Project Finance

in 34 jurisdictions worldwide

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Collateral

1 What types of collateral are available?

As is customary for project financings globally, the collateral package for a US project typically includes substantially all of the project company's present and future assets together with the equity of the project company and all intercompany debt. The collateral package thus includes multiple types of collateral, including real property (such as fee simple interests, leaseholds and easements) and fixtures (such as buildings) as well as personal property (such as equipment, inventory, contract rights, receivables, bank accounts, securities and proceeds), and the relevant legal framework consists of several bodies of law.

The US legal system involves not only federal law but also the laws of its 50 states and the District of Columbia (DC) and the laws of their political subdivisions (eg, municipalities). The laws most relevant to the granting and perfection of the collateral include: the Uniform Commercial Code (UCC) of the applicable states (notably, UCC, articles 8 and 9), which applies to most personal property; the real property law of the state in which any relevant real property is located; and potentially, certain other federal, state and foreign laws (Other Rules).

While articles 8 and 9 of the UCC have been enacted by all states and DC in a largely uniform manner, certain provisions vary from state to state. Thus, the UCC of the applicable states should always be consulted.

Perfection and priority

2 How is a security interest in each type of collateral perfected and how is its priority established? Are any fees or taxes payable to perfect a security interest and, if so, are there lawful techniques to minimise such fees or taxes?

Real property interests are typically encumbered by a mortgage. Mortgage instruments vary among states and include deeds of trust and deeds to secure debt. Deeds of trust name a trustee as holder of real estate interests for the benefit of the lender whereas mortgages simply name the lender itself as the mortgagee. While the attributes and methods of foreclosure of these instruments vary somewhat, each essentially creates a lien on the real property interest encumbered.

The formalities for a mortgage differ from state to state but typically involve preparation of a written instrument granting the lien, a description of the property and of the debt secured, identification of the grantor and the grantee of the lien, and an acknowledgement of the grantor's signature. In some states, the grantor's signature must also be witnessed. Beyond the express formalities, the forms of security documents are privately negotiated among the parties.

While the mortgage instrument can be effective as between the parties without recording, notice to third parties and perfection of the lien are established by recording the mortgage in the county or other local recording office where the property is located. No governmental approval is typically required for granting a mortgage, although governmental approvals may be required for certain regulated utilities.

Priority of liens is typically determined by state law, with priority accorded to those recording first in time or first with no prior notice of an existing claim. The priority afforded to a lien properly filed may, however, be affected by state laws granting preferential treatment to mechanics lienors, at times permitting such lienors to assert a lien dating back to commencement of work rather than to the date of recording. Different priority may also be accorded to advances pursuant to existing loans depending upon whether the advances are obligatory or optional. Some states permit future advances and revolving credits to have the same priority as original advances so long as the mortgage complies with statutory provisions regarding future advances. Unpaid real estate taxes will also comprise first ranking items.

Taxes and fees payable to perfect a lien on real property vary among states (and even among cities and counties). In some jurisdictions, these taxes and fees, which are often calculated on the principal of debt secured, can be substantial. A significant amount of effort is often expended to minimise these impositions. Often these taxes and fees can attach to each readvance under a revolving credit loan. In many jurisdictions, the tax or fee is not payable until the mortgage is recorded. However, the risks associated with a delayed recording can be significant, and timely recording is usually recommended.

Other techniques for minimising the impositions include the practice in New York of transferring debt instruments upon which mortgage recording tax has already been paid and restating those instruments to reflect the new agreed terms. In certain jurisdictions, a current tax need not be paid if the mortgage secures a guaranty of an obligation and not the principal obligation itself. Finally, in some states the parties may minimise recordation taxes in the context of a multi-property financing by securing less than the entire debt facility amount with each mortgage.

Security interests in personal property subject to the UCC are created by an agreement generally referred to as a 'security' or 'pledge' or 'collateral assignment' agreement. Under the UCC, perfection of validly attached security interests in most types of collateral may (and in many cases must) be obtained by filing a UCC financing statement in the applicable filing office. The filing office will likely be the state-level filing office where the debtor is organised or, if the debtor is organised outside the US, in the office of the DC Recorder of Deeds. In general, UCC filings must be extended every five years to remain effective. Note that, if the collateral package includes intellectual property (IP) assets, certain filings in the US Patent and Trademark Office (PTO) or the US Copyright Office (USCO) may also be required or advisable.

Other methods of perfection contemplated by the UCC include possession and 'control', the requirements for which vary among different categories of collateral. Perfection by control is relevant to

collateral packages for project financings, since the account structures often include a number of pledged deposit accounts, security interests in which can be perfected only by control. Additionally, certain assets of the project company, and its equity interests, may constitute 'investment property', security interests in which may also be perfected by control. Thus, the collateral documentation for US project financings may include a 'control agreement' as a stand-alone agreement, or as part of another agreement – which often contains the account waterfall provisions.

For certain types of assets, it is necessary or advisable to take other steps to ensure perfection or enhanced priority or to facilitate enforcement. For example, even when perfection by filing has been obtained over the security interest in pledged equity interests constituting certificated securities (such as stock certificates), secured parties often take delivery of the certificated securities together with a stock power executed in blank by the pledgor. Additionally, each counterparty to a material pledged project contract customarily executes a 'direct agreement' (or 'consent and agreement' or 'consent') for the benefit of the secured parties in respect of the related contract. Standard features of such direct agreements include an acknowledgement of and consent to the security interest therein, step-in and cure rights for the benefit of the secured parties, the right to assign the contract to transferees, irrevocable directions to make any payments into a pledged account and other covenants, representations and releases. The secured parties may also wish to negotiate clarifications to the project contract. It is prudent to provide in the applicable project contracts that the counterparty will execute such a consent, and to commence the negotiation of the consents early in the documentation process so as not to jeopardise the timetable for the financing.

While the UCC's basic rule of priority is 'first in time, first in right', the nuances of the UCC's priority rules (which include rules for trumping priorities when parties use different means of perfection over the same collateral) are beyond the scope of this article, as is any discussion of the UCC's rules for which state's laws will govern priority or perfection and its effects. The governing law selected for the collateral documents may vary by transaction, and the jurisdiction of organisation of the project company and any pledgors may also vary (and may further differ from the governing law of the transaction documentation). These factors, in addition to the location of collateral belonging to certain categories, may affect which state's law applies to various aspects of priority, perfection and the effects of perfection.

Because the majority of the rules applicable to the collateral packages for US projects tend to be found in the UCC and relevant real property law, this article does not address (except as briefly noted above with respect to IP filings) any Other Rules which govern various types of collateral such as aircraft, railcars, other 'rolling stock', motor vehicles, certain maritime vessels and contracts with the US government.

We do note that one limitation to the scope of article 9 in most states is the exclusion of security interests in insurance policies. However, under article 9, insurance payable for loss of, defects in, or damage to, the collateral, if payable to the debtor or the secured party, is considered 'proceeds' to the extent of the value of collateral. In turn, article 9 does provide special rules addressing the creation and perfection of security interests in proceeds. To ensure receipt of monies paid under insurance policies in respect of US projects, secured parties usually require a loss payee endorsement for any insurance policies or designation thereunder as 'additional insured'.

Fees payable in connection with UCC filings are in almost all states de minimis.

Existing liens

3 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

The US does not have a federal system of governmental registration of land titles. State governments have established offices to file instruments affecting land titles, but do not certify the status of title. As a result, a private title insurance industry has evolved offering a means of searching title to real property and indemnity insurance against undisclosed title defects. In customary diligence, project parties procure a preliminary report on title identifying previously recorded exceptions (eg, prior mortgages; mechanics, judgment or tax liens) affecting the property and a survey which will, among other things, locate all recorded easements and similar encumbrances. The purchaser, the lender, or both will purchase a title insurance policy insuring the status of title as shown on the preliminary report (after any curative work). The title insurer charges a single premium, payable upon issuance of the policy, which generally averages about 50 to 60 cents per US$1,000 of coverage, but in some states can be significantly higher. An owner's policy is in force so long as the insured has any interest or title liability in the property; a lender's policy is in force so long as its loan is outstanding.

Searches can be conducted in the applicable filing offices for property subject to the UCC to uncover liens previously perfected by filing under the UCC in respect of the applicable debtor and collateral. A UCC termination statement can then be filed, if appropriate, to terminate any pre-existing filing (the transaction giving rise to the lien should also be terminated and any related obligations repaid). Most companies providing commercial UCC search services also conduct searches for judgment, bankruptcy and tax liens. Specialised companies provide lien searches of the PTO and the USCO. For searches regarding liens on certain types of collateral subject to Other Rules, the respective filing offices should be consulted.

For any collateral in which security interests are not perfected by filings of which public notice is available, the creditor is dependent on other aspects of the due diligence process and the negotiation of representations in the documentation to determine the existence of prior liens, as to which the parties may then agree on appropriate action.

Lien searches should be commenced early enough to allow the review of the results and the negotiation of a resolution of any liens disclosed.

Foreign exchange

4 What are the restrictions, controls, fees and taxes on foreign currency exchange?

Generally, there are no exchange controls or taxes imposed on foreign currency exchange in the US. However, the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions on the basis of US foreign policy and national security, which rules should be consulted.

Remittances

5 What are the restrictions, controls, fees and taxes on remittances of investment returns or loan payments to parties in other jurisdictions?

A foreign investor may remit US profits abroad and repatriate equity or debt capital investment, in each case, without any restriction. Dividends, interest, royalties and service fees, which also may freely be repatriated, may be subject to US withholding tax. The rate of such withholding tax is 30 per cent, or a lower treaty rate (or in the case of interest, a zero statutory rate) may apply.

Repatriation

6 Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

US companies may (but need not) repatriate foreign earnings. Even if not repatriated, foreign profits, especially passive (eg, interest and rent) may be subject to taxation in the US.

Offshore and foreign currency accounts

7 May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

The US does not prohibit offshore accounts, but the Internal Revenue Service (IRS) requires US persons to declare foreign accounts upon filing of the annual income tax return if more than US$10,000 is held in offshore accounts. There are no longer any restrictions in the US on offering foreign currency deposits.

Foreign investment and ownership restrictions

8 What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

The US has a policy of open foreign direct investment, in support of which the US has entered into a number of bilateral and multilateral treaties to increase investment opportunities and provide protections for foreign investors. One example is the North American Free Trade Agreement (NAFTA) among Canada, Mexico and the US. Protection of investors against expropriation is discussed in question 13. An example of protection under NAFTA is the provision requiring each NAFTA party to treat other NAFTA investors and their investments no less favourably than its own investors or their investments and investors or investments of third parties. NAFTA also requires that each NAFTA party treats foreign investments in accordance with international law principles, such as 'fair and equitable treatment' and full protection and security.

Nonetheless, foreign investments in the US do face some restrictions. The most notable disincentive for foreign investments in the US is in the Exon-Florio Amendment to the Defense Production Act of 1950, under which the president may decide, on a case-by-case basis, whether an acquisition of a US business by a non-US person should be blocked where there is credible evidence that such transaction threatens US national security. To avoid uncertainty, non-US parties may submit a voluntary notice about the transaction to the Committee on Foreign Investment in the United States (CFIUS). CFIUS is the interagency committee to which the president delegated certain of his authority under the Exon-Florio Amendment. The goal of submitting a notice is to receive a 'no action' letter, which generally insulates the transaction from any subsequent action. The Exon-Florio Amendment was in the public spotlight in recent controversies, including the proposed acquisition by Dubai Ports World, a state-owned company based in the United Arab Emirates, of a company with operating rights in various American ports.

The International Economic Emergency Powers Act also grants the president authority to investigate, regulate and prevent foreign acquisitions of US companies. This process, however, calls for the declaration of an 'unusual and extraordinary threat' to national security.

There are other restrictions under federal laws that protect national security by imposing restrictions on foreign investment, eg, in the development of natural resources on federally owned lands or of nuclear power, and foreign investments involving the transfer of sophisticated technology and goods.

Finally, the US historically has had a number of restrictions on foreign ownership of real property. Many states have eliminated these restrictions. Today, the remaining limitations are primarily in the western states and apply only to property usable for particular purposes, such as agricultural, mining or forest lands.

The federal government and many states also have a number of laws requiring foreign acquirers to file reports disclosing ownership of real property in the US. These laws have typically been enacted as a means of information gathering and are not intended to be penal in application.

Project or related companies owned by US or foreign investors are subject to the same tax regime. Earnings or debt service payments to foreign investors may be subject to withholding taxes at a 30 per cent rate, subject to tax treaty or statutory reduction. In addition, if the project company is a US real property holding company, taxes are imposed on the sale of such companies.

Government approvals

9 What government approvals are required for typical project finance transactions? What fees and other charges apply?

Necessary permits depend on a range of variables such as the location, sector and size of the project. Any particular project may require a number of approvals, licences, permits and consents on the federal, state and municipal level.

Foreign insurance

10 What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

The states are the primary regulators of insurance in the US. Many state laws make it unlawful to engage in the business of insurance unless the applicable entity is qualified under state law and related administrative rules. Every state has adopted legislation regulating insurance, and has its own licensing procedures for insurers.

Insurance policies over project assets may be payable to foreign secured creditors.

An excise tax at the rate of 4 per cent, or 1 per cent on reinsurance, is imposed on premiums paid to foreign insurance companies subject to reduction or elimination by tax treaty.

Foreign employee restrictions

11 What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

Foreign nationals generally must obtain visas to work in the US. Such visas are usually issued upon a specific job offer from a US employer and are valid for a limited period. Typically an employer files a petition for a worker with the Citizenship and Immigration Services in the Department of Homeland Security (DHS). Before filing the petition the employer may need to seek a certification from the Department of Labor that no US workers are available for the prospective job and that US workers will not suffer economically if the foreign worker is employed. If the petition is approved, the foreign national then applies for a temporary worker visa. A number of categories of temporary worker visas are available (ie, visas for aliens with extraordinary ability in business or science and executives and managers of multinational corporations). There is also a category for 'intra-company transferees,' covering certain employees of an affiliate of a US employer working in a managerial, executive

or specialised knowledge capacity. Temporary worker visas are for a specific period, but limited extensions are possible.

Equipment import restrictions

12 What restrictions exist on the importation of project equipment?

Some important restrictions on the import of equipment include those set forth below.

Goods imported into the US must clear customs and are subject to a customs duty, unless specifically exempted by law. The Harmonized Tariff Schedule sets forth the rates of duty for each imported item. The US Customs Service does not impose an obligation on an importer to acquire a licence or other certification, but importers may be subjected to such requirements by other agencies, depending on the nature of the import.

US Customs and Border Protection enforces health, safety and technical standards for imported merchandise.

Antitrust laws impose restrictions on imports such as the Antidumping Acts, which address import sales below cost, and section 337 of the Tariff Act of 1930, which prohibits unfair trade practices.

The OFAC administers a series of laws to further US foreign policy and national security that include prohibitions on imports from certain countries or goods of certain origin and economic sanctions against hostile targets.

Nationalisation and expropriation

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

The US Constitution provides that private property cannot be taken for public use without just compensation. A 'taking' requiring just compensation also occurs when an action of the government impairs the value of the property, even if the property is not seized. In addition, investment treaties between the US and other nations also contain expropriation clauses offering foreign investors both protection against direct seizure and protection against impairment of value. For example, NAFTA, article 1110 prohibits expropriation of an investor's investment in the host country unless: it is done for a public purpose; it is on a non-discriminatory basis; it is in accordance with due process of law; and prompt and adequate compensation is paid.

Fiscal treatment of foreign investment

14 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?

Generally, none.

Government authorities

15 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

As noted in question 9, many variables determine which regulatory authorities need to be considered in any project. The project sector is one such variable.

Two federal agencies which are relevant for energy sector projects are: first, the Federal Energy Regulatory Commission (FERC), regulating the interstate transmission of electricity, natural gas and oil. FERC reviews proposals to build liquefied natural gas (LNG) terminals and interstate natural gas pipelines and to license hydropower projects. Many areas outside of FERC's jurisdictional responsibility are dealt with by state public utility commissions.

The structure of the electric power sector has evolved in the US. While it used to be in the hands of the electric utilities, which were highly regulated, it is now exposed to greater competition from non-utility power producers and less regulation.

Second, the US Nuclear Regulatory Commission (NRC) regulates commercial nuclear power plants through licensing, inspection and enforcement of its requirements. The NRC's regulatory activities cover safety oversight and licensing, waste management and the evaluation of applications for new nuclear plants.

In addition, an energy project may be required to obtain additional federal, state and local approvals.

International arbitration

16 How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

The US is a signatory to both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Panama Inter-American Convention on International Commercial Arbitration. Further, federal legislation (the Federal Arbitration Act, Title 9 USC) provides a statutory structure and provides for federal court jurisdiction for the enforcement of these two conventions. The United States is also a signatory to the Washington Convention and the NAFTA treaty, which provide for the arbitration of investment disputes between non-US investors and governmental entities in the US.

While regional differences do exist, US courts are generally very 'pro-arbitration'. In most cases, enforcement of arbitration agreements and awards can be obtained relatively promptly and at reasonable cost. There are no types of commercial disputes common to project finance transactions that cannot, by agreement, be made subject to arbitration.

Applicable law

17 Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Typically, the laws of New York govern the financing agreements other than the collateral documents required by law to be governed by the laws of the state in which the project is located (eg, the mortgage). Project agreements can be governed by the law of any state or by foreign law.

Jurisdiction and waiver of immunity

18 Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Generally, yes.

Bankruptcy

19 What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes are available to seize the assets of a business outside of court proceedings?

The United States Bankruptcy Code governs reorganisation and liquidation proceedings for business entities including corporations, limited liability companies and partnerships. As a general rule, commercial entities may be subject to reorganisation and liquidation proceedings. However, entities that are excluded from reorganisation

proceedings include governmental units and certain US and foreign financial institutions.

Entities that are excluded from liquidation proceedings include governmental units, railroads and certain US and foreign financial institutions. There are special rules governing reorganisation proceedings for municipalities.

Certain state laws provide for non-judicial foreclosures, allowing lenders to foreclose on mortgages without a court proceeding. In most cases, however, US law does not permit seizure of assets outside of court proceedings. The Bankruptcy Code does not distinguish between foreign and local creditors. The Bankruptcy Code also allows recognition in the US of insolvency proceedings undertaken abroad and permits representatives of foreign debtors to obtain assistance in the US for such foreign proceedings.

Title to natural resources

20 What has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The federal government, state governments, individuals and business entities may own rights to natural resources in the US. Foreign parties are permitted to hold similar rights, but these rights may be subject to review by the federal government and to certain limitations.

Subsurface rights to minerals, oil or gas may be held concurrently with, or independently from, rights to the surface of real property. The landowner holds both the mineral rights and the surface rights, unless the mineral rights have been expressly severed from the surface rights, creating an interest called a profit. A profit entitles the holder to reasonable use of the surface to extract any minerals, oil or gas from the land.

The General Mining Law of 1872 regulates mining rights on real property owned by the US government and permits any person, for an annual fee, to stake a 'mining claim' on federal land. State law, which varies widely, governs mining rights on state-owned lands. Private parties may contract for subsurface rights, which can be transferred by sale or lease. Surface and mineral rights owned by Native American tribes can be acquired in accordance with tribal law with oversight by federal authorities.

Water rights vary from state to state. Depending on the jurisdiction, rights to use bounded bodies of water are governed by either the Riparian Doctrine or the Prior Appropriation Doctrine. A riparian owner, one whose land lies adjacent to a body of water, is entitled to reasonable use of the water. A landowner in a prior appropriation jurisdiction obtains rights in and priority to the water supply by actual beneficial use.

Rights to groundwater are governed by four doctrines, the applicability of which varies across jurisdictions. The absolute ownership doctrine permits the owner of the surface land to remove an unlimited quantity of water for any purpose. The reasonable use doctrine grants the same rights as the absolute ownership doctrine; however, extraction for export purposes is limited if such activity harms those with rights in the same aquifer. The appropriative rights doctrine grants rights to groundwater based on priority of use. The correlative rights doctrine, the law in California, allocates reasonable amounts of water for personal use to the surface owners, who are treated as joint tenants of the groundwater.

Royalties on the extraction of natural resources

21 What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

Royalties payable for extraction under a lease of natural resources will be affected by the identity of the owner of the related minerals or land. If privately owned, the terms of royalties will be as negotiated. If owned by a state, royalties will vary depending on state regulations. If federally-owned, royalties depend on the natural resource in question; the applicable body of law includes rules that are specific to oil and gas, coal, other solid minerals and geothermal resources. Note that under the Energy Policy Act of 2005, the secretary of the interior may require oil or gas lease royalties to be paid in kind. The federal government also derives revenues from rents and bonuses under its leases, and certain other charges may be payable to governmental agencies.

The concept of royalties is generally based on production (or related proceeds). Oil and gas royalties tend to be expressed as percentages of production, royalties for precious metals often as a percentage of net smelter returns and royalties under other mineral leases as an amount of royalties per production unit.

Generally applicable state and federal taxes, in addition to severance taxes assessed by the states regarding certain land, tend to apply to natural resource operations. While taxes on mining activities do not generally distinguish between domestic and foreign parties, the Mineral Leasing Act of 1920 restricts direct foreign ownership of federal mineral leases. There are no federal taxes imposed on the extraction of natural resources other than normal taxes on business profits that may be apportioned partially within and partially without the US where sold outside the US. Additionally, purchasers of real property (including mining) interests from foreign parties are required to deposit 10 per cent of the sales price with the IRS as a credit against the seller's potential tax liability.

The high oil prices prevailing in recent years have given rise to proposed legislation calling for reinstatement of a version of the federal crude oil windfall profits tax law that was in effect during much of the 1980s.

Export of natural resources

22 What restrictions, fees or taxes exist on the export of natural resources?

Relevant export controls include the following:

- natural gas exports require prior approval from the Department of Energy;
- crude oil exports require difficult-to-obtain approval from the Department of Commerce, while refined petroleum product exports are less severely restricted (however, export licences are required for products derived from, or available due to exchanges with, certain reserves); and
- exports of certain specific strategic minerals are restricted by the DHS.

No taxes are imposed on the export of natural resources.

Environmental, health and safety laws

23 What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

Environmental matters typically are a major focus in US project financings and are governed by a number of federal, state and local laws. The principal federal laws are administered by the Environmental Protection Agency (EPA), though EPA regularly delegates authority to state agencies. The most significant laws include those set forth below.

Update and trends

Though statistics show project finance activity continuing and actually increasing amid the intense market turbulence of 2008, it has not been unaffected. In fact, fundamental changes in the identity of the major sources of financing and the terms have appeared. The question is, are the changes here to stay?

Under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System permitting programme, either EPA or an authorised state agency issues permits regulating discharges to waterbodies. The CWA's Oil Pollution Prevention regulation requires regulated facilities to prepare Spill Prevention Control and Countermeasure plans.

The Resource Conservation and Recovery Act (RCRA) governs solid and hazardous waste management activities. The transport of all RCRA wastes and additional hazardous materials is regulated by the Hazardous Materials Transportation Act.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorises EPA to respond to releases of hazardous substances that might endanger the environment and enables EPA to force parties responsible for environmental contamination to clean it up. Petroleum is notably exempt from CERCLA regulation.

The Clean Air Act (CAA) regulates air emissions. New facilities and significant modifications to existing facilities are subject to extensive permitting and performance standards for emissions controls.

The Endangered Species Act protects threatened species and their habitats, and on federal land with oil production, mining, logging and other activities, the Department of Interior's Bureau of Land Management regulates siting and production.

Project companies

24 What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

The principal business structures include corporations, limited liability companies and limited partnerships. The sources of financing are generally quite varied including commercial and investment banks, the private placement market (eg, insurance companies), the unregulated fund (or Term B) market, public capital markets (including the 144A market) and taxable and tax-exempt government-supported financing. In the current environment, however, liquidity has become quite constrained.

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