

INTERNATIONAL PROJECT FINANCE
(COURSE #: LAWG-928-09; LAWJ-928-09)

SYLLABUS

Course Description:

This course examines legal, business and public policy issues that arise in international project financings, particularly in emerging markets, and analyzes how such transactions are structured and related risks are allocated. We consider the typical roles played by parties to such transactions (equity sponsors, lenders, customers, suppliers and host governments), interests associated with such roles, how competing interests tend to be reconciled. We will focus on how negotiated arrangements are embodied in and supported by typical transaction documentation such as financing contracts, project documents, and legal opinions. Coverage will include illustrative local law and political risk issues. Selected international investment transactions, both actual and hypothetical, will be used to illustrate recurring themes.

The course will be taught jointly by Leocadia I. Zak, Deputy Director (and former General Counsel) of the U. S. Trade and Development Agency, and Kenneth W. Hansen, a project finance partner at the law firm of Chadbourne & Parke LLP (and former General Counsel of the Export-Import Bank of the United States).

Course Requirements:

- **Special required double class session on Saturday, April 14, 8:30 a.m. to 12:45 p.m.: Project Loan Negotiation.**
- No classes on February 21 or March 7.
- Various preparatory exercises related to the Project Loan Negotiation. (The loan agreement drafting assignment (see February 14 below) will count for 10% of the course grade.)
- Readings:
 - The required course textbook is Scott L. Hoffman, *The Law and Business of International Project Finance* (Boston: Kluwer Law International, 2nd ed., 2001), referred to herein as “Hoffman.”
 - Additional required materials include a package of “Sample Documents” that will be available at the Distribution Center and assorted readings that will be distributed.
- Additional required readings may be distributed from time to time.
- Final examination will be May 12, 10 a.m., in-class, lasting three (3) hours.

Regular Class Meetings: Wednesdays, 7:55-9:55 p.m., in Hotung 1000.

Office Hours:

Lecturers will generally be available after class and at other times by prior appointment. Ms. Zak can be reached by telephone at 703-875-4357 and e-mail at lzak@tda.gov. Mr. Hansen can be reached by telephone at 202-974-5656 and e-mail at khansen@chadbourne.com.

Program and Readings

Jan. 17: Nuts and Bolts of an International Project Financing. Who's who in the cast; functional and contractual relationships; deal issues. (Mr. Hansen and Ms. Zak)

Hoffman:

- Ch. 1: An Introduction to Project Finance, §§1.01-1.20 (4-32);
- Ch. 2: Project Finance Risks, §§2.01-2.08 (35-53);
- Ch. 3: Project Finance Cross-Border Risks, §§3.01-3.18 (57-82);

Optional:

- Ch. 5: Project Finance Participants and their Roles, §§5.01-5.18 (104-112); and
- Ch. 6: Project Finance Structures, §§6.01-6.09 (114-119).

Jan. 24: Documenting the Deal I. Structure and substance of project documents. (Mr. Hansen and Ms. Zak)

Hoffman:

- Ch. 12: An Overview of Project Documentation, §§12.01-12.12 (168-178);
- Ch. 16: Input Contracts, §§16.01-16.06 (288-294); and
- Ch. 17: Project Finance Off-take Sales Agreements, §§17.01-17.06 (306-312); and
- Ch. 18: Project Finance Off-take Sales Agreements, §18.03 (324-333).

Jan. 31: Documenting the Deal II. Structure and substance of finance documents. (Ms. Zak)

Hoffman:

- Ch. 13: Representations and Warranties in Project Finance Credit Agreements and Contracts, §§13.01-13.29 (182-207);
- Ch. 23: Project Finance Debt Commitment Letters, §23.01 (482-484).
- Ch. 24: Credit and Related Documentation for Project Finance Transactions, §§24.01-24.08 (503-531).

Sample documents:

- Term Sheet; and
- Finance Agreement (read closely Articles I to V).

Feb. 7: Documenting the Deal III. More about credit agreements. (Ms. Zak)

Hoffman, Ch. 24: Credit and Related Documentation for Project Finance Transactions (continued), §§24.10-24.14 (531-559).

Sample document: Finance Agreement (read closely Articles VI to IX and the annexes).

Program and Readings

Feb. 14: Documenting the Deal IV: Supporting the credit. (Mr. Hansen)

[Project Loan Negotiation: Individual loan agreement drafting assignment distributed.]

Hoffman:

Ch. 20: Project Finance Credit Enhancement: §§20.01-20.10 (382-397) and §§20.18-20.19 (421); and

Ch. 26: Project Collateral, §§26.01-26.09 (569-590).

"24 Defenses of a Guarantor" (hand-out)

Sample documents:

Project Completion Agreement; and
Share Pledge Agreement.

Feb. 21: No Class (Faculty Retreat)

Feb. 28: Documenting the Deal V. Ancillary documentation. (Ms. Zak)

[Project Loan Negotiation: Individual loan agreement mark-ups due; teams established and lender teams commence work.]

Hoffman:

Ch. 26: Intercreditor Agreements: §26.10 (590-592); and

Ch. 30: Local Lawyers and Overview of Local Laws: §§30.01-30.05 (625-629);

Committee on Legal Opinions, "Guidelines for the Preparation of Closing Opinions," *The Business Lawyer* (v. 57, Nov. 2001), at 8;

Sample documents:

Intercreditor Agreement;
Legal Opinion; and
Closing Certificates.

Mar. 7: No class (Spring break).

Mar. 14: Political Risks. Issues of history, policy and law. (Mr. Hansen)

Hoffman, Ch. 20: Project Finance Credit Enhancement: §20.11 (397-414);

Hansen, "Rise and Fall of Private Investment in Public Infrastructure" in Moran, *International Political Risk Management: The Brave New World* (World Bank Group, 2004), at 75.

Mar. 21: Political Risks II. Legal doctrines and business options; expropriation, exchange controls, war and civil violence; commercial risk compared. (Mr. Hansen)

Program and Readings

[Project Loan Negotiation: Lender team drafts of loan agreement, etc., due and distributed. Borrowers commence review and preparation of mark-ups.]

OPIC Memorandum of Determination for Claim by Nord Resources (Sierra Leone, 1993), re: political violence; and

MIGA Convention, (focus on Articles 12 to 14).

Sample document: Form of OPIC Insurance Contract for equity investments.

Mar. 28: Alternative Routes Abroad. Debt versus equity; sources of funds – who's who among the international financial institutions. (Ms. Zak)

Hoffman, Ch. 21, Financing Sources for the Project, §§21.01-21.09 (parts [1] and [2]) (428-460); and

Fernandez-Duque, "Co-Financing with IFC: Preferred Creditor Status and Inter-Creditor Agreements," Accelerating the Process of Transition (EBRD, 1998).

April 4: Investment Promotion and Regulation. FCPA, OFAC, Anti-terrorism. National, regional and multilateral investment codes; bilateral investment treaties. (Ms. Zak)

[Project Loan Negotiation: Loan Agreement mark-ups, etc., due from Borrower teams; clients assigned.]

Hoffman:

Ch. 29, United States Laws Affecting Foreign Investments, §§29.01-29.03 (612-623);

Ch. 32, OECD Convention, §32.06 (653-654);

Martin, "Foreign Corrupt Practice Act" (Practicing Law Institute, 2004), Appendix A6, 1-24; and

Sample Document: Bilateral Investment Treaty between the United States and Bolivia.

Apr. 11: Investments Awry, Part I. Project financing workouts; a sampler of investment disputes illustrative of recurring issues. (Mr. Hansen and Ms. Zak)

Kargman, "Project Finance Restructurings and Corporate Debt Restructuring in the Emerging Markets: A Comparative Overview," Journal of Structural and Project Finance, Winter 2003, at 35; and

Kargman, "How to Tackle Debt Restructuring in Emerging Markets," in Int'l Financial Law Review, Dec. 12, 2002, at 41.

Apr. 14 (Saturday) Project Loan Negotiation (8:30 a.m. to 12:45 p.m.; 1200 New Hampshire Ave., NW, Suite 300).

Program and Readings

- Apr. 18: Investments Awry, Part II. Dispute resolution; litigation vs. arbitration (Ms. Zak, Mr. Hansen, and guest lecturer)
- Hoffman, Ch. 31, Dispute Resolution in Project Finance Transactions, §§31.01-31.06 (632-638) and §§31.08-31.09 (640-641);
- Henn, "Where Should You Litigate Your Disputes? In an Arbitration? Or Through the Courts?" 59 Disp Resol. J. 34 (2004); and
- Kantor, "International Project Finance and Arbitration with Public Sector Entities: When Is Arbitrability a Fiction?" 24 Fordham Int'l L. J. (April, 2001), 1122-1182.
- Apr. 25 [Make-up class, if needed]
- May 12: Final Examination (10:00 a.m.).