



ICLG

The International Comparative Legal Guide to:

Project Finance 2015

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A practical cross-border insight into project finance

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General Chapter:

1	Why the World Needs Project Finance (and Project Finance Lawyers...) – John Dewar & Oliver Irwin, Milbank, Tweed, Hadley & McCloy LLP	1
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Country Question and Answer Chapters:

2	Albania	Boga & Associates: Renata Leka & Besa Velaj (Tauzi)	8
3	Angola	Angola Legal Circle Advogados (ALC Advogados): Catarina Levy Osório & Irina Neves Ferreira	17
4	Argentina	Severgnini, Robiola, Grinberg & Tombeur: Carlos María Tombeur & Matías Grinberg	25
5	Australia	Clayton Utz: Bruce Cooper & Peter Staciwa	33
6	Botswana	Khan Corporate Law: Shakila Khan	44
7	Brazil	Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados: Pablo Sorj & Filipe de Aguiar V. Carneiro	52
8	Chile	Philippi, Prietocarrizosa & Uría: Marcelo Armas M. & Daniel Parodi N.	62
9	Colombia	Brigard & Urrutia: Manuel Fernando Quinche & César Felipe Rodríguez	70
10	Congo – D.R.	Etude Kabinda/Avocats DRC: Dr. Alex Kabinda Ngoy & Ms. Dolores Kimpwene Sonia	78
11	Denmark	Gorrissen Federspiel: Morten Lundqvist Jakobsen & Tina Herbing	87
12	Egypt	El-Borai & Partners: Dr. Ahmed El Borai & Dr. Ramy El Borai	95
13	England & Wales	Milbank, Tweed, Hadley & McCloy LLP: Clive Ransome & Munib Hussain	103
14	Germany	Heuking Kühn Lüer Wojtek: Adi Seffer	118
15	Greece	Kyriakides Georgopoulos Law Firm: Ioanna I. Antonopoulou & Elisabeth V. Eleftheriades	126
16	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Emir Nurmansyah & Freddy Karyadi	137
17	Italy	Bonelli Erede Pappalardo: Catia Tomasetti & Simone Ambrogi	151
18	Japan	Nagashima Ohno & Tsunematsu: Masayuki Fukuda	161
19	Kazakhstan	GRATA Law Firm: Shaimerden Chikanayev & Lola Abdukhalykova	167
20	Kosovo	Boga & Associates: Sokol Elmazaj & Sabina Lalaj	177
21	Morocco	Hajji & Associés: Amin Hajji	185
22	Mozambique	Mozambique Legal Circle Advogados (MLC Advogados): Paula Duarte Rocha & Ana Berta Mazuze	192
23	Namibia	Koep & Partners: Peter Frank Koep & Hugo Meyer van den Berg	201
24	Netherlands	Ploum Lodder Princen: Tom Ensink & Alette Brehm	209
25	New Zealand	Minter Ellison Rudd Watts: Tom Fail & Steve Gallagher	217
26	Norway	Advokatfirmaet Ræder DA: Marit E. Kirkhusmo & Kyrre W. Kielland	226
27	Philippines	Abuda Asis & Associates: Cornelio B. Abuda & Jehemiah C. Asis	236
28	Portugal	Vieira de Almeida & Associados, Sociedade de Advogados, RL: Teresa Empis Falcão & Ana Luís de Sousa	244
29	Serbia	Petrikić & Partneri AOD in cooperation with CMS Reich-Rohrwig Hainz: Milica Popović & Ksenija Boreta	254
30	Sierra Leone	BMT Law Chambers: Glenna Thompson	263
31	Slovenia	Odvetniki Šelih & partnerji, o.p., d.o.o.: Blaž Ogorevc & Tilen Terlep	271
32	Spain	Cuatrecasas, Gonçalves Pereira: Héctor Bros & Jaime Ribó	281
33	Switzerland	Walder Wyss Ltd.: Thomas Müller-Tschumi & Alexandre Both	292
34	USA	Milbank, Tweed, Hadley & McCloy LLP: Eric F. Silverman & Simone M. King	301
35	Uzbekistan	Leges Advokat: Nizomiddin Shakhabutdinov & Nail Hassanov	312
36	Venezuela	Torres Plaz & Araujo: Federico Araujo & Juan Carlos Garantón	320

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Uzbekistan

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in Uzbekistan?

The main trend in the project finance market in Uzbekistan is the participation of multiple foreign lenders in each project, including regional development banks and large investment banks as well as regular commercial banks of a particular foreign state, usually from the same state as the equity shareholders.

Another trend is the active participation of the state in the implementation of project financing, which is expressed both in participation through state-owned entities as a shareholder of the project company, and in entering into investment agreements with foreign equity shareholders of the project and direct agreements with foreign lenders. In most cases the state initiates the large-scale projects without attracting state funds or providing state guarantees. Yet the state is willing to provide the agreed benefits and state protection for such projects.

1.2 What are the most significant project financings that have taken place in Uzbekistan in recent years?

The most significant project financing that has taken place in Uzbekistan in recent years is the Surgil Project. The Surgil Project is an integrated gas-to-petrochemicals project, the largest petrochemical project financing in the former USSR and one of the largest multi-sourced financings ever raised around the world. Under the project the operating company will extract natural gas from onshore fields, and process ethane and condensate for petrochemical production, the outputs of which will be mostly exported. The senior lenders include ADB, CDB, KEXIM, KSURE, Euler Hermes, and EKN/SEK, which have extended approximately USD 2.5 bn.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Yes, it is possible. The first option is to give security over all the assets of a company by entering into a pledge agreement over the business of the company as a whole; a so-called pledge over enterprise as property complex. In such pledge agreement the

object of the pledge shall include, unless expressly excluded by law or agreement itself, all types of property of the company intended for its activity, including land plots, buildings, constructions, equipment, inventory, raw materials, products, rights of claim, as well as trademarks, trade name and other exclusive rights. The price of the object of the pledge (pledged enterprise) should be evaluated taking into account the debts of this enterprise. Enterprise as property complex is considered to be immovable property and, thus, pledge agreement over such enterprise is subject to notary certification and the following registration with the state cadastral bodies of Uzbekistan. Notary certification shall be done by a notary of one of the public notary offices located in the same administrative district as the enterprise. The same is true with the subsequent registration with the relevant cadastral bodies.

If it is not in the interest of the creditors to take pledge over the whole enterprise, the second option will be conclusion of a general pledge agreement on pledge of both movable, immovable assets and property rights. The pledge agreement shall specify the objects of the pledge and their value, as well as the nature and terms of the obligation that is being secured. It should be noted that pledge of different types of assets is subject to different perfection requirements; hence, when concluding a general pledge agreement such requirements shall be considered and followed.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Under Uzbek law, an object of pledge can be any property in civil circulation. With regard to land, in Uzbekistan land is state-owned and cannot be the object of the pledge. However, rights over land plots can, in limited cases, be pledged.

The procedure for taking security over such property will depend whether the property is movable or immovable. For immovable property to be validly secured, the mortgage agreement shall be concluded, which shall be notary-certified and registered with the relevant cadastral bodies. Generally, there are no special procedures for pledge agreements over movable property, unless the main agreement, performance of obligations of which are being secured, has to be notary-certified. In this case the pledge agreement shall be notary-certified as well. It should be noted, however, that transactions with movable property that is subject to state registration, such as vehicles or mainstream gas pipelines, are also subject to registration. For example, under Uzbek law pledge agreements over vehicles are subject to notary certification and registration with the State Road Inspectorate.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

It is possible to have security over receivables where the pledgor is free to collect the receivables in the absence of a default. Moreover, Uzbek laws do not impose an obligation to notify the debtors of the pledgor for the security to be valid. However, for the purpose of efficiency of the security and its possible enforcement, usually the pledgee requires the pledgor to notify its counterparties on the existence of security over receivables.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

There are two possible ways for taking security over cash deposited in bank accounts. The simplest way is to separate the cash in question from the remaining monetary funds of the pledgor. This can be done by placing the cash in a separate block account, which shall not be operated by the pledgor without the consent of the pledgee.

The other option is to take security of the rights over present and future funds on the bank accounts of the pledgor. This way the pledgor will be able to manage its bank account and dispose of the cash in these accounts until there is a default. It should be noted that rights to control and manage bank accounts, and to determine priority of making payments as such, may not be pledged.

In either of the options it is recommended to introduce the servicing bank of the pledgor as a party to the pledge agreement to facilitate the enforcement process, when applicable.

2.5 Can security be taken over shares in companies incorporated in Uzbekistan? Are the shares in certificated form? Briefly, what is the procedure?

Uzbek law provides for two types of shares. One is shares in public companies; these shares are considered securities. Shares are issued in uncertificated form. The other is shares of other commercial entities such as limited liability companies, and these are referred to as ‘participating interest’. A company may issue a certificate confirming ownership of the holder of the participating interest; however, such certificates are not considered securities under Uzbek law.

Both shares and participating interests can be pledged. To pledge shares the parties shall enter into a written contract, which is subject to registration with the registrar (depository) within two business days after conclusion of the pledge agreement.

Uzbek law does not impose any registration requirements for a pledge of participating interest. These pledge agreements can be made in simple written form, unless the main contract, performance of the obligation of which is being secured, was not notary-certified itself. In this case the pledge agreement shall be notary-certified as well.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The public notary levies the state fees for notarisation of security deals. The amount of the state fee depends on the security agreement. For example, the state fee for notary certification of a

mortgage agreement will be calculated based on the total value of the object of mortgage. The average fee for such types of transactions is 0.1% of the value of the object of mortgage. The state fee for notary certification of a pledge agreement of foreign and local light vehicles younger than one year is five minimum monthly salaries for each horse-power, except for pledge agreements with licensed credit organisations. It should be noted that under Uzbek law pledge agreements with vehicles are subject to stamp duty of 10% of the minimum monthly salary set in the Republic of Uzbekistan.

The state cadastre does not levy fees for registration of mortgage agreements. As for the fees of the registrar of pledge over shares, the amount of the fee is set in a contract concluded between the registrar and the applicant.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Depending on the complexity of the security transaction, review by the public notary and notary certification of the agreement may be lengthy. Generally, registration of the security transaction with relevant state authorities, however, is done within one business day.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

The general rule is that the owner of the property is free to create encumbrance over its property, for example, by entering into security agreement, without a consent of any other party.

3 Security Trustee

3.1 Regardless of whether Uzbekistan recognises the concept of a “trust”, will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

Uzbek law does not recognise the role of a security trustee or agent in enforcing the security or applying the proceeds from such enforcement to the claims of all the lenders. Under Uzbek law the holder of security can only be the creditor, i.e. a party to whom the debt is owed by the debtor.

3.2 If a security trust is not recognised in Uzbekistan, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Both a parallel debt and joint and several creditor structures are being used or being considered to be used in recent project financing in Uzbekistan. Each of these structures attempts to allow a security agent/trustee to enforce claims on behalf of all the lenders without each individual lender enforcing its security separately. Since these structures are novel to the Uzbek legal environment, it is difficult to

assess how they will be enforced in practice in future, and how the Uzbek courts will view these structures in case there are disputes over enforcement of security.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/ liquidator), or (b) (in respect of regulated assets) regulatory consents?

There are, indeed. Uzbek law provides for enforcement of security through either court proceedings or out-of-court proceedings. The out-of-court proceedings shall either be stipulated in the security agreement or in a separate notary-certified agreement concluded between the pledgor and the pledgee upon occurrence of the default triggering enforcement of security. Out-of-court proceedings are not permitted in situations when: (i) conclusion of the pledge agreement required the consent of a third party; (ii) the object of security has certain historical, art and other cultural value for the society; or (iii) the pledgor is absent and it is not possible to identify its location. It should be noted that due to the absence of an extended regulatory environment for out-of-court proceedings as well as a relatively easy way to challenge agreement on out-of-court proceedings, in practice the majority of security enforcement is done through court.

Under Uzbek law, enforcement of the security shall be done only through public auction (sale). Direct possession of the object of security by the pledgee is not permitted. It should be noted that the debtor may apply to the court for deferral of sale of the security for a term of up to one year. Moreover, the court has a right to refuse enforcement of security in case the debtor's default is extremely negligible and the amount of the pledgee's claim as a result of such breach is evidently disproportionate to the value of the object of security.

It should be separately noted that the starting price of the security to be sold at the public auction is set by the court, if the enforcement is done through court, and by the agreement of the pledgee and the pledgor if the enforcement is done through out-of-court proceedings.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

Restrictions listed in question 4.1 apply to all creditors, regardless whether these are foreign or local investors.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

Upon announcement of liquidation proceedings by the court, enforcement of security can be done only by the court administrator.

It should be noted that under Uzbek law, proceeds received from sale of security do not compose the liquidation estate of the company and shall be transferred to the secured lender in the amount of their claim.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

In cases where all assets of the project company are secured and proceeds from the sale of these assets are equal or less than the amount of the claims of the secured lenders, the claims of the secured lenders are satisfied only after compensation of court expenses, expenses related to payment of remuneration fees of the court administrator, current utility bills and insurance of the property of the company, as well as satisfaction of claims arising after the initiation of bankruptcy proceedings and personal injury claims.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

State unitary enterprises and entities funded exclusively from state budget funds, as well as political parties and religious organisations, are excluded from the scope of the Law of Uzbekistan "On bankruptcy". It should be also noted that individuals cannot be declared bankrupt, unless they are sole entrepreneurs.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

When the company is under bankruptcy proceedings, there are no other processes available to the creditors.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

The Law of Uzbekistan "On bankruptcy" provides for out-of-court restructuring, supervision, and court restructuring, which allow the project company to preserve its assets and re-establish its solvency. However, these are formal procedures within the bankruptcy legislation.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in Uzbekistan.

The directors can be brought to civil, administrative and/or criminal liability. Under administrative liability a director shall be fined with a fine of approximately USD 750-1,000. Criminal liability includes either: (i) a fine of approximately USD 4,900-9,800; (ii) deprivation of certain rights for up to five years; (iii) corrective work for a period of three years; or (iv) imprisonment for a period of three years.

Failure of the directors to apply to the court for bankruptcy within the deadlines set by Uzbek law leads to civil subsidiary liability of the directors for payment obligations of the company towards its creditors.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

There are not any restrictions, controls, fees and/or taxes applicable purely on the ground of foreign ownership of a project company.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Uzbekistan has entered into a number of standard bilateral investment treaties with other countries which provide for an obligation of Uzbekistan not to use groundless, arbitrary or discriminatory measures in relation to the possession, use, management, operation and other functions on investment of the counterparty state.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The matter of nationalisation and expropriation is governed by international treaties concluded by Uzbekistan as well as the Civil Code of Uzbekistan, the Law of Uzbekistan “*On investment activities*” of 24 December 1998, the Law of Uzbekistan “*On guarantees and means of protection of rights of foreign investors*” of 30 April 1998, and the Law of Uzbekistan “*On protection of private property and guarantees of rights of owners*” of 24 September 2012. These laws provide that nationalisation can be initiated only by a law and not by by-laws. Secondly, it is provided that no investments, including foreign investments, are subject to nationalisation.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

The Ministry of Foreign Economic Relations, Investments and Trade is the state body generally responsible for attracting and overseeing foreign investments. However, in each sector of the economy there is a separate ministry, state agency or state company that is responsible for the supervision and implementation of projects.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Any foreign loan agreement without state guarantees is subject to registration with the Central Bank of Uzbekistan. Such registration is done through a servicing bank of the debtor by way of written notification. Foreign loan agreements with state guarantees shall be registered with the Ministry of Finance of Uzbekistan in issuing the relevant guarantee. As for project documents, it largely depends on the type of project document and the parties to such agreement.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

The question of whether there is a requirement for a licence depends not on the object being possessed, but on the activities undertaken. Uzbek laws list the activities which can be undertaken only upon acquiring a relevant licence. As an example, the extraction of hydrocarbons or precious metals, and the operation of pipelines, are all subject to licensing. A licence for the extraction of a mineral resource can be issued to a foreign entity based on a product-sharing agreement. In other cases, foreign investors establish local subsidiaries or enter into joint ventures to apply for licences.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Under Uzbek law, subsoil users pay the following taxes and payments: (i) tax for the use of subsoil; (ii) excess profit tax; and (iii) subscription bonuses and commercial discovery bonuses. Exporters of natural gas shall pay excise tax.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

Foreign currency exchange is highly regulated in Uzbekistan. The Government imposes certain restrictions and regulations in this sphere. The most representative of these are: (i) foreign currency exchange by legal entities can be done only through inter-bank exchange and only for specific purposes, which shall be declared in a relevant application for conversion; and (ii) all export proceeds shall be remitted to Uzbekistan and the exporters are obliged to sell 50% of their export proceeds to the state, except for small business entities.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

After payment of withholding tax in the amount, foreign investors are free to repatriate their profit and investments abroad in hard currency. Unless otherwise provided by a particular Double Tax Treaty, the following are the rates of withholding tax:

- 10% for dividends and interests (except the interests paid by local banks and leasing companies to the foreign financial institutions);
- 10% for insurance premium;
- 6% for profits from international freights; and
- 20% for other profits.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Project companies may open and maintain onshore foreign currency accounts. To open and maintain offshore accounts in a foreign jurisdiction a project company shall apply for a special permit of

the Central Bank of Uzbekistan. Such permit expressly states the purpose for which such offshore accounts can be used. In practice, most of the project companies apply for such permit with the Central Bank of Uzbekistan.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in Uzbekistan or abroad?

There is a general corporate law restriction on making a decision to distribute dividends and on payment of dividends. A project company cannot make a decision on distribution of dividends: (i) when the charter fund of the project company is not fully paid up; (ii) prior to payment of the actual value of the share to the withdrawing shareholder; (iii) when the project company meets the insolvency criteria or may become insolvent due to such decision; (iv) when its net assets are less than its charter fund and the reserve fund or may become less due to such decision; or (v) in other cases provided by Uzbek laws.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Overall, the project company in its activities shall comply with environmental, health and safety laws and regulations. The key laws regulating these spheres in Uzbekistan are the laws of Uzbekistan: “On protection of nature” of 9 December 1992; “On protection of atmosphere air” of 27 December 1996; “On water and water use” of 6 May 1993; “On wastes” of 5 April 2002; “On protection of health of people” of 29 August 1996; “On work safety” of 6 May 1993; and “On industrial safety of dangerous production facilities” of 28 September 2006. The governing authority responsible for the administration of laws and regulations in these spheres are: the State Committee on Protection of Nature, the Ministry of Health, the Ministry of Labour and the State Inspection on Supervision of Work Safety in the Industries.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

Uzbek law establishes a special statutory framework for procurement applicable to operating companies under product-sharing agreements, and to legal entities funded from centralised state funds. Other commercial companies are free to establish their own procurement policies.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

Foreign insurance companies may not provide insurance services, unless they are incorporated in Uzbekistan and have relevant licences. As to guarantees provided by foreign insurance companies (re-insurance), local insurance companies may re-insure their risks with foreign insurance companies only up to 95% of their obligations under each insurance agreement.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Insurance policies may be payable to foreign creditors in case these are named as beneficiaries under such policies. Under property insurance the foreign creditors can be named as beneficiaries only if they have legal interest, based on the law or contract, in preserving such property. It should be noted that under insurance of entrepreneurial risk the only beneficiary that can be named is the entrepreneur itself. Thus, if the project company insures its entrepreneurial risks, the foreign creditors cannot be named as beneficiaries.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

The project company, as a local employer, may employ foreign personnel in case it has a licence for attraction of foreign personnel; and foreign workers, not being permanent residents of Uzbekistan, may work for the project company after receiving a permit to work in Uzbekistan. Most of the project companies in Uzbekistan actively employ foreign specialists for project purposes. When issuing a work permit the Uzbek state authorities take into consideration the need for such specialists and the presence or absence of relevant specialists in the local labour market.

In projects being implemented under the product-sharing agreements, the overall number of foreign employees being attracted for the project may not be more than 20% from the total number of employees.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

All goods, including equipment, that are imported into Uzbekistan are subject to customs clearance, control and customs payments.

10.2 If so, what import duties are payable and are exceptions available?

Customs payments include import customs duties, VAT, customs clearance fees and excise tax, if applicable. It should be noted that Uzbek laws set a list of import equipment that is exempted from customs duties and VAT. To fall under this list the equipment shall be new, i.e. not older than three years old.

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

Force majeure exclusion clauses are available and widely used in practice. Such clauses are recognised and enforced by Uzbek courts.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

The Criminal Code of Uzbekistan establishes criminal liability for giving or taking bribes or acting as an intermediary in bribery. The punishment can be as high as 15 years of imprisonment.

13 Applicable Law

13.1 What law typically governs project agreements?

It should be noted that under Uzbek law, with certain exceptions, parties are free to contractually choose the governing law for their contracts, provided one of the parties is a foreign entity or individual, or there is a so-called 'foreign element' in their relations. In such situations the parties tend to choose either the laws of Uzbekistan or those of the country of residence of such foreign party. In contracts where there is no foreign element, the governing law shall be Uzbek law.

13.2 What law typically governs financing agreements?

Typically, financing agreements are governed by English law.

13.3 What matters are typically governed by domestic law?

As mentioned in answer to question 13.1, Uzbek laws govern contracts where there is no foreign party or foreign elements. Moreover, any relations regarding property that is registered with the Uzbek state register shall be governed by Uzbek laws. Thus, for example, contracts with immovable property, all of which is subject to state registration with state cadastral bodies, shall be governed by Uzbek laws. It shall be separately noted that the mandatory norms of Uzbek law regulating relevant spheres of civil relations shall be applicable regardless of the choice of the parties as to the governing law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

A party's submission to a foreign jurisdiction is legally binding and enforceable under Uzbek law provided one of the parties to the dispute is a foreign entity or individual, or there is a so-called 'foreign element' in their relations.

With regard to waiver of immunity, we assume this refers to sovereign immunity. Under Uzbek law the state acts in civil relations on an equal basis with other participants of such relations, i.e. it shall not use its sovereign immunity. Yet the state is free to expressly waive its immunity, and such waiver shall be recognised and enforced.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Contractual provisions on international arbitration and arbitral awards are recognised and enforced by Uzbek courts pursuant to the New York Convention of 1958.

15.2 Is Uzbekistan a contracting state to the New York Convention or other prominent dispute resolution conventions?

Yes, Uzbekistan is a contracting state to the New York Convention on Recognition of Foreign Arbitration Awards of 1958. The New York Convention entered into force in Uzbekistan on 7 February 1996.

15.3 Are any types of disputes not arbitrable under local law?

Under the law of Uzbekistan "On arbitration" of 16 October 2006, arbitration courts may not adjudicate disputes in the sphere of administrative, family or labour relations as well as other disputes which fall under the exclusive competence of other courts. These are, for example: bankruptcy cases; disputes arising from taxation; and disputes related to the administrative activities of state bodies. Such cases shall be tried and settled by the state courts.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

No, there are no disputes that are subject to mandatory domestic arbitration proceedings. The parties are free to choose domestic arbitration proceedings or go to state courts.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

In practice, foreign creditors and foreign equity investors in large project financings frequently request direct agreement with the central government and apply for political risk guarantees.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Under Uzbek law, interest payable on loans is subject to withholding tax, except for interest paid by local banks and leasing companies to

foreign financial institutions. As for the proceeds of a claim under a guarantee or the proceeds of enforcing security, these are treated in the same way as payments received for the underlying obligations, e.g. the principal amount is not taxable, but the interest is subject to withholding tax at the rate of 10%.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Pursuant to Presidential Decree No. UP-3594 dated 11.04.2005, enterprises attracting foreign direct investment into certain sectors of the economy in certain regions are exempt from profit tax, property tax, tax on improvement and development of social infrastructure, unified tax payment for micro- and small entities as well as mandatory contributions to the Republican Road Fund. The term of incentive depends on the amount of attracted investments and can last as long as seven years.

Moreover, the state provides special tax, customs and foreign currency regimes in the free industrial zones of Navoi, Djizax and Angren. In practice, when implementing project financing, equity investors and/or lenders enter into direct investment agreements with the state, which stipulates both the investment obligations of the investors, their terms and incentives, and privileges necessary for successful implementation of the project.

There are no taxes applicable to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in Uzbekistan?

As mentioned in question 17.2 above, equity investors and/or lenders should consider concluding direct investment agreements with the states that stipulate their investment obligations and certain incentives and guarantees of the state. The procedure for conclusion of such investment agreements is provided in the Decrees of the Cabinet of Ministers of Uzbekistan No. 180 dated 02.08.2005, and No. 110 dated 07.06.2007.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

Project companies are subject to the same rules and regulations for issuing bonds or similar capital market instruments. It should

be noted that corporate bonds can be issued only by joint-stock companies and commercial banks, regardless of their legal incorporation form. Corporate bonds can be issued by financial solvency joint-stock companies and commercial banks within the limits of their own capital.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in Uzbekistan.

We are not aware of cases where the mentioned Islamic instruments have been used in project financing in Uzbekistan. However, these instruments are being used in ordinary financing made by Islamic financial institutions, after certain particular provisions have been adopted/amended in compliance with the mandatory provisions of Uzbek law.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

Shari'ah law may become the governing law of a contract, where one of the parties to the contract is a foreign individual or legal entity, or the contract is so-called 'complicated by other foreign element', i.e. the object of the contract is located abroad, the subject matter of the contract is closely connected with a foreign country, etc. In such cases the parties are free to choose a foreign governing law, including *Shari'ah* law.

We are not aware of recent jurisdictional cases regarding *Shari'ah* law.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in Uzbekistan? If so, what steps could be taken to mitigate this risk?

Inclusion of an interest payment obligation in a loan agreement governed by Uzbek law is normal practice and will not negatively affect its validity and/or enforceability in Uzbekistan.



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Nail Hassanov has 10 years of experience working as a lawyer in Uzbekistan. His key areas of expertise and special interest are cross-border financing, project financing, syndicated loans and secured transactions in the oil and gas sector, energy, infrastructure development and construction.

Nail represents, as a local counsel, both lenders and borrowers in international finance transactions, including project finance, syndicated loans, and sales on credit. He regularly advises foreign investors in M&A transactions, joint ventures, complex property acquisitions, etc.

Nail's expertise has been recognised by leading legal directory *Chambers & Partners*, which characterised him as a "rising star in the project finance space".

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