

INDEX

- abandonment, of project
 default, 321, 354
 development agreement, 83, 85
- abbreviations/acronyms/terms,
 449–454
- act of state doctrine, 140, 162
- affiliates, transactions with, 321,
 350
- African Development Bank, 276, 293
- Agreement on Officially Supported
 Export Credits, 296
- anti-competitive activity
 Council of Europe Criminal Law
 Convention on Corruption, 419,
 423
 European Union Convention on
 Fight Against Corruption, 419,
 425
 generally, 419
 Inter-American Convention Against
 Corruption, 419, 421
 International Chamber of Commerce
 Rules of Conduct to Combat
 Extortion and Bribery, 419, 426
 OECD Convention on Combating
 Bribery of Foreign Officials in
 International Business
 Transactions, 419, 424
 OECD Recommendation on Tax
 Deductibility of Bribes, 419, 424
- procurement, 419, 420
 European Bank for Reconstruction
 and Development, 419, 420
 Inter-American Development
 Bank, 419, 420
 World Bank, 419, 420
 United Nations policy, 419, 425
- Arab Fund for Economic and Social
 Development, 276, 294
- arbitration. *See* dispute resolution
- Asian Development Bank, 245–260,
 276, 294
 breach of undertaking by host
 government, 260
 currency inconvertibility and
 currency transfer risks, 259
 expropriation, 260
 political violence, 260
- assignments, consents to. *See* consents
 to assignment of project
 contracts
- B Loan program, International Finance
 Corporation, 259
- bankability, 19
- bankruptcy
 forum, 389, 391
 generally, 389
 non-U.S. debtor with foreign assets,
 389, 390
 structuring solutions to avoid, 389,
 391
 types of, 389
 U.S. debtor with foreign assets, 389,
 390
- bidding (tendering) processes, 139, 140
 advantages, 139, 141
 bid design and preparation of bid
 documents, 139, 142
 bid meetings and bidder questions,
 139, 143
 bidding, project finance, 139, 143
 consortium bids, 139, 144
 disadvantages, 139, 141
 evaluation and scoring, 139, 142
 generally, 139, 140
 lenders, when to involve, 139, 144
 model contracts, 139, 143
 multilateral agencies, promotion of
 public bids, 139, 143
 non-self scoring, 142
 pre-qualification of bidders, 139,
 141
 security, 139, 143
 self-scoring, 142
 special-purpose entities, 139, 143
 World Bank, 143
- bilateral agencies
 Compagnie Française d'Assurance
 pour le Commerce Extérieur
 (France), 276, 299
 direct lending, 276, 297
 Eksportkreditaadet (Denmark), 276,
 299
 Export Credit Guarantee Department
 (United Kingdom), 276, 299
- Export Credit Insurance Company
 (Spain), 276, 300
- Export Development Corporation
 (Canada), 276, 299
- Export Finance and Insurance
 Corporation (Australia), 276,
 300
- Export-Import Bank of Japan, 276,
 298
- Export-Import Bank of Korea, 276,
 300
- financial intermediary loans
 (bank-to-bank), 276, 297
- financing, types of, 276, 297
- Finnish Export Credit Limited
 (Finland), 276, 299
- Garanti-Instituttet for Eksportkreditt
 (Norway), 276, 300
- generally, 276, 295
- Hermes Cover (Germany), 276, 299
- Instituto Centrale per il Credito a
 Medio Termine (Italy), 276, 299
- interest rate equalization, 276, 297
- Netherlands, 276, 299
- OECD Consensus, 276, 296
- Oesterreichische Kontrollbank AG
 (Austria), 276, 300
- Office National du Ducroire
 (Belgium), 276, 299
- other support, 276, 300
- Overseas Private Investment
 Corporation, 276, 298
- Swedish International Development
 Authority, 276, 300
- U.S. Export-Import Bank, 276, 297
- bond
 bid, 245, 252
 labor and material, 245, 253
 payment, 245, 252
 performance, 245, 252
 retention, 245, 253
 warranty, 245, 252
- bond financing, 78, 81, 275, 278
 advantages, 280
 credit ratings, 275, 278
 disadvantages, 275, 280
 generally, 275, 278
 investment funds, 275, 282

- bond financing (*cont.*)
 mini-perm, 275, 280
 mini-perm, amortizing, 275, 280
 political risk insurance, 246, 265
 Rule 144A (U.S.), 282
- bond ratings, currency risk analysis, 275, 279
- bribery. *See* anti-competitive activity
- budgets
 construction, 103
 covenants, credit agreement, 321, 348
 operating, 103
- building materials, unavailability of as a risk, 58, 61, 164, 168
- build-own-transfer, 47, 75, 81, 146
- cancellation of project, 3, 24
- capacity payments. *See* power sales agreement
- cash call, 246, 271
- cash trap, 58, 68
- change of law. *See* risks, change of law
- choice of forum, 404, 409
- choice of law, 39, 55, 249, 309, 404, 408, 417
 U.C.C., 365
- co-financing, 78, 81
- collateral
 accounts, 363, 366
 civil law, 363, 370
 collateral trusts, 363, 372
 common law, 363, 370
 consents to assignment. *See* consents to assignment of project contracts, 363, 375
 contract, cutoff, 212
 contracts, 363, 366
 contracts, notice of assignment, 212
 enforcement, 363, 370
 executory contracts, 377
 floating lien, 363, 369
 foreclosure, 363, 370
 generally, 365
 guarantees, 363, 366
 insurance, 363, 380
 additional insured, 363, 380
 other issues, 363, 381
 reinsurance, 363, 381
 insurance, waiver of subrogation, 363, 381
 insurance proceeds, 363, 366
 intangible assets, 363, 365
 intercreditor agreements, 363, 378
 lender liability for contracts assigned as collateral, 363, 377
 lien, "blanket," 363, 365
 lien, priority of, 363, 370
 liens, denominated in local currency, 363, 370
 liens, types permitted, 363, 369
 liquidated damages, 363, 366
- local formalities, 363, 370
- negative pledge, 363, 369
- offshore accounts, 363, 378
- ownership and operation, transfer of rights to, 363, 371
- permits, licenses and concessions, 363, 365
- personal property, 363, 365
- political risk insurance, 363, 366
- potential purchasers of, 363, 371
- project cash flow, 363, 365
- project contracts, 363–378
- real property, 363, 367
- real property, foreign ownership, 363, 371
- revenues, payment to operating account, 363, 376
- surety bonds, 363, 366
- collateral documents
 disbursement agreement, 363, 368
 generally, 363, 367
 mortgage, deed of trust and indenture, 363, 367
 offshore accounts, 363, 368
 ownership interests, pledge of, 363, 367
 security agreement, personal property, 363, 367
 voting trust, 363, 368
- collateral risk. *See* risks, collateral security
- collateral security
 collateral trusts, x, xxxix, 39, 54, 363
 foreclosure, 39, 53
 lien enforcement, 39, 53
 local formalities, 39, 53
 priority, 39, 53
 real property, 39, 54
 risks, 39–54
 types of collateral security permitted, 39, 53
- collateral, insurance, loss payee, 363, 380
- collateral, insurance, non-vitiation clause, 363, 380
- comfort letter, 245, 251
- commercial risks. *See* risks
- commitment letter, 310–317
 application process, 310, 311
 conditions to closing, 310, 315
 conditions to closing, sample provision, 310, 315
 covenants, 310, 314
 covenants, sample provision, 310, 314
 events of default, 310, 314
 events of default, sample provision, 310, 314
 expenses, 310, 316
 expenses, sample provision, 310, 316
 general recommendations, 310, 317
 letter of intent, 310, 311
- loan amount, 310, 312
- loan amount, sample provision, 310, 312
- material adverse change, 310, 316
- material adverse change, sample provision, 310, 317
- non-disclosure, 310, 316
- non-disclosure, sample provision, 310, 316
- oral, 310, 312
- preliminary advice from lender, 310, 311
- repayment terms, 310, 313
- repayment terms, sample provision, 310, 313
- representations and warranties, 310, 313
- representations and warranties, sample provision, 310, 313
- scope of, 310, 312
- scope of, sample provision, 312
- term, 310, 316
- term sheet, 310
- term, sample provision, 310, 316
- use of proceeds, 310, 313
- use of proceeds, sample provision, 310, 313
- Compagnie Française d'Assurance pour le Commerce Extérieur (France), 276, 299
- completion of project. *See also* construction contract
 bonus, early completion, 164, 179
 delay in, 58, 60
 guarantees of, 164, 177
 representation and warranty, 122, 136
- concession agreement, 48, 139, 145
- BOT structure, example in, 139, 146
- construction contract, coordination with, 165, 187
- disputes, 139, 146
- host government, 139, 145
- ongoing consents and approvals by host government, 139, 146
- concessions and licenses
 compliance with, 165, 187
 risks, 39, 47
- consents to assignment of project contracts, 363, 375
- contracting party perspective, 363, 376
- host government's perspective, 363, 376
- project company's perspective, 363, 376
- secured party perspective, 363, 375
- construction contract, 164, 170
 bonds, 164, 183
 bonus, 164, 179
 breach, remedies for, 164, 181
 building materials, 164, 168

- change in work, 164, 181
- change orders, lender restrictions on, 320, 344
- concession, compliance with, 165, 187
- construction costs, 164, 166
- construction of project-related facilities, 164, 168
- contractor resources and experience, 164, 167
- coordination, 164, 165, 169, 184
- correction of work, 164, 178
- cost overrun, implications of in credit agreement, 321, 350
- cost-plus-fee contract, 164, 171
- cost-plus-fee, with maximum price and incentive fee, 164, 171
- delay, 164, 166
- engineering contract, 164, 169
- environmental guarantee, 164, 179
- EPC contract, 164, 170
- excuses to performance, 164, 168
- final acceptance date, failure to achieve, 321, 353
- final completion, 164, 178
- fixed-price contract, 164, 170
- force majeure, 164, 165, 167, 184
- generally, 164, 165
- guarantee, performance, 164, 177
- guarantees, alternatives to, 164, 179
- guarantees, exceptions to, 164, 179
- insurance, 165, 183
- liability limitations, 165, 186
- liquidated damages, delay, 164, 178
- mechanical completion, 164, 177
- notice to proceed, 164, 174
- offset, 303
- offset, sample of, 303
- payment bond, 164, 183
- performance bond, 164, 183
- performance guarantee, 164, 166
- price, 164, 175
- procurement contract, 164, 170
- project company, responsibilities, 164, 173
- project documents, compliance with, 165, 186
- project finance turnkey contract, 164, 171
- raw materials and utilities, 164, 168
- responsibilities, contractor, 164, 172
- retainage, 164, 176
- retention bond, 165, 183
- risks, 164–169
- scope of work, 164, 172
- site conditions, 165, 186
- subcontractors, 165, 185
- substantial completion, 164, 177
- suspension of work, 164, 182
- termination for convenience, 165, 187
- termination of work, 164, 182
- testing, 164, 178
- title to work, 164, 181
- training, 165, 185
- types, 164–172
- typical provisions, 164–187
- warranties, 164, 180
- warranty bond, 165, 183
- contractor, 35
 - as financing source, 276, 303
 - creditworthiness, 164, 169
- contracts
 - amendments, modifications and supplements, 113, 115
 - commercial impracticability, 209, 212
 - cooperation for project financing, 113, 116
 - cooperation for project financing, example of, 113, 116
 - coordination with construction contract, 165, 186
 - credit support, as, 209, 211
 - damages, 113, 119
 - enforceability, 113, 114
 - force majeure, 113, 118
 - formalities, 113, 114
 - formation, 113, 114
 - forum for dispute resolution, 113, 114
 - frustration of purpose, 212
 - general requirements in project finance, 113
 - governing law, 113, 114
 - government action, 113, 115
 - input contracts, 188
 - internationalization of, 113, 120
 - language, 113, 115
 - liquidated damages, 113, 119
 - list of types needed, 113, 115
 - mutual mistake, 213
 - nonrecourse, 113, 115
 - nonrecourse provision, examples of, 116
 - output and requirements, example of, 209, 213
 - project completion, 113, 117
 - project completion, example of, 113, 117
 - renegotiation, 140–158, 219–221, 222, 232
 - risks in contract terms and defenses, 209, 211
 - specific performance, 113, 119
 - structure and validity, 113, 114
 - term, 113, 115, 117
 - turnkey construction, 164, 171
 - unconditional obligation, 113, 118
 - unconscionability, 213
- Contracts (Rights of Third Parties) Act 1999, 374
- Council of Europe
 - Criminal Law Convention on Corruption, 419, 423
- country support agreement, 150
- credit agreement
 - abandonment of project, default, 321, 354
 - abandonment of project, default, sample provision, 321, 354
 - accounts, 321, 349
 - accounts, sample provision, 321, 349
 - affiliates, transactions with, 321, 350
 - affiliates, transactions with, sample provision, 321, 350
 - assets, sale of, 321, 349
 - assets, sale of, sample provision, 321, 349
 - bankruptcy, default, 321, 352
 - bankruptcy, default, sample provision, 321, 352, 353
 - breach of covenant, default, 321, 351
 - breach of covenant, default, sample provision, 321, 351
 - capital expenditures, 321, 349
 - capital expenditures, sample provision, 321, 350
 - change orders, 320, 344
 - change orders, sample provision, 320, 344
 - closing, conditions to, 318–335
 - closing, conditions to, sample provisions, 318–335
 - construction cost overruns, 321, 350
 - construction cost overruns, sample provisions, 321, 350
 - construction drawdown, conditions to, 319–337
 - construction drawdown, conditions to, sample provisions, 319–337
 - conversion of construction loan to term loan, conditions to, 319–339
 - conversion of construction loan to term loan, conditions to, sample provisions, 319–339
 - covenants, 320–350
 - covenants, sample provisions, 320–350
 - credit support, breach of, default, 321, 355
 - credit support, breach of, default, sample provision, 321, 355
 - engineering standards, 320, 343
 - engineering standards, sample provision, 320, 343
 - environmental compliance, 320, 343
 - environmental compliance, sample provision, 320, 343
 - events of default, 350–356
 - export financing, sponsor support, subordinated debt, maximizing use of, 320, 346

- credit agreement (*cont.*)
 export financing, sponsor support, subordinated debt, maximizing use of, sample provision, 320, 346
 expropriation, default, 321, 354
 expropriation, default, sample provision, 321, 354
 final acceptance date of project, default, 321, 353
 final acceptance date of project, default, sample provision, 321, 353
 financial reporting, 321, 348
 financial tests, 320, 347
 financial tests, sample provision, 320, 347
 governing law, 321, 356
 government approvals, default, 321, 353
 government approvals, default, sample provision, 321, 354
 guarantees, 321, 349
 guarantees, sample provision, 321, 349
 indebtedness, 320, 345
 indebtedness, sample provision, 320, 345
 insurance, 320–344
 insurance, sample provision, 320, 343
 investments, 320, 345
 investments, sample provision, 320, 345
 judgments, default, 321, 353
 judgments, default, sample provision, 321, 353
 laws, obligation to comply with, 320, 342
 laws, obligation to comply with, sample provision, 320, 342
 liens, 320, 345
 liens, sample provision, 320, 345
 maintain existence, obligation to, 320, 341
 maintain existence, obligation to, sample provision, 320, 341
 maintain interest in project, obligation to, 320, 341
 maintain interest in project, obligation to, sample provision, 320, 341
 maintenance of properties, obligation for, 320, 343
 maintenance of properties, obligation for, sample provision, 320, 343
 merger and consolidation restrictions, 320, 342
 merger and consolidation restrictions, sample provision, 320, 342
 milestones, project, 320, 347
 milestones, project, sample provision, 320, 347
 nonrecourse, exceptions to, 321, 356
 notice to lender of certain events, 320, 341
 notice to lender of certain events, sample provision, 320, 341
 obligations, payment of, default, 321, 355
 obligations, payment of, default, sample provision, 321, 355
 operating budget, 321, 348
 operating budget, sample provision, 321, 348
 other business, engaging in, 320, 345
 other business, engaging in, sample provision, 320, 345
 overview, 318, 328
 ownership and control, default, 321, 355
 ownership and control, default, sample provision, 321, 355
 payment, default, 321, 350
 payment, default, sample provision, 321, 351
 permits and licenses, obligation to obtain and maintain, 320, 342
 permits and licenses, obligation to obtain and maintain, sample provision, 320, 342
 prepayment, mandatory, 320, 346
 prepayment, mandatory, sample provision, 320, 346
 proceeds, use of, 321, 348
 proceeds, use of, sample provision, 321, 348
 project changes, 320, 347
 project changes, sample provision, 321, 347
 project contracts, default, 321, 354
 project contracts, default, sample provision, 321, 354
 project documents, amendments and changes, 320, 344
 project documents, amendments and changes, sample provision, 320, 344
 project documents, performance of, 320, 344
 project documents, performance of, draft provision, 320, 344
 remedies of lender on default, 321, 356
 reports to lender on construction and operation, 320–341
 reports to lender on construction and operation, sample provisions, 320–341
 representation or warranty breach, default, 321, 351
 representation or warranty breach, default, sample provision, 321, 351
 representations and warranties. *See* representations and warranties
 restricted payments, 320, 346
 restricted payments, sample provision, 320, 346
 security documents, 321, 348
 security documents, default, 321, 356
 security documents, default, sample provision, 321, 356
 security documents, sample provision, 321, 348
 support for project, 321, 347
 support for project, sample provision, 321, 347
 taxes, obligation to pay, 320, 341
 taxes, obligation to pay, sample provision, 320, 342
 credit enhancement
 bonds. *See* bond
 cash call, 246, 271
 commodity supplier as project partner, 246, 271
 generally, 245, 246
 government-funded account, 246, 269
 guarantees. *See* guarantees
 hedging strategies, 246, 271
 implementation agreement, 246, 270
 indemnification obligations, 246, 267
 insurance. *See* insurance
 insurance, lender requirements, 320, 343
 letter of credit, 245, 246, 252, 270
 liquidated damages, 246, 266
 pledge of receivables by state-owned utility, 246, 269
 political risk insurance. *See* insurance, political risk
 put option, 245, 251
 reserve funds, 246, 271
 sovereign guarantee, 246–269
 state devolution account, 246, 270
 subordination of project costs to debt service, 246, 271
 subordination, by government, 246, 269
 surety obligations, 245, 252
 warranty, 246, 266
 credit ratings, 275–279
 generally, 275, 278
 legal (contract) risk analysis, 275, 279
 market for output, 275, 279
 political risk analysis, 275, 279
 sovereign risk analysis, 275, 278
 cross-border risks. *See* risks
 Currency and Foreign Transactions Reporting Act (U.S.), 392, 398

INDEX

467

- currency devaluation, 39–45
 advance approvals, 39, 46
 consent, 39, 46
 currency options, 45
 debt repayment, 39, 46
 derivatives, 39, 45
 exemption, 39, 46
 forward contracts, 45
 generally, 39, 44
 matching revenue currency to debt
 currency, 39, 44
 offshore accounts, 39, 45
 raising debt in local currency, 39, 45
 sharing of risks, 39, 45
 currency-related risks, 39–47
 advance approval, 39–46
 devaluation, 39–45
 generally, 39–41
 guarantees, 245, 249
 large projects, 46
 nonconvertibility (unavailability of
 foreign exchange), 39–41
 offshore accounts, 46
 special currency problems in
 large-scale projects, 39, 46
 summary of currency risk
 minimization techniques, 39,
 46
 transfer (inability to transfer foreign
 exchange abroad), 39–44
- Dabhol power project, 23–24, 219–221
 contract renegotiation, 209, 219
- damages, liquidated. *See* liquidated
 damages
- developing countries
 alternatives to project finance, 19
 arbitration, example of, 416
 collateral problems, 363, 369
 difficulties in infrastructure
 development, 18–19
 economic conditions, 99, 101
 equity return, effect on power price,
 222, 231
 generally, 3, 17
 power purchase agreements,
 common risk allocation in, 223,
 239
 project finance in, 99, 101, 102
 risks, 99, 101
- development agreement
 abandonment, 83, 85
 antitrust and restrictive trade
 practices, 83, 85
 confidentiality, 83, 85
 cost funding, 83, 84
 definition of project, 83, 84
 exclusivity, 83, 84
 management and voting, 83, 84
 roles and responsibilities, 83, 84
 tasks and schedule, 83, 84
 withdrawal, 83, 85
- development loans, 276–302
 definition, 276, 301
 developmental lender, goals of, 276,
 301
 generally, 276, 301
 project sponsor, goals of, 276,
 301
- dispute resolution
 ad hoc, 404, 412
 alternatives, 404, 406
 American Arbitration Association,
 404, 411
 arbitration
 advantages of, 404, 405
 challenging awards, 404, 412
 host country, 413–414
 bilateral investment treaties, 404,
 410
 choice of forum, 404, 409
 choice of law, 404, 408
 choice of panel, 404, 411
 contract provisions, 418
 contractor and operator perspective,
 404, 407
 developing countries, 404, 410, 414
 examples of, 416
 generally, 404
 governing law, failure to select, 404,
 410
 governing law, flexibility for, 404, 409
 inconsistent procedures, 404, 407
 Inter-American Commercial
 Arbitration Commission, 404,
 411
 International Centre for Settlement
 of Investment Disputes, 404,
 411
 International Chamber of
 Commerce, 404, 411
 lender perspective, 404, 407
 lex mercatoria, 404, 409
 litigation, advantages of, 404, 405
 London Court of International
 Arbitration, 404, 411
 New York Convention, 404, 409
 New York law, 404, 409
 off-take purchaser perspective, 404,
 407
 pacta sunt servanda, 404, 413
 Panama Convention, 410
 project company perspective, 404,
 407
 project financing, 404, 406
 project participants not parties to
 contract, 404, 412
 renvoi, 404, 408
 Stockholm Chamber of Commerce,
 404, 411
 United Nations Commission on
 International Trade Law, 404,
 411
 Washington Convention, 410
- due diligence, 12, 13, 16, 58, 59, 123,
 125, 126, 263, 318, 327
 checklist, 433
- East-Asian financial crisis, 23
 decrease in market demand for
 private power, 3, 23
 increased cost of power, 3, 21
 power purchase contract
 renegotiation, 3, 22
- economic feasibility, 104
 assumptions, 103, 104
 construction budget, 103
 debt service, 103
 operating budget, 103
 purpose, 103
 ratios, 103, 104
 valuation, 103, 104
 working capital, 103
- Eksportkreditraadet (Denmark), 276,
 299
- energy generation projects, 3, 13
- energy payment. *See* power purchase
 agreement
- environment, 105–110
 aesthetics, 105, 107
 air, 105, 106
 audit, 105, 108
 Equator Principles, 105, 109
 future regulation, 105, 109
 generally, 105
 health hazards, 105, 106
 historic and cultural significance,
 105, 107
 home country, 105, 106
 host country, 105
 impact, 105, 106
 indigenous people, 105, 107
 international treaties, 105, 106
 multilateral and bilateral
 institutions, 105
 noise, 105, 107
 OECD Recommendation on
 Common Approaches on
 Environment and Officially
 Supported Export Credits, 108
 permits, 105, 107
 plant and animal habitats, 105, 106
 public opposition, 105, 107
 site, 105, 106
 transportation, public services and
 utilities, 105, 107
 water, 105, 106
 World Bank Environmental
 Standards, 105, 108
- Equator Principles, 105, 109
 2006 Revisions, 105, 110
 Equator Principles Financial
 Institution, 109
- equity investor, 37
 project interests, restrictions on sale
 of by lender, 318, 327

- ethanol production projects, 3, 15
- European Bank for Reconstruction and Development, 276, 294
- anti-bribery guidelines, 419, 420
 - procurement policies, 419, 420
- European Investment Bank, 276, 294
- European Union, 276, 294
- Convention on Fight Against Corruption, 419, 425
- exchange controls
- enforcement, 39, 43
 - permissions and consents, 39, 43
 - reducing exposure, 39, 44
 - types, 43
 - violation of, 39, 43
- executory contracts, 211
- expatriation, 39, 49
- export and transit governments, 36
- export credit, 357–359
- direct lending, 357, 358
 - documentation, 359
 - Export Credit Guarantee Department (U.K.), 246, 264
 - Export Development Corporation (Canada), 246, 264
 - financial intermediary loans (bank-to-bank), 357, 358
 - generally, 357
 - interest rate equalization, 357, 358
 - Japanese Bank for International Cooperation, 246, 263
 - OECD Consensus, 357
 - other agencies, 246, 264
 - types of export-import financing, 357, 358
 - U.S. Export-Import Bank, 245, 263
- Export Credit Guarantee Department (United Kingdom), 276, 299
- Export Credit Guarantee Department of the United Kingdom
- Department of Trade and Industry, 246, 264
- Export Credit Insurance Company (Spain), 276, 300
- Export Development Corporation (Canada), 246, 264, 276, 299
- Export Finance and Insurance Corporation (Australia), 276, 300
- export financing, 78–80
- export prohibitions, 40, 56
- export restrictions, 392, 399
- Export-Import Bank of Japan, 276, 298
- Export-Import Bank of Korea, 276, 300
- Export-Import Bank, United States, 245, 263
- export-import financing, methods of, 276, 297
- expropriation, 39, 48
- creeping, 48
 - default in credit agreement, 321, 354
 - just compensation, 48
- False Statements Act (U.S.), 392, 398
- feasibility study, 95–98
- contracts, 95, 96
 - economic information, 95, 96
 - financing, 95, 97
 - general description, 95
 - government, 95, 97
 - market, 95, 97
 - privatization, 95, 97
 - project participants, 95
 - project sponsors and project company, 95
 - purpose, 95
 - schedule, 95, 96
 - technical information, 95, 96
- financeable, 19
- financial tests in credit agreement, 320, 347
- financing sources
- banks and institutional lenders, 277
 - bilateral agencies, 276–300
 - bonds, 275–281
 - contractor, 276, 303
 - development loans, 276–302
 - equity markets, 275, 278
 - equity, domestic, 275, 278
 - equity, international, 275, 278
 - generally, 277
 - Global Environment Facility, 276, 300
 - host government, 276, 302
 - International Bank for Reconstruction and Development, 275–286
 - project participants, 276, 302
 - regional development banks, 276–295
 - securitization of cash flows, 276–305
 - subordinated debt, 276–301
 - World Bank, 293
- Finnish Export Credit Limited (Finland), 276, 299
- force majeure
- construction contract, 165, 184
 - input contract, 188, 190, 195
 - operation and maintenance agreement, 198, 200, 208
 - power sales agreement, 222, 226, 233
- Foreign Corrupt Practices Act (U.S.)
- anti-bribery provisions, 392, 394
 - corrupt intent, 392, 394
 - exceptions and defenses, 392, 395
 - expense reimbursement, 392, 396
 - facilitating payments, 392, 395
 - foreign official, 392, 395
 - influencing foreign official, 392, 395
 - interstate commerce and acts in furtherance, 392, 394
 - offer, payment or gift, 392, 394
 - payments authorized by local law, 392, 396
 - subsidiary corporations, 392, 396
- avoiding violations of, 392, 397
- contract drafting considerations, 392, 397
- enforcement and penalties, 392, 396
- generally, 394
- local partners, 392, 397
- Foreign Sovereign Immunities Act of 1976 (U.S.), 140–162
- arbitration award, 160
 - attachment of sovereign's property, 140, 160
 - case study, waiver of sovereign immunity in a project finance transaction, 140, 161
 - certain commercial activity
 - excepted, 159
 - counterclaims, 140, 160
 - exceptions to immunity, 140, 159
 - generally, 140, 159
 - maritime exception, 160
 - mortgage, 160
 - property taken in violation of
 - international law, 160
 - sovereign liability, 140, 160
 - waiver of sovereign immunity, 159
 - forward purchase agreements, 78, 82
 - freezing or blocking orders, 40, 56
- Garanti-Instituttet for Eksportkredit (Norway), 276, 300
- Global Environment Facility, 276, 300
- guarantee, performance
- alternative to, construction, 164, 179
 - availability, 177
 - capacity, 177
 - completion, construction, 164, 177
 - efficiency, 177
 - environmental, 164, 179
 - exceptions to, 164, 179
 - input, 177
 - operation and maintenance agreement, 198, 199
 - output, 177
 - reliability, 177
- guarantees
- cash deficiency, 245, 250
 - claw-back, 245, 249
 - collateral, 245, 248
 - comfort letter, 245, 251
 - completion, 245, 250
 - counter-guarantee, 259
 - currency risk, 245, 249
 - generally, 245, 247
 - implied, 245, 251
 - indirect, 245, 250
 - Inter-American Development Bank, 260
 - limited guarantees, 245, 249
 - put options, contrast to, 245, 248
 - retention, 164, 176
 - sovereign, 139–153. *See also* sovereign guarantee

- sponsor, 245, 247
 take-and-pay contract, 245, 251
 take-or-pay contract, 245, 250
 tax implications, 245, 249
 third party, 245, 248
 transnational, 245, 248
 U.S. Export-Import Bank, 263
 unlimited, risks with, 245, 250
 World Bank, 245–259, 275–292
- Hermes Cover (Germany), 276, 299
 host country, 76
 arbitration, 413–414
 business environment for project finance, 101
 economic conditions, 99, 101
 future governments, commitment to project, 140–158
 human rights, 99, 100
 legislative and regulatory, 99, 100
 political risks, 99
 host government, 27–36
 breach of undertaking, 260
 Asian Development Bank, 260
 Multilateral Investment Guarantee Agency, 258
 World Bank guarantee, 259
 human rights, 99, 100
- implementation agreement,
 139–153
 authorization to do business, 139, 149
 constitutionality, 139, 150
 country support agreements,
 contrasted to, 139, 150
 currency concerns, 139, 148
 damages, 139, 150
 enforcement and dispute resolution,
 139, 150
 exclusive right to develop project,
 139, 149
 expropriation, 139, 147
 generally, 139, 147
 good citizenship, 139, 150
 legislative protection, 139, 149
 general cooperation, 139, 149
 nondiscrimination clause, example
 of, 150
 permits and other governmental
 approvals, 139, 148
 sovereign guarantee, 139–153,
 267–268
 stabilization clause, 139, 151
 tax benefits and customs duties
 relief, 139, 148
 tax holiday, 139, 149
 war, insurrection, general strikes,
 and political violence, 139,
 149
 indemnification, 246, 267
 independent engineer, 95, 98
 indigenous people, 105, 107
- input contract
 alternative inputs, 188, 197
 breach, remedies for, 188, 196
 change of law, 188, 195
 commodity supplier as project
 partner, 188, 192
 cost increase, 188, 189
 dedicated reserves, 188, 191
 default, 188, 195
 excuses to performance, 188, 192
 experience of supplier, 188, 190
 experience of transporter, 188, 190
 firm vs. interruptible, 188, 191
 fixed amount contract, 188, 191
 force majeure, 188, 190, 195
 fuel management, 188, 190
 generally, 188
 linking project inputs to outputs,
 188, 191
 mining and production plans, 188,
 197
 output contract, 188, 191
 payment, 188, 193
 price, 188, 193
 quality, 188, 190
 quality and rejection, 188, 194
 quantities, 188, 193
 requirements contract, 188, 191
 reserves, 188, 197
 scheduling, metering and weighing,
 188, 193
 specific performance, 188, 196
 spot contract, 188, 191
 subordination of costs to debt
 service, 188, 192
 supply, availability of, 188, 190
 term, 188, 194
 termination, by project company,
 188, 195
 termination, by supplier, 188, 195
 termination payments, 188, 196
 title and risk of loss, 188, 194
 transportation, 188, 190
 transportation facilities, delay in
 completion, 188, 190
 types of, 188, 191
 typical provisions, 188–197
 when needed, 188, 189
- input supplier
 creditworthiness, 188, 192
 Istituto Centrale per il Credito a
 Medio Termine (Italy), 276, 299
 insurance, commercial, 245, 253
 additional insured, project lender as,
 245, 253
 all-risks, contractor, 245, 254
 all-risks, operator, 245, 255
 collateral, 245, 254
 commercially available in the
 marketplace standard, 245,
 255
 employers' liability and worker's
 compensation, 245, 255
- exchange controls, 245, 256
 export financing requirements, 245,
 256
 finite risk, 245, 255
 lender requirements, other, 245, 254
 loss of revenue, 245, 255
 marine, 245, 255
 operator, 245, 255
 loss payee, project lender as, 245, 253
 marine cargo, 245, 255
 non-vitiation clause, 245, 254
 reinsurance, 245, 254
 subrogation, waiver of, 245, 254
 third-party liability, 245, 255
 trade disruption, 245, 255
- insurance, political risk
 approval by host country, 140, 157
 Asian Development Bank, 245–260
 assignment rights, 246, 265
 bond financing in emerging market
 project finance, 246, 265
 commercial, 246–265
 credit evaluation of, 246, 266
 generally, 245, 256
 International Finance Corporation,
 245, 258, 259
 MIGA Cooperative Underwriting
 Program (CUP), 246, 265
 Multilateral Investment Guarantee
 Agency, 245–258
 Overseas Private Investment
 Corporation, 245–263
 World Bank, 245–259
 Inter-American Convention Against
 Corruption, 421
 Inter-American Development Bank,
 245, 260, 276, 294
 breach of undertaking by host
 government, 260
 expropriation, 260
 guarantee, political risk, 260
 procurement policies, 419, 420
 war, revolution and civil
 disobedience, 260
 Inter-American Investment
 Corporation, 276, 295
 intercreditor agreements, 363, 378
 generally, 363, 378
 lender goals, 363, 379
 typical arrangements, 380
 Internal Revenue Code (U.S.), illegal
 bribes, deduction for, 392, 398
 International Bank for Reconstruction
 and Development
 debt refinancing, 275, 290
 enclave programs, 275, 285
 enclave project financing, 275, 289
 general requirements, 275, 284
 generally, 275, 282
 guarantee program, 275, 284
 indirect support, 275, 285
 loan program, 275, 283
 negative pledge, 275, 285

- International Chamber of Commerce
Rules of Conduct to Combat
Extortion and Bribery, 419, 426
- International Development
Association, 275, 286
- International Finance Corporation,
245, 258, 275, 287
- A-B Loan program, 259, 287
- catalyst for participation by other
entities, 288
- co-financing, 258, 287
- currency inconvertibility and
currency transfer risks, 258
- equity program, 275, 288
- generally, 275, 287
- guarantee program, 275, 288
- insurance, political risk, 259
- last resort lender, status as, 288
- loan program, 275, 287
- participation, benefits of, 275, 288
- political risk protection, 288
- private sector, ability to invest in, 288
- International Monetary Fund, 275, 286
- Islamic Development Bank, 276, 295
- Japanese Bank for International
Cooperation, 246, 263
- joint venture, 83, 90
- Koran, financings consistent with, 276,
304
- law and legal system risk. *See* risks
- law of project finance, 3, 20
- law, change of
customs duties, 39, 50
- environmental controls, 39, 51
- export tariffs, 39, 49
- foreign laws, 39, 51
- import tariffs, 39, 49
- nondiscrimination contract
provision, example of, 39, 50
- price controls, 39, 51
- privatization of suppliers or
purchasers, 39, 51
- production or consumption
controls, 39, 50
- regulation and deregulation, 39, 51
- taxes, 39, 50
- withholding taxes on payment of
interest, 39, 50
- lawyers, local, 400–403
- opinions, 400, 401
- lease financing, 78–81
- legal culture. *See* risks, legal culture
- Legislative Guide on Privately Financed
Infrastructure Projects, 20
- lender
assignments, 318, 327
- construction, 34
- contract amendments, approval of,
318, 327
- due diligence, 318, 327
- excess cash flow, control over, 318,
327
- generally, 318, 321
- permanent, 35
- project interests, restrictions on sale
of, 318, 327
- lender, credit review of project
completion and cost overrun, 318,
324
- construction of related facilities, 318,
324
- contractor, experience and
resources, 318, 322
- currency and exchange risks, 318, 325
- energy, predictability of price and
supply, 318, 323
- equity contributions, timing and
certainty, 318, 325
- equity returns, 318, 325
- force majeure, 318, 326
- generally, 318, 322
- interest rate, 318, 326
- market for product or service, 318,
323
- off-take contract, terms and
enforceability, 318, 324
- operating expenses, 318, 325
- operator, experience and resources,
318, 323
- permits and licenses, 318, 324
- political environment, 318, 325
- project management team,
experience and reputation, 318,
322
- project sponsor, experience and
reputation, 318, 322
- project, value as collateral, 318,
325
- project-specific risks, 318, 326
- raw materials, predictability of price
and supply, 318, 323
- real estate, 318, 324
- technology, 318, 324
- letter of credit, 246, 270
- letter of intent, 139, 144
- leveraged debt, 3, 10
- lex mercatoria, 404, 409
- liens. *See* collateral
- liquidated damages
buy-down, 177
- collateral, as, 363, 366
- construction contract, 164–180, 246,
266
- delay, 164, 178
- enforcement, 267
- generally, 267
- limitation on, 178
- operation and maintenance
agreement, 198, 199–200, 204
- litigation. *See* dispute resolution
- loan agreement. *See* credit agreement
- loan financing, 78–79
- local bank letter of credit, 246, 270
- Mail and Wire Fraud Acts (U.S.), 392,
398
- merchant facility
commodity output risk,
management of, 429, 432
- commodity risk, management of,
429, 430
- generally, 430
- loan covenants, 429, 432
- market risk, 429, 430
- milestones, 139, 155
- mining, 3, 14
- mortgage, deed of trust and indenture.
See collateral
- Multilateral Investment Guarantee
Agency, 245, 256
- breach of undertaking by host
government, 258
- currency inconvertibility and
transfer risk coverage, 257
- expropriation coverage, 258
- insurance, political risk, term of, 258
- political risk insurance, coverage,
245, 257
- political risk insurance, eligibility,
245, 257
- political risk, generally, 245, 256
- war, revolution and civil
disobedience coverage, 258
- needs assessment, 95, 98
- New York Convention, 404, 409
- nondiscrimination, in implementation
agreement, 139, 149
- nonrecourse, 3, 8
- contract provision, examples of, 9
- exceptions to recourse in credit
agreement, 321, 356
- Nordic Development Fund, 276, 295
- Nordic Investment Bank, 276, 295
- notice to proceed, 164, 174
- OECD Consensus, 276, 296, 357
- OECD Recommendation on Common
Approaches on Environment
and Officially Supported Export
Credits, 108
- Oesterreichische Kontrollbank AG
(Austria), 276, 300
- off-balance-sheet, 3, 9
- offering memorandum, 306–309
- borrower, 306
- closing, conditions to, 306, 308
- collateral, 306, 307
- cost overruns, 306, 307
- covenants, 306, 308
- credit enhancement, 306, 308
- debt amount, 306, 307
- debt and equity, sources of, 306, 307

- debt commitment, 306, 308
- debt repayment, 306, 308
- defaults, 306, 308
- drawdown of funds, conditions to, 306, 308
- equity terms, 306, 307
- fees, 306, 308
- governing law, 306, 309
- interest rate, 306, 308
- key provisions, 306
- lawyers, advisors and consultants, 306, 309
- project overview, 306
- project sponsors, 306, 307
- purpose, 306
- uses of proceeds, 306, 307
- Office National du Ducroire (Belgium), 276, 299
- offset, 303
- offshore account, 46, 49, 363, 368, 378
- off-take contract
 - blended, 209, 210
 - capacity allocation, 209, 215
 - long-term sales agreement, 209, 211
 - option, 209, 215
 - reserve capacity, 209, 215
 - spot sales, 209, 211
 - standby charge, 209, 216
 - take-and-pay contract, 209, 210
 - take-or-pay contract, 209
 - typical provisions, 216
- OPEC Fund for International Development, 276, 295
- operation and maintenance agreement
 - breach, remedies for, 198, 205
 - capital changes, 198, 205
 - coordination, 198, 201
 - cost increase, 198, 199
 - cost-plus-fee agreement, 198, 202
 - cost-plus-fee with maximum price and incentive, 198, 202
 - excuses to performance, 198, 201
 - fixed-price contract, 198, 201
 - force majeure, 198, 200, 208
 - generally, 198
 - insurance, 198, 207
 - liquidated damages, 198, 204
 - operator experience and resources, 198, 200
 - performance guarantees, 198, 199, 204
 - price, 198, 204
 - raw materials and utilities, 198, 200
 - responsibilities, operator, 198, 202
 - responsibilities, project company, 198, 203
 - self-operation, 198, 199
 - standards, 198, 204
 - suspension of services, 198, 206
 - termination procedure, 198, 207
 - typical provisions, 208
- operator, 35
 - creditworthiness, 198, 201
- Organization for Economic Cooperation and Development
 - OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, 419, 424
 - Recommendation on Tax Deductibility of Bribes, 419, 424
- Organization of American States
 - Inter-American Convention Against Corruption, 419, 421
- output purchaser, 27–36
- Overseas Private Investment Corporation, 245, 260, 276, 298
 - bilateral agreements, necessity for, 261
 - bond financing, 263
 - bond financing political risk, 266
 - currency inconvertibility and currency transfer risk, 261
 - eligibility for insurance, 261
 - expropriation, 262
 - insurance, political risk, 245–263
 - oil and gas project financings, 262
 - political risk insurance, generally, 261
 - political violence, 262
 - power project financings, 262
 - project contractors and exporters, 263
- pacta sunt servanda, 404, 413
- Panama Convention, 410
- permits, 39, 47
 - environmental, 105, 107
 - foreclosure, 39, 53
 - host government, 71, 74
 - implementation agreement, 139, 148
 - legislative and regulatory considerations, 99, 100
 - lender requirements for, 320, 342
 - representation and warranty, 122, 134
 - representations and warranties in credit agreement, 122, 134
 - risks, 39, 47, 58, 65
 - sample provision, 122, 135
- pipelines, 3, 14
- political risk. *See* risks
- political risk insurance. *See* insurance, political risk
- power purchase agreement. *See* power sales agreement
 - power sales agreement, 222, 223
 - approval of project contracts, 222, 224
 - bonuses, 222, 230
 - capacity and energy payment, 222, 228
 - capacity payment, 222, 228
 - adjustments, 222, 229
 - back-loaded, 222, 229
 - beginning date of, 222, 231
 - fixed or variable, 222, 228
 - floor, 222, 228
 - levelized, 222, 229
 - ending date of, 222, 231
 - capacity shortfall, 222, 225
 - change of law, 222, 234
 - commercial operation, delay in, 222, 225
 - commercial operations, 222, 225
 - currency convertibility, 222, 234
 - delivery point, 222, 227
 - development obligations, 222, 223
 - eminent domain, 222, 227
 - energy payment, 222, 229
 - fixed or variable, 222, 230
 - floor, 222, 230
 - forecasted, 222, 230
 - indexed, 222, 230
 - equity return, effect on price in developing countries, 222, 231
 - failure to construct facility, 222, 225
 - financial closing, 222, 225
 - force majeure, 222, 226, 233
 - front-loaded, 222, 229
 - fuel costs, 222, 230
 - insurance, 223, 239
 - interconnection, 222, 227
 - interconnection facilities, 222, 227
 - land rights, 222, 227
 - letter of credit to support state utility payment, 246, 270
 - metering, 222, 236
 - milestones, performance, 222, 224
 - obligation to deliver power, 222, 226
 - obligation to take power, 222, 226
 - operating procedures, 222, 236
 - ownership of project at expiration of term, 222, 236
 - payment, 222, 234
 - penalties, 222, 230, 236
 - penalties, missed milestones, 222, 225
 - pledge of receivables to support state utility payment, 246, 269
 - political risk, 222, 234
 - power purchaser credit risk, 246–270
 - power purchaser, right to operate, 222, 236
 - price, 222, 227
 - price, summary of options, 222, 228
 - project lenders, 222, 235
 - regulatory out, 223, 237
 - remedies, 222, 235
 - renegotiation, 222, 232
 - responsibilities, power purchaser, 223, 238
 - responsibilities, project company, 223, 238
 - risk allocation, typical, 223–242

- power sales agreement (*cont.*)
 security for performance
 cash and letters of credit, 222, 233
 equity undertaking, 222, 233
 generally, 222, 232
 lien, 222, 232
 state devolution account, 246, 270
 take-and-pay, 222, 228
 take-or-pay, 222, 228
 technical standards, 222, 236
 term, 222, 234
 termination, 222, 235
 payments, 222, 235
 by project company, 222, 235
 by power purchaser, 222, 235
 third-party sales, 223, 237
 tolling agreements, 223, 242
 tracking account, 222, 233
 uncontrollable events, 222, 234
 wheeling, 222, 227
 price regulation, 139, 156
 privatization, 7, 14, 19, 48, 51, 75, 76,
 95–98, 145, 146, 151, 152, 157,
 268, 279, 294, 295
 benefits, 95, 97
 effect on project feasibility, 95, 98
 types, 95, 97
 production or consumption controls,
 39, 50
 production payments, 78, 81
 project company
 considerations in determining the
 type of entity, 83–86
 corporation, 83, 87
 development consortium, 83, 91
 European economic interest
 grouping, 83, 91
 host-country requirements, 83, 86
 joint venture, 83, 90
 joint venture agreements, 385, 386
 limited liability company, 83, 90
 limited partnership, 83, 89
 management agreements, 385, 386
 ownership, generally, 385
 partnership, 83, 88
 partnership agreements, 385, 386
 special-purpose entity, 83, 86
 stockholder agreements, 385
 project contracts
 amendment to, lender restrictions,
 344
 anti-assignment, 363, 372
 assignment, 363, 372, 374
 collateral, as, 363–378
 project development
 cabotage, 153
 communications, 139, 154
 construction equipment,
 importation of, 139, 155
 employees, 139, 156
 expansion rights, 139, 155
 export restrictions, 139, 156
 import restrictions, 139, 156
 infrastructure, 139, 153
 land and air transportation, 139, 153
 legislative approval, 139, 146
 loans for project development,
 276–302
 local restrictions, 139, 156
 milestones, 139, 155
 natural resources, government
 owned, 139, 156
 power, 139, 154
 price regulation, 139, 156
 product or service limitations, 139,
 154
 raw materials, 139, 155
 social program support, 139, 155
 waste disposal, 139, 154
 water, 139, 154
 water ports and harbors, 139, 154
 withholding taxes on loan interest,
 139, 157
 project development agreement, 83–85
 project finance
 advantages, 8–12
 asset-based finance, compared to, 7
 balance sheet finance, compared
 to, 7
 basic components, 3, 8
 contracts, value as credit support,
 209, 211
 contrasted to other financing
 models, 3, 7
 definition, 4
 disadvantages, 12–13
 economic efficiencies of, 3, 5
 economic inefficiencies, 5–7
 economic studies, 3, 21
 examples of, 3–17
 limited-recourse, 3, 5
 nonrecourse, 3, 4
 reliance on project revenues as credit
 support, 4, 209, 214
 structured finance, 6
 uses of, 3, 7
 project participants
 bondholders, 72
 borrowing entity, 71
 commercial lender, 72
 construction lender, 27, 33
 contractor, 27, 35, 73
 equity investors, 27, 36
 export and transit countries, 27, 36
 financial advisor, 74
 financing from, 276, 302
 host country, 27, 36
 host government, 74
 insurers, 77
 lawyers, 74
 lender, *See* lender
 multilateral and bilateral agencies,
 27, 37
 objectives, 27, 29
 operator, 27, 35, 74
 output purchaser, 27, 36, 73
 permanent lender, 27, 34
 project company, 71
 rating agencies, 73
 sponsor, 27, 33, 71
 supplier, 27, 36, 73
 technical experts, 74
 technology owner, 27, 35
 put option, 245, 251
 guarantees, contrast to, 245, 251
 regulatory put, 245, 251
 receivables, pledge of, 246, 269
 refineries, 3, 14
 regional development banks, 276, 293
 African Development Bank, 276, 293
 American Development Bank, 276,
 294
 American Investment Corporation,
 276, 295
 Arab Bank for EConomic and Social
 Development, 276, 294
 Asian Development Bank, 276, 294
 European Bank for Reconstruction
 and Development, 276, 294
 European Investment Bank, 276, 294
 European Union, 276, 294
 generally, 276, 293
 Islamic Development Bank, 276, 295
 Nordic Development Fund, 276, 295
 Nordic Investment Bank, 276, 295
 OPEC Fund for International
 Development, 276, 295
 reinsurance, 363, 381
 renegotiation of contracts, 22–23,
 219–221
 power sales agreement, 222, 232
 renvoi, 404, 408
 representations and warranties
 asset ownership and liens, 121, 132
 business organization, 121, 125
 collateral, 122, 136
 complete project, 122, 138
 completion, 122, 136
 compliance with laws, 122, 135
 date made, 121, 124
 debt, 122, 133
 definition, 121, 122
 enforceability, 121, 128
 existing agreements, 121, 131
 financial information, 121, 128
 force majeure, 121, 132
 full disclosure, 122, 137
 generally, 121, 122
 infrastructure, 122, 136
 judgments and orders, 121, 131
 litigation, 121, 130
 materiality and knowledge
 limitations, 121, 124
 operation of business, 121, 133
 other project contracts, in, 122, 137

INDEX

473

- permits, 122, 134
- power and authority, 121, 127
- prior business activity, 122, 137
- project assets and necessary assignments, 122, 133
- project budget, 121, 129
- project contracts, 122, 133
- projections, 121, 129
- purpose of, 121, 123
- regulatory and legal status, 122, 134
- role in project finance contracts, 121, 123
- subsidiaries and ownership of securities, 121, 132
- taxes, 122, 134
- request for proposals (RFP), 139, 142
- request for qualifications (RFQ), 141
- requirements contract, 191
- retainage, 164, 176
 - guarantee, 164, 176
 - liens, 164, 177
- regulatory out, 223, 237
- risks
 - building materials, 58, 61, 164, 168
 - capacity shortfalls, output and efficiency, 58, 64
 - change of law, 39, 49, 149, 188, 195, 222, 234
 - civil unrest, 39, 51
 - collateral security, 39, 52
 - commercial risks, generally, 59
 - completion delay, 58, 60
 - concessions and licenses, 39, 47
 - construction, 164–169
 - construction contract force majeure, 58, 60
 - construction costs, 58, 60, 164, 166
 - construction of project-related facilities, 58, 62, 164, 168
 - contract enforcement, 209, 214
 - contract provision mismatch, 58, 66
 - contract repudiation, 39, 52
 - contract terms and defenses, 209, 211
 - contractor resources and experience, 58, 61, 164, 167
 - contracts, generally, 58, 66
 - coordination, construction contract, 164, 169
 - creditworthiness of participants, 58, 59
 - currency, 39–47
 - design engineering and construction, 27, 28
 - development, 27, 28, 37
 - economic projection and feasibility report inaccuracy, 58, 66
 - environmental, 58, 66
 - equity investment, illiquidity, 40, 56
 - excuses to performance, construction contract, 164, 168
 - expatriation, 39, 49
 - export prohibitions, 40, 56
 - expropriation, 39, 48
 - facility site, 58, 61
 - force majeure, 58, 65
 - force majeure in construction contract, 164, 167
 - freezing or blocking orders, 40, 56
 - interest rate, 58, 65
 - joint venture, 27, 38
 - law and legal systems, 39, 54
 - law, change of, 39–51
 - legal culture, 40, 56
 - management experience, 58, 65
 - market for product or service, 58, 63
 - mitigation of commercial risks, 68
 - off-take purchaser, creditworthiness, 58, 63
 - operating, 27, 29
 - operating expenses, 58, 64, 198, 199
 - operator experience, 58, 64
 - operator experience and resources, 198, 200
 - output and requirements contract, 209, 213
 - performance, 198, 199
 - performance guarantee, contractor, 164, 166
 - permits, 39, 47, 58, 65
 - political, 99, 163
 - political collapse and succession, 39, 51
 - political environment, 58, 65
 - political violence, 39, 51
 - preemption and priority in emergencies, 39, 52
 - price controls, 40, 56
 - raw materials and utilities, 58, 62, 164, 168, 198, 200
 - shortfalls in mineral reserves, 58, 62
 - sovereign immunity, 40, 56
 - sovereign risk, 39, 52
 - sponsor commitment, 58, 64
 - start-up, 27, 29
 - taxes, 39–51
 - technology, 58, 61
 - war, 39, 51
- sanctity of contracts, 140–158
 - Dabhol power project, 219–221
 - retroactive laws, 209, 217
 - state sovereignty, 140, 158
 - U.S. law, 209, 216
- Securities Exchange Act of 1934 (U.S.), 392, 398
- securitization, 276–305
 - benefits of, 276, 304
 - generally, 276, 304
 - structure of, 276, 305
- sovereign guarantee, 246, 267
 - generally, 246, 267
 - government subordination, 246, 269
 - government-funded account, 246, 269
 - host government's perspective, 139, 151
 - necessity of, 246, 268
 - pledge of receivables, 246, 269
 - sovereign ability to pay, 246, 268
 - World Bank, 246, 268
 - World Bank involvement, necessity of, 246, 268
- sovereign immunity, 40, 56, 140–162
 - Foreign Sovereign Immunities Act of 1976 (U.S.), 140, 159
 - generally, 140, 158
 - State Immunity Act of 1978 (U.K.), 140, 162
- sovereign risk, 39, 52
- sports stadium projects, 3, 15
- spot sales, 209, 211
- State Immunity Act of 1978 (U.K.), 140, 162
 - application of, 140, 162
 - exceptions to immunity, 140, 162
 - generally, 140, 162
- storage facilities, 3, 14
- structured project finance, 3, 5
- subordinated debt, 276–301
 - conditions to funding, 276, 301
 - funding, 276, 300
 - generally, 276, 300
 - other indebtedness, 276, 301
 - payment blockage period, 276, 301
 - project contracts, amendment of, 276, 301
 - senior debt documents, amendment of, 276, 301
 - terms, 276, 300
- subordination
 - host government, 246, 269
- subrogation, waiver of, 363, 381
- supplier, 27–36
- Swedish International Development Authority, 276, 300
- take-and-pay contract, 63, 82, 209, 210, 245, 251
- take-or-pay contract, 209, 245, 250
- tariffs
 - export, 39, 49
 - import, 39, 49
- taxes
 - change of law, 39, 50
 - customs duties, 39, 50
 - implementation agreement, 139, 148
 - income, 39, 50
 - nondiscrimination, 39, 50
 - withholding taxes on loan interest, 139, 157
- technology owner, 27–36

- telecommunications projects, 3, 15
 throughput contracts, 63
 toll roads, 3, 14
 tolling agreements, 63, 223, 242
 trade embargo regulations, 392, 399
 turnkey construction contract, 164, 171
- U.S. Export-Import Bank, 276, 297
 Uniform Commercial Code (U.S.)
 2-615, 212–213
 3-408, 373
 9-318(4), 373
 9-403, 212
 9-404, 212
 9-406, 373, 376, 377
 9-408, 374
- United Nations Commission on International Trade Law, Legislative Guide on Privately Financed Infrastructure Projects, 439–447
 United States Export-Import Bank. *See* Export-Import Bank, United States
- war. *See* risks, war
 Washington Convention, 410
 waste disposal projects, 3, 14
 water projects, 3, 14
 World Bank
 benefits of participation by, 275–293
 breach of undertaking by host government, 259
- currency inconvertibility and currency transfer risks, 259
 expropriation, 259
 guarantees, availability of, 275, 291
 guarantees, political risk, 245–259
 guarantees, types of, 290
 IDA credits, 275, 290
 negative pledge, 275, 285
 political risk mitigation, 276, 292
 procurement policies, 276, 293, 419, 420
 war, revolution and civil disobedience, 259
 World Bank Group
 debt in project financings, 275–290