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PRACTICE NOTE:

GENERAL DEBT FINANCING VERSUS PROJECT FINANCING

Nicole Kearse, Head of Sovereign Finance - African Legal Support Facility

Primah Atugonza, Head of PPP and Infrastructure - African Legal Support Facility

Emeka Charles Chinwuba, Partner - Cahill Gordon & Reindel LLP

Allison Perlman, Senior Associate - McDermott Will & Emery LLP

Princess Fuller, Associate - McDermott Will & Emery LLP

I. Overview

In this practice note, we compare general debt financing to project financing structures, highlighting some of the fundamental components of the two similar but distinct types of financing. This note additionally addresses some of the key distinctions in loan structuring and documentation where the borrower is a sovereign.

Regardless of whether a borrower is a business or a sovereign, there are various forms of debt a borrower may incur depending on the desired use of the debt proceeds, the financing structure it seeks to adopt and the level of efficiency it seeks to achieve relative to the debt structure adopted.

For example, while project financing has, in some respects, several similarities to general debt financing, it is a separate and unique product that is specifically designed to facilitate the financing of a variety of revenue generating projects.

II. General Debt Finance and Project Finance Structures

A. Use and purpose for either structure

General debt financing is one of the most used forms of financing for government and business activity. It may be used for various purposes, including to support general budgetary needs or refinance existing debt in the case of a sovereign borrower, or, for businesses, in order to secure working capital for general corporate purposes or maintain a certain level of liquidity for future investment.

Before making the determination to lend and the amount and terms of a loan, lenders undertake a high level of diligence to determine the ability of the borrower to repay the debt over the term of the debt facility and satisfy any financial or other covenants agreed in the debt documents. This can be especially challenging in the case of sovereign borrowing as access to both confidential and historical borrowing documentation can prove to be very difficult. The results of a due diligence analysis, to a large degree, determine some of the key terms of the financing such as tenor, spread, credit support and the covenant package. While a borrower will aim to secure the maximum required amount possible on the most favorable terms, ultimately the lender must be reasonably confident that the borrower will be able to comply with the loan conditions and repay the loan.

Project financing is typically more appropriate where financing is required to fund the development of a distinct revenue generating project. Project financing is often referred to as off-balance sheet and non-recourse/limited recourse lending because project finance lenders do not primarily look to the balance sheets of the borrower as the basis for lending but rather to the specific, revenue-generating project being funded with the project debt. Furthermore, the ring-fenced revenue being generated by the borrower (typically a special purpose vehicle) is the primary source of repayment of the project debt while the assets of the borrower are the sole recourse of the lenders in the event of default and enforcement under the debt documents. Project financing is very commonly used to finance the development of energy and infrastructure revenue-generating projects and is attractive to governments and sponsors of such projects for its off-balance sheet and non-recourse features. This means that the debt incurred by the project company is not reflected on the government or sponsor's balance sheet, and in the event of a default under the debt documents the lenders only have recourse to the project company and its assets pledged under the debt security documents.

Unlike in a general debt financing, where the lenders focus on the financial position of the borrower in underwriting a loan facility, project lenders primarily focus on the project being financed and the cash flow projections of the assets upon completion to determine whether the debt service obligations can be supported by such revenues.

In addition to the projected cash flows of a project, overall project bankability is determined by the lenders after an extensive due diligence review (typically involving several advisers depending on the type of project) of the entire project, project counterparties and the allocation of the various project-related risks associated with the project.

B. Structural Differences

Issue	General Debt Financing	Project Financing
Borrowing entity	Government or operating company – the debt is typically incurred by the government (usually through the Ministry of Finance) or operating company upon whose financial data the loan is priced.	Special Purpose Vehicle (SPV) – the debt is typically incurred by a SPV who will own and operate the project or asset.
Ring fencing	Borrowing entity may engage in various activities or businesses, with no real segregation of financial assets.	SPV typically required to own/operate the project and segregation of the financial assets is required to ensure bankruptcy remoteness.
Debt sizing	This is based off the credit worthiness and balance sheet of the borrower and/or the value of the borrower's assets and any available credit support.	This is primarily based off the projected cash flows of the project to be developed or operated by the SPV and any available credit enhancements or support.
Key collateral	Government assets – sovereign loan transactions are mostly unsecured. However, it may be possible to have secured sovereign lending transactions; for example, using oil revenues as security. Company assets – either all assets or specified assets (e.g., inventory and receivables etc.).	Project company assets, including material project contracts, revenue, accounts, and equity interest in the SPV.
Recourse by lenders	Lenders generally have direct recourse to the borrower and any entity providing credit support.	Typically, non-recourse to the sponsors and the lenders' recourse is limited to the cash and assets of the SPV.
Tenor	Typically attracts shorter tenors (i.e., 3 – 5 years).	Ability to attract longer tenors (i.e., 7-15 years) for bank debt, and non-traditional debt providers.
Bankability assessment	Limited to the financial position, credit worthiness of, and materially adverse changes impacting, the borrower entity.	Extensive analysis of various risk categories related to the project, sponsors and any offtakers.
Risk management	Less risk management on the project level as the borrower is usually a government or an operating entity.	Increased risk allocation, mitigation and sharing measures are employed during the bankability and diligence review.
Credit Support	Third party credit support and enhancement may be used to attain better pricing and a favorable covenant package.	Generally preferred that the project economics stand on its own, although credit support can be used to offset certain counterparty risk.
Complexity	Typically, more straight-forward to arrange and reach financial close.	Can be very complex to arrange and document-heavy depending on the project and structure.
Enforcement	For corporate lending, enforcement is typically by sale of company's secured assets. This is more complicated with sovereign lending.	Lender remedies typically include step-in rights, contract replacement rights, extended cure rights and ultimately a sale of pledged assets.

III. Project Finance Case Study

In 2020, a West African based power developer (the "Sponsor") sought to develop, finance, construct, operate and maintain a new gas-fired embedded power plant with an initial capacity in excess of 150 MW, associated distribution infrastructure and a gas pipeline to service and provide power to a ring-fenced location. The Sponsor sought project financing from an Africa based development finance bank to fund the project costs related to the development of the project, pay transaction fees and expenses, and provide letters of credit to support the scheduled debt service obligations during construction of the project.

(a) Underwriting: Being a traditional project financing, the lenders were underwriting this facility based off the financial projections on future performance of the Project, the quantum of cash equity the Sponsor committed to invest into the Project, as well as the additional credit support provided by a Sponsor affiliate to back-stop the project debt.

(b) Project Financing: The project financing was structured as a senior secured facility to be used primarily to pay project costs in connection with the construction of the project. Under the facility, the borrower could access letters of credit to support its scheduled debt service obligations during the construction period when no revenues would be generated by the Project.

(d) Collateral: The Borrower granted to the lenders a first lien (i.e., priority) security interest over all its assets including all personal property, project accounts, equity interest in the borrower, as well as the project contracts.

(e) Credit Support: In addition to the required equity investment from the Sponsor, the lender required the Sponsor to furnish a guarantee to backstop the obligations of the borrower under the facility agreement.

No°	Financing Documents	Notes
1	**Facility Agreement**	Covering the borrowing mechanics, terms and conditions relating to the debt facility.
2	**Security Debenture**	Specifying the collateral pledged to, and the rights of, the lender with respect to the collateral.
3	**Common Security Trust Deed**	Providing for the shared collateral between the senior DFI lender and the previously existing subordinated lenders.
4	**Project Accounts Agreement**	Providing for the project accounts, mechanics for depositing and withdrawing funds from each account, the cash waterfall from each project account and agency provisions for the account bank.
5	**Share Charge**	Providing for the pledge by the Sponsor of the equity interest in the Borrower to the lender.
6	**Direct Agreements**	Providing for privity between the lender and the material project contract counterparties, and the additional lender protections including step-in rights, default notices and extended cure periods.
7	**Intercreditor and Subordination Deed**	Providing for the subordination arrangements between the senior and junior lenders, standstill and decision making procedures.

IV. Key Lending Documentation

A. Documentation common to both General Debt Financing and Project Financing

1. Facility Agreement

A facility agreement (which is also referred to as a "credit" or "loan" agreement) is the primary agreement outlining the terms and conditions of a lending arrangement between a borrower (or borrowers) and a lender (or lenders). The agreement will detail, inter alia, borrowing mechanics, representations and warranties of the borrower, covenants (i.e., agreements to undertake or not to undertake certain activities or report or disclose certain events), conditions precedent to lending (i.e., actions the borrower must undertake or documents the borrower must deliver before the lender(s) are required to lend under the facility) and events of default.

A facility agreement can be structured as a term loan facility (loans for a specific amount with a specified repayment schedule), a revolving credit facility (loans that allow the borrower to borrow up to a specified amount, repay and re-borrow such amounts), or other structures such as bridge and swingline loans and overdraft facilities. Of note, a facility agreement may contain more than one loan type.

Although facility agreements are bespoke based on the transaction and the parties thereto, the provisions noted above are customary provisions one would find in a facility agreement. In addition, the Loan Market Association (LMA), a market-led trade body for the syndicated loan market in Europe, the Middle East and Africa, has created standard form facility agreements that are often used for sophisticated lending transactions. Similarly, the Loan Syndications and Trading Association (LSTA), a financial services trade group which exists to enhance the development and running of the North American syndicated market, has created standard form facility agreements often used as a basis for negotiating loan agreements in North America and are very useful for deals involving US based lending parties and DFIs.

There are some key distinctions to be made where the borrower is a sovereign as opposed to a corporate. For example, representations related to due incorporation, financial statements and insolvency will not be included in sovereign loan documents. Conversely, representations related to sovereign immunity, compliance treaty obligations, and IMF and/or World Bank membership, while typically present in a sovereign borrowing will not be present in a corporate borrowing.

Further distinctions are necessary where the borrowing relates to a project financing. As a starting point, the borrower will be a special purpose vehicle (SPV) (typically the project company) which is effectively a shell company formed to develop and operate a project. In addition, in a project financing, the parties may decide to enter into a common terms agreement (CTA), in which case, the CTA will be the primary agreement amongst the parties (see CTA summary below).

2. Security Agreement

A security agreement is a contract pursuant to which the borrower(s) grants a security interest in, and pledges specified collateral (i.e., the borrower's assets) to secure the loan under a facility agreement. If the borrower defaults under the facility agreement, the proceeds from the sale of the pledged collateral can be used by the collateral agent (a financial institution such as a bank that holds the pledged collateral on behalf of the secured parties) to satisfy the borrower's obligations under the facility agreement. A security agreement thus offers lenders additional assurance that they will be repaid for loans made, and includes a detailed description of the collateral, representations and warranties, appointment and rights of the collateral agent and a waterfall provision for the application of proceeds from the sale of the pledged collateral. A security agreement is also important as it gives the lenders under the facility agreement priority over other unsecured creditors of the borrower and, to the extent perfected[1], priority over other subsequent secured parties.

The parties may also enter other separate security and/or pledge agreements relating to specific forms of collateral, as well as specific agreements required for perfection purposes such as deposit account control agreements and securities account control agreements. Whether such additional agreements are required will be subject to the laws governing perfection of the security interest granted in such item

of collateral. Although a security agreement is often a separate agreement to the facility agreement, in many jurisdictions, the security and security terms are included within the facility agreement itself.

As noted, sovereign lending is typically unsecured, and as such, it is less likely to find a security agreement where the borrower is a country.

Security agreements within a project financing will typically set forth the assets being granted as collateral by the borrower to the collateral agent (on behalf of the secured parties). The collateral granted in a project financing most often covers all assets of the SPV, including the project revenues, rights under the project contracts, as well as the shares in the SPV itself (and equity contributions). There is often a separate pledge agreement covering the pledge of the equity interest in the borrower itself owned by a parent entity one level above in the ownership structure.

3. Guarantee Agreement

It is not unusual for lenders both general debt financing and project financings to require a guarantee as additional credit support for the facility. The guarantee, if required, is typically provided by the government in the case of an SOE or a parent of the borrower for a corporate borrowing. A government may also benefit from a guarantee from an external party such as the World Bank. Guarantees are typically drafted as primary obligations of the guarantor such that the lenders have direct recourse in the first instance to the guarantor in the event the borrower fails to fulfil its payment or other obligations under the facility.

4. Account Control Agreement

An account control agreement may also be used in both secured commercial and project finance transactions. This contract secures the borrower's obligations under a facility agreement by granting the collateral agent "control" over any deposit account maintained by a borrower (or guarantor). This type of agreement will not be used where the borrower is a sovereign government.

This agreement is especially important to lenders in a project financing transaction since the cash flow is the primary source of repayment of the debt. In some jurisdictions, this agreement will also include the grant of a security interest in such accounts (and the cash deposited) by the borrower to the collateral agent although the security agreement may cover such grant of security interest.

5. Intercreditor Agreement

In both corporate debt financings and project financings where there are separate classes of lenders having different levels of priority, it is very common to have the lenders and the borrower enter into an intercreditor agreement. The intercreditor agreement settles the rights of the different classes of lenders with respect to payment priority, enforcement and decision making. Rights granted under the intercreditor agreement will typically include rights and ranking in respect of receiving payments, declaring defaults, granting waivers, enforcing security and amending any of the financing agreements. As with the account control agreement, this type of agreement will not be used for sovereign lending.

1- Perfected means that the interest in the particular secured asset or assets cannot be claimed by another party. Perfection is typically achieved through registration with the relevant governmental authority.

B. Specific Project Financing Documentation

1. Common Terms Agreement

In project financing transactions where there are multiple facilities being provided by different groups of lenders, it is very common for the borrower, lenders and other financing parties to enter into a common terms agreement (CTA). The CTA is an agreement among the financing parties and the borrower which sets out the terms that are common to all tranches of debt including definitions, conditions precedent, covenants, events of defaults and various miscellaneous provisions.

2. Direct Agreements

The non-recourse nature of project financings requires a robust security package, which allows lenders access to the project itself in the event of a default by the borrower. As such, the borrower will, in addition to the other collateral being granted, assign all its rights in the project contracts, and enter into direct agreements with the collateral agent and the counterparties under the material project contracts.

The direct agreement allows the lenders to step into the position of the borrower under such material project contract in the event of a default under a project contract, which might otherwise entitle the counterparty under such project contract to terminate or suspend the contract. It also enables the lenders to substitute the borrower under such project contract with an acceptable substitute party, as well as requires the contract counterparty to notify the lenders of any default under such project contract.

3. Credit Support

Letters of comfort/support are not legally binding but provide both investors and lenders some level of comfort that if the SPV becomes insolvent, the government or parent company will step in to assist the SPV in meeting its payment obligations under the facility.

Kindly see the table below for a summary of the provisions typically found in these agreements.

Agreement	General Debt Financing and Project Financing
Facility Agreement	The facility agreement, also referred to as a loan agreement or credit agreement, is used in both debt financings and project financings. In this agreement, the parties specify in detail the terms and conditions of the debt being provided including: • Loan amount, tenor and maturity; • Interest rate and interest periods; • Prepayment, amortization and repayment; • Conditions to borrowing; • Representations and warranties; • Covenants (affirmative, negative, informational and/or financial); • Events of default and acceleration; • Agency provisions; and • Assignment, amendments, notices, confidentiality and other miscellaneous provisions.
Security Agreements	The security agreement will specifically detail the collateral and the rights of the secured parties in relation to such collateral including: • Covenants in relation to the collateral; • Representation and warranties in relation to the collateral; • Enforcement by the collateral agent; • Collateral agency provisions; and • Amendments and other miscellaneous provisions.

Intercreditor Agreement	The agreement will specify the priority of each lender group and detail the rights of each group of lenders, including the following: • Subordination; • Payment priority; • Standstill; • Voting and decision making; • Agency provisions; and • Amendments and other miscellaneous items. Note that not all intercreditor agreements have subordination features as this only applies where there are separate lender groups with different priority levels. An intercreditor agreement may simply cover decision making amongst different lender groups with equal priority in relation to payment and security.

Project financing transactions are far more document heavy when compared to a typical debt financing transaction, and depending on the assets, there are several other financing agreements applicable to a project financing transaction.

Kindly see the table below for a summary on these project finance specific agreements.

Agreement	Project Financing Only
Common Terms Agreement (CTA)	The CTA is commonly used in multi-sourced project financings as it ensures there is a common understanding of key definitions and other material provisions under the facilities. The CTA is also very helpful to a borrower to ensure uniformity across facilities with respect to: • borrowing conditions, • representations and warranties, • covenants, • events of default, • cure periods and materiality and material adverse effect ("MAE") qualifiers.
Direct Agreements	The direct agreement allows the lenders to "step into the shoes" of the Borrower under such material project contracts if there is a default under the facility agreement or under the relevant material project contract. This agreement will include provisions on: • default notification, • extended cure rights, • substitution/step-in rights, and • obligation to enter New Agreement.
Accounts Agreement	This is a very important agreement for lenders and in some jurisdictions will also include the grant of security interest in such accounts (and the cash deposited) by the borrower to the collateral agent. The accounts agreement will usually include provisions on: • creation of project accounts, • inflows in project accounts, • account waterfall, and • distribution conditions.
Credit Support Instruments	Credit support instruments may include: • guarantees, • letters of credit, • bonds, and • such other liquid security instruments. In a project financing, any of these forms of credit support may be required to backstop certain identified risks that cannot be otherwise mitigated or allocated away from the project.

Please see Annex I: Key Terms Explained for a more detailed overview of these various clauses found in debt and project financing documents.

V. Conclusion

As this practice note has highlighted, there are several similarities between general debt financing and project financing. The note has also highlighted some of the key differences in relation to sovereign borrowing. It is important to note that each loan structure will be borrower and transaction-specific and thus must be drafted and/or reviewed with an understanding of those specificities.

Annex I: Key Terms Explained

The structure of a loan agreement in both debt financings (sovereign and corporate) and project financings will generally follow a standard pattern, divided into discrete sections beginning with extensive definitions used throughout the document and followed by borrowing and payment mechanics, conditions precedent, representations and warranties, affirmative, reporting, financial and negative covenants, events of default, remedies, agency provisions and other miscellaneous provisions. The actual terms of each document will vary to reflect the terms of the underwriting commitment and negotiation by the parties. Within this section, we will discuss some of the more common material terms within lending documentation.

A. Borrowing Mechanics – Draws

The term "draw" simply refers to the act of drawing down funds by the borrower under a credit facility, often alternatively referred to as a borrowing.

In a single draw facility, the borrower draws the entire loan amount as a single advance and there are no subsequent advances under the loan agreement. Here, the borrower requires the entire loan proceeds immediately upon reaching financial close and the lender has no monitoring incentive to tranche the draws. One exception is where there is a revolving commitment as part of the overall debt package, in which case the borrower may draw on the revolving loan facility in whole or in part, repay the drawn amounts and draw such repaid amounts again.

In some instances, the lender will agree to defer drawing on the facility upon satisfying the primary conditions precedent to close and agree to a series of draws, each for a specified amount, to be paid over a fixed period of time. This is simply referred to as a delayed draw facility. The parties may agree on a draw schedule specifying the intervals and the permissible amounts for each draw subject to any agreed specific conditions precedent to drawing.

In other cases, a borrower may decide that it will borrow a predetermined loan amount but is uncertain as to when such funds will be needed or whether it will truly need all of those funds. In this case, a credit facility with a multiple draw feature may be the best option. A multiple draw facility refers to when the borrower receives portions of the loan amount in a series of draws. In project financings where there is a development piece, lenders will often apply the multiple draw structure such that the borrower can only access loan amounts for pre-approved project costs. This allows the lenders to monitor construction progress (using independent engineers) and the application of previously released loan amounts to the borrower.

Credit facilities are generally referred to as term loans, simply meaning that the entirety of the loan balance is due and payable at the end of a fixed term. However, as noted above, a revolving loan may be repaid and reborrowed repeatedly during its term with the balance of the loan outstanding due at maturity. These multiple advances are often referred to as revolver draws. In this instance, the borrower has recurring access to a fixed amount of funds and this cycle continues up until the earlier of the expiration of the lender's revolving commitment or the maturity date.

B. Borrowing Mechanics – Conditions Precedent

Within a loan agreement, the conditions precedent section outlines actions the borrower must take, or documents the borrower must deliver, before the lender is required to fund the committed facility. From a borrower's standpoint, the shorter, clearer and exhaustive the list of conditions precedent is, the more certainty of funds the borrower has relative to the lender. As such, most borrowers attempt to consolidate this list of prerequisites so that there are fewer steps and less documentation required to obtain the loan. Lenders, on the other hand, often insist upon a more extensive set of conditions than the borrower would wish, subject to the extent of and satisfaction with the due diligence conducted with respect to the borrower and/or the project.

Loan agreements typically provide for the following conditions:

(a) Conditions precedent to closing, referring to the set of conditions that need to be satisfied for the closing of the facility to occur. As noted below, satisfying these conditions will not necessarily guarantee funding as there may be specific conditions to each drawing under the facility.

(b) Conditions precedent to initial draw, referring to the set of conditions that need to be satisfied for the initial draw under the facility to occur. Usually, one of these conditions would be that the closing has occurred which, in effect, means the conditions precedent to closing have been fully satisfied. Similarly, satisfying the conditions precedent to an initial draw will not guarantee subsequent draws (if any) as there may be specific conditions to making subsequent draws under the facility.

(c) Conditions precedent to subsequent draws, referring to the set of conditions that need to be satisfied for the borrower to make subsequent draws under the facility.

(d) Conditions precedent to effectiveness, referring to the set of conditions that need to be satisfied for the loan agreement to become effective, notwithstanding there being no requirement to fund by the lenders. The reference here to "effectiveness" is often synonymous with the reference to "closing" where no draws are being made as of such date.

Some common conditions precedent include requirements that, (i) the loan agreement and all other financing agreements (e.g., security agreement and guaranty) be properly executed and delivered; (ii) in the context of a refinancing, the borrower has paid or shall concurrently pay off the loan being refinanced; (iii) the lender has received certain financial documents from the borrower (e.g., pro forma balance sheet, audited financial statements for a certain period, etc.); (iv) all government and/or third party approvals needed in order to provide the loan have been met or received; (v) no material adverse change has occurred that would prevent either party from performing their duties under the loan agreement; (vi) certain certificates and legal opinions have been provided by the borrower (or borrower's counsel); and (vii) sovereign immunity has been validly waived in accordance with the laws of the borrowing country in the case of a sovereign borrower.

C. Waterfall Provisions & Repayment

Generally, there are two kinds of waterfall provisions typically seen in loan agreements – the payment waterfall in the event of an enforcement and, more specifically for project financings, the cash waterfall with respect to the project accounts. The payment waterfall, usually provided for in the loan agreement or security agreement, sets out how the proceeds received from the exercise of remedies by the lenders should be disbursed. However, the cash waterfall, which is typically set out in the Accounts Agreement, provides for the order in which cash and revenues are disbursed from the various project accounts.

In project financings, the Accounts Agreement will also specify what lender authorizations and/or documents are required in order for the account bank to obey payment instructions from the borrower. Some of the typical accounts included within a waterfall provision for a project finance loan include: a disbursement account (where the lenders deposit the loan proceeds); proceeds (or revenue) account (where the borrowers deposit revenue from the project and otherwise); operating account (where the borrowers deposit funds for the project company's operating expenses); insurance (or condemnation) proceeds account (where the borrowers deposit proceeds from insurance or condemnation claims); debt service reserve account (where the borrower sets aside a reserve as a backup in the event insufficient funds exist to pay debt service); and distribution account (where revenues to be distributed as dividends are deposited).

D. Representations & Warranties

Within loan agreements, the representations and warranties are principally made by the borrower and very rarely would you see lenders making representations in the loan agreement. The representations and warranties speak to certain facts in connection with the borrower, the transaction documents being true and correct as of the closing date, the date each drawing is made under the facility and, in some cases, through the term of the facility until the maturity date. A breach of a representation and warranty by the borrower, which remains uncured after the specified grace period, will result in the occurrence of an event of default.

Some common representations and warranties include: existence and power; no material adverse effect; no litigation; use of proceeds; and enforceability. In addition, the lender's due diligence might necessitate the inclusion of more project-specific representations and warranties to address specific issues or risks not sufficiently resolved or mitigated by the borrower.

In some instances, the borrower may make certain disclosures to the lender within the attached disclosure schedules of the loan agreement. These disclosures will typically be excluded from coverage under the specific representations and warranties. The effect of such disclosures is that the borrower is not liable for these specific disclosures excluded from the relevant representation and warranty and will not be required to indemnify the lender.

E. Covenants

Covenants in loan agreements are effectively a promise or commitment by the borrower to (a) perform or ensure performance of certain actions, or maintain or ensure the maintenance of certain conditions (affirmative covenants), (b) provide notice of certain occurrences or deliver copies of certain documents received by the borrower (reporting (or informational) covenants), (c) for corporate borrowers, maintain certain financial ratios or satisfy certain financial tests (financial covenants), (d) for sovereign borrowers, maintenance of International Monetary Fund membership, and/or (d) refrain from taking certain actions or ensure certain events do not occur (negative covenants), in each case, during the term of the loan.

The breach of a covenant which remains uncured will result in an event of default. Note, however, that the breach of a negative covenant or, if applicable, a financial covenant will typically result in an immediate event of default under the loan agreement. Certain affirmative covenants and reporting covenants are drafted with built-in grace periods, such that the lenders take the view that an additional cure period in the event of a default is not warranted. The breach of such covenants will result in an immediate event of default under the loan agreement.

F. Events of Default

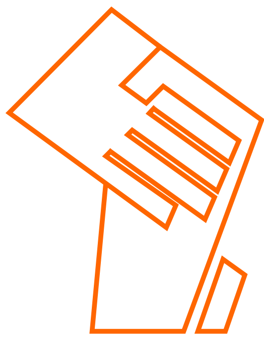
The loan agreement will always include a specific list of events, the occurrence of which will constitute an event of default under the loan agreement. Some of the common events of default include: (i) payment default; (ii) breaches of representations and warranties; (iii) breaches of covenants; (iv) bankruptcy and dissolution for corporate borrowers; (v) invalidity of the financing agreements; and (vi) the failure of the security granted under the financing agreements.

When an event of default occurs, the lenders may choose to accelerate the loans and exercise remedies against the borrower. Lenders are also able to waive an event of default to the extent the borrower is working to cure the default.

G. Security

Debt financings may be secured or unsecured, although, as noted above, most sovereign lending is unsecured. In a secured financing, the borrower will grant a security interest to the lender (or secured parties) over all its assets that constitutes the collateral agreed in the commitment papers. Most corporate debt financings and almost all project financings are structured as secured financings. An investment grade borrower will be able to structure an unsecured loan in certain circumstances, although this will rarely occur in a project financing. In a secured financing, the lenders have full recourse to the collateral granted to the lenders and in the event of a default that remains uncured, the lender can accelerate the facility and exercise remedies upon the collateral by selling the assets to repay its advances to the borrower.

Secured financings require additional agreements to describe the collateral in full, the grant of the security interest therein and the perfection of such security interests. These agreements include the security agreement, pledge agreement, account control agreements, mortgages and other perfection related agreements.



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