest shall begin upon the relevant decision of the court being issued.

Settlements with the creditors are conducted in accordance with the register of creditors in the order, established under the Law on Insolvency dated April 12, 2022.

Claims of secured creditors are satisfied from the funds received after the sale of the secured property in a public online-auction.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The concept of security trustee is not recognised under Uzbek legislation. Uzbek

law requires that only the lender (creditor) can act as a pledgee. In case there are several creditors under the same facility agreement, one of the creditors (agent) can act as a security agent (pledgee) on behalf of other secured creditors.

C. Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

Incentives and exemptions depend on the types of the projects which are being financed. There are several government support programs which provide for incentives in different areas, such as agriculture, textile, etc. There are also Free Economic Zones in certain regions of Uzbekistan, the residents of which are entitled to tax and customs exceptions, subsidies.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Yes, only foreign investors under PPP projects as well as projects with investment agreements have a right to peg the prices for the sale of the goods/products/services under the projects foreign currency.

Foreign investors also enjoy certain privileges in obtaining work permits and entry visas for foreign employees.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency?

There are no any restrictions for borrowing bank loans and shareholder loans from abroad and/or in a foreign currency.

Special regulatory approvals might apply to state-owned companies acting as a borrower.

12. Are there any restrictions for foreign investments in your jurisdiction?

The foreign entities and citizens are not entitled to privatize land, i.e., cannot have ownership rights over the land and there are also limits on the share ownership in certain sectors (mass media, national security etc.).

Otherwise, foreign investments are not subject to any specific restrictions in Uzbekistan.

13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

No, there is no minimum equity requirement under the legislation for project financing.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

The transaction documents in project financing are subject to the following registration procedures:

- Registration of a loan agreement with the Central Bank of the Republic of Uzbekistan;
- Registration of land lease rights pledges and mortgages with cadaster authority;
- Registration of any pledge agreement with Pledges Register under the Central Bank of the Republic of Uzbekistan;
- Registration of onshore export and import contracts with the Unified Electronic Information System of Foreign Trade Operations.

Special regulatory approvals are required for any state-owned company acting as a borrower.

D. Insurance

15. Can local insurance policies be governed by a foreign law?

No, local insurance policies may not be governed by foreign laws.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes, insurance proceeds under the insurance and reinsurance policies can be assigned to the benefit of the lenders. This can be achieved via pledge of rights under insurance agreements.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

Following requirements of local legislation should be considered:

- Insurance of the property interests of a legal entity - resident of the Republic of Uzbekistan located on the territory of the Republic of Uzbekistan can be insured only by an insurance company - resident of the Republic of Uzbekistan, except otherwise explicitly provided under the law;
- Authorized state body has a right to provide for minimum requirements and conditions to insurance contracts;
- Prior to the assignment of insurance obligations for reinsurance to foreign insurance companies, 100% of the reinsurance must first be offered to reinsurance companies established by the National Agency for Perspective Projects of Uzbekistan. Only if these entities decline the offer, in whole or in part, may the remaining portion then be offered to other local reinsurance companies. Foreign reinsurers may only be approached if all local options have declined.

E. Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, PPP is a permitted method for the project development in Uzbekistan. In accordance with the data published on the official website of the Ministry of Economy and Finance of Uzbekistan, to date, around 2611 PPP projects are included in the PPP Projects Registry[38] in the transportation, healthcare, energy, communal services, water management, education and other social infrastructure sectors of the country. As of today, large-scale PPP projects are mainly implemented in the energy, healthcare, education, transport, water and communal services sectors of Uzbekistan.

19. Are direct agreements between the public authorities and the Lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Yes, direct agreements are allowed under Uzbek law and are commonly seen in the project finance market of Uzbekistan.

In particular, Article 35 of the PPP Law states that lenders may enter into direct agreements with the public partner or private partner and requires such direct agreements to contain the following:

- lenders' rights and obligations in connection with the replacement or removal of the private partner (or the private partner management);

38 https://data.egov.uz/eng/data/64dc9c7fb04a41cb2e29d597

- obligation to pay the lenders the fees payable by the public partner to the private partner in accordance with the PPP agreement in the event of replacement or removal of the private partner;
- conditions to mitigate the risk of termination of the PPP agreement;
- payments for the early termination of the PPP agreement;
- procedure for exchanging information on the implementation of the PPP project, on the security of rights and obligations of the parties.

The PPP Law also provides for the lenders' step-in rights and allows the private partner to grant its lenders any form of security, including its rights under the PPP agreement, assets, share pledge, assignment and transfer of rights under other PPP project agreements forming part of the PPP project.

In practice, in PPP projects, the direct agreements are usually signed in relation to the PPP agreement, the government support agreement and the land lease agreement.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

The PPP Law allows provision of additional guarantees and state support to a private partner and lenders under the PPP projects.

Particularly, PPP Law sets out a non-exhaustive list of government support measures that can be provided to a private partner and/or lenders under a PPP project as follows:

(a) subsidies, including those allocated to ensure a guaranteed minimum income for the private partner from the implementation of the PPP project;

(b) contributions in the form of assets and property necessary for the implementation of the PPP project;

(c) funds from the state budget of Uzbekistan covering a certain amount or part of goods, works, services that are produced or supplied under the PPP project;

(d) provision of loans, grants, credit facilities and other types of financing;

(e) additional guarantees aimed at ensuring that the sponsors are able to fulfill their obligations under the PPP project;

(f) tax incentives and preferences, as well as other benefits;

(g) other guarantees and/or types of compensation.

Any additional guarantees and state support shall be provided by execution of a government support agreement between a private partner and the Republic of Uzbekistan represented by the Ministry of Economy and Finance or otherwise as provided under a PPP agreement.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

Under the PPP agreements in Uzbekistan, political risk events are usually under the responsibility of the public party.

In particular, PPP agreements in Uzbekistan usually contain a political risk event concept which includes political force majeure events (wars, revolutions, strikes of a political nature, embargo etc. in Uzbekistan or directly involving Uzbekistan), change-in-law and other political events affecting the private partner and the project.

In case the political risk events occurred and continuing, the private partner is

usually entitled to claim increased costs and / or terminate the PPP agreement.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

Yes, the PPP Law expressly recognizes that a PPP agreement can envisage change in law protection mechanisms entitling the private partner to request compensation in the form of lump-sum payment, tariff adjustment or amendment of the PPP agreement in the event the change in law occurring after the execution of the PPP agreement directly increases the private partner's costs or decreases its revenue from the PPP project.

At the same time, the PPP Law provides that such change in law protection shall not apply to the change of law resulting in the change of taxes following execution date of the PPP agreement unless such changes are discriminatory in respect of a certain PPP project.

In practice, change in law provisions under a PPP agreement usually apply from a bid date (in case of tendered projects only) and cover the general changes in taxes as well. In order to rectify such deviations from the PPP Law, such extension of a change in law protection is provided as an additional guarantee under a government support agreement.

23. Is force majeure specifically regulated under the local legislation?

Yes, under Article 333 of the Civil Code, a party can be relieved from liability if such party proves that it could not perform its obligation due to force majeure circumstances unless otherwise provided for by law or the underlying contract.

The Regulation on Administrative Regulation for Delivery of Public Services Confirming Force Majeure Events[39] defines the term "force majeure" as emergency, unavoidable and unforeseen circumstances under given conditions caused by natural phenomena (earthquakes, landslides, hurricanes, droughts, etc.) or socio-economic circumstances (state of war, blockades, bans on import and export, etc.), which are not dependent on the will and actions of the parties in connection with which they are unable to fulfill their obligations.

24. What are the general environmental and social requirements in project financings?

The Law on Nature Protection specifically provides for environmental management, prevention and control of pollution as well as sustainable management and use of natural resources.

In 2025, the new Law on Environmental Expertise, Environmental Impact Assessment, and Strategic Environmental Assessment dated 24 February 2025 was adopted, which entered into force in 25 August 2025. The new Law sets out the criteria for environmental experts, the procedures conducted in the course of the environmental examination, the duration of examination and the financial obligations of applicants. State environmental examination is the key instrument for ensuring compliance of the contemplated project with the environmental legislation. Main novelties brought by the new Law include the introduction of the strategic environmental assessment of the implementation of urban planning projects as well as creation of the council of experts to resolve controversial issues and ensure the impartiality of the state environmental impact assessment.

39 Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 625 dated October 28, 2022.

The Equator Principles are not part of the legislation of Uzbekistan; however, the Equator Principles are used in several large infrastructure projects in Uzbekistan financed by DFIs and foreign banks.

Uzbekistan has no specific legislation governing social matters, but certain aspects are contained in various laws (for example, the Law on Nature Protection, which provides that every citizen has the right to a clean, safe and healthy environment).

F. Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

Under general provisions of Uzbek laws, parties to an agreement can agree on a foreign law to govern the agreement provided that there is a "foreign element" in the transaction (e.g., one party is a foreign company). That said, a choice of a governing law does not affect the applicability of mandatory rules of Uzbek laws regulating corresponding relations.

In accordance with article 79 of the Uzbek Civil Code, the state (represented by the government) takes part in relationships regulated by civil legislation on an equal basis with other participants and is liable for its undertakings with its own property.

The Uzbek Civil Code is therefore clear that if the government enters into a commercial activity, it loses special treatment or sovereign immunity. It is widespread practice in Uzbekistan when dealing with the government directly, it is widespread practice for the government, as a public entity, to waive its sovereign immunity. From our experience of direct contracts with the government, whether investment agreements or PSAs, the waiver of sovereign immunity was not an issue. It is quite natural for a foreign investor to request the government of a host country to waive immunity.

Meanwhile, the Republic of Uzbekistan is not a party to any multilateral or bilateral treaties with any Western jurisdiction or the United States for the mutual enforcement of court judgments. Consequently, should a judgment be obtained from a national court in any Western jurisdiction or the United States, it is highly unlikely to be given direct effect in Uzbek courts.

26. Can financing documents provide for arbitration clauses?

A party's submission to a foreign jurisdiction is legally binding and enforceable if a dispute is subject to international commercial arbitration. Uzbekistan is a party to the 1958 New York Convention and, thus, arbitral awards made in foreign jurisdictions are recognized and enforced in Uzbekistan unless there are grounds for the refused pursuant to Article 5 of the New York Convention.

Investor-state disputes submitted to ICSID and other institutional or ad hoc arbitration tribunals abroad in accordance with valid arbitration clauses are also subject to recognition and enforcement in Uzbekistan pursuant to the New York Convention. Apart from the arbitration clause, there shall be a due sovereign immunity waiver from the state or its governmental organization in an investor-state dispute.

Disputes relating to administrative, corporate, family, inheritance and employment relations are not arbitrable under Uzbek law.

Also, Uzbek courts have exclusive jurisdiction over the cases related to immovable property (buildings and land) when such immovable property is located

in Uzbekistan and transportation of passengers, baggage and goods when the transport organization is incorporated in Uzbekistan.

G. Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

Investment in the energy and manufacturing sectors, coupled with priority the social infrastructure development are the dominant areas of the project finance sector in Uzbekistan with increasing activity in the energy distribution, education, healthcare and utilities sectors.

Infrastructure development is, by and large, funded by the state, occasionally raising much needed financial resources from IFIs or financial institutions and state development funds in Asia or the Middle East, predominantly China, South Korea and Gulf countries.

28. Are any significant development or change expected in the near future in the project finance market?

Key developments expected include the expansion of PPP projects in the electricity distribution, transport, water, education and healthcare sectors. Significant infrastructure projects encompass the construction of over 1,000 km of toll roads, the modernization of power and gas distribution networks and irrigation systems with the private sector involvement including PPPs.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

SOFR is being commonly used in Uzbekistan as an alternative reference interest rates during the LIBOR transition period.