



Top 10 Construction Loan Provisions

*Renewable Energy Non-Recourse
Project Finance Transactions*

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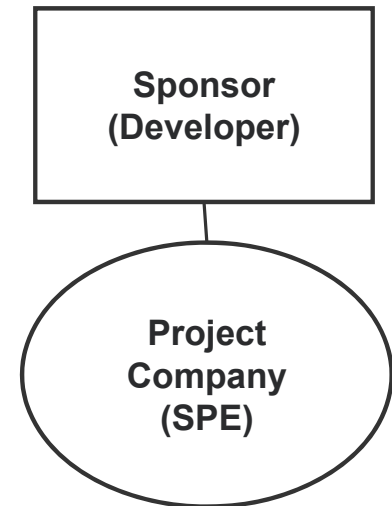
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Project Financing Basics

The Basics: What is Project Financing?

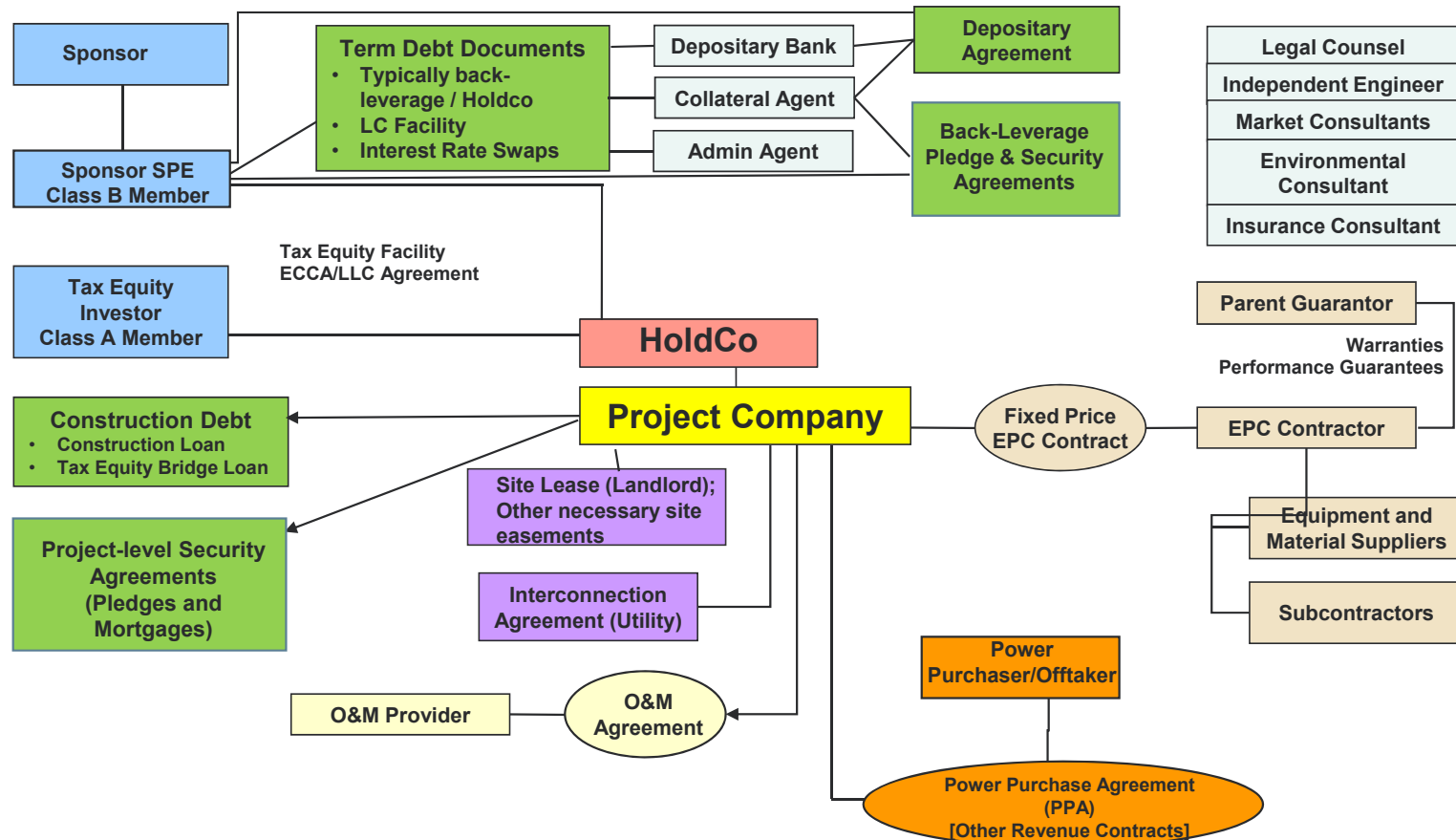
- Technique for financing capital-intensive projects that are either difficult to support on a Developer's corporate balance sheet or are more attractive when financed separately
- Sponsor (the Developer) creates subsidiary Special Purpose Entity ("SPE") to hold the project's assets



The Basics: What is Project Financing?

- Equity in SPE comes from Sponsor and outside parties
- “Tax Equity” investor provides additional equity funding subject to requirements of tax equity documentation
- Debt is provided to SPE based on the economic viability of the project and the strength of project contracts
- Risks borne by project parties / counterparties key credit
- Recourse limited to SPE’s assets and cash flow

Parties to the Transaction



Debt Facilities

Typical Debt Facilities for Renewables

- Development Loans
 - Pre-construction – not typically provided by banks
- Construction Loan
- Tax Equity Bridge Loan
 - Bridging construction funding until tax equity investment is made
- Term Loan
 - Amortized longer tenor post-construction
- Letter of Credit Facility

Debt Documentation

Financing Documentation



Financing Documentation Overview

- **Financing Agreement** – contains key obligations of the Borrower, including representations and warranties, conditions precedent to closing and funding, affirmative and negative covenants, default conditions
- **Depository Agreement** – outlines cash management / account structures and processes
- **Deposit Account Control Agreement** – required if account will be held at a bank other than the Depository Bank

Financing Documentation Overview

- **Borrower Security Agreement** – grants security interest in all Borrower assets to the secured parties
- **Pledgor Pledge Agreement** – pledge of membership interests in Borrower held by upstream sponsor/pledgor
- **Guaranty and Security Agreement** – grants a security interest in Borrower subsidiary assets to support Borrower obligations
- **Swap Documents** – interest rate hedging documentation (ISDA documents)

Financing Documentation Overview (Cont'd)

Other Financing Documents:

- **Mortgage** – grants security interest in real property collateral (for project-level debt)
- **Tax Equity Interparty Agreement** – outlines key obligations of Tax Equity Investor and Secured Parties re: forbearance, recapture

Financing Documentation Overview (Cont'd)

Other Financing Documents:

- **Third-Party Consents to Collateral Assignment**
– project agreement counterparties recognize secured parties' cure and step-in rights
- **Collateral Agency and Accounts Agreement** – collateral agent appointment; account cash flows & waterfall (may take place of Depositary Agreement)

Top 10 Construction Loan Provisions

#1 – Definitions



Definitions (some are highly negotiated)

- Acceptable Transferees
- Additional Project Documents
- Change of Control
- Debt Sizing
- Majority Lenders
- Material Adverse Effect
- Material Project Documents
- Maturity Dates
- Project Costs and Revenues
- Required Lenders

#2 – Lending Mechanics



Lending Mechanics

- Availability Period
- Debt Sizing Parameters / Commitment
- Minimum Requested Amounts
- Repayment Dates: principal v. interest
- Roadmap to security interests – scope and termination (project-level security drops away at conversion from construction to term loan facility)

#3 - Interest



Interest	<ul style="list-style-type: none">▪ Capitalized Interest▪ Interest Rate:<ul style="list-style-type: none">▪ Term SOFR (1, 3, 6 months),▪ Daily Simple SOFR▪ Base Rate / ABR▪ Credit Spread Adjustment
Interest Rate Hedging	<ul style="list-style-type: none">▪ Timing – execution at closing or post-closing (occurs at term conversion)▪ Percentage required to be hedged

#4 - Prepayments



Prepayments	<ul style="list-style-type: none">▪ Optional Prepayment<ul style="list-style-type: none">▪ Penalties – time periods▪ Mandatory Prepayments<ul style="list-style-type: none">▪ Solar Resource Impairment Event▪ Loss of PPA's▪ Failure of Distribution Conditions▪ Middle-ground: Cash sweeps
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#5 - Collateral



Collateral	<ul style="list-style-type: none">▪ Construction Loan: Project-Level Collateral<ul style="list-style-type: none">▪ All assets of Borrower▪ “Collateral Assignment” of Project Documents▪ Pledge of membership interest in Borrower▪ Account Collateral▪ Term Debt: back-leverage (upstream) collateral
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#6 – Conditions Precedent



Conditions Precedent to **Closing**

See Appendix

Conditions Precedent to **Borrowings**

Project construction status, diligence items
Example: Construction Budget and Timeline
Stands alone for a reason

Conditions Precedent to **Term Conversion**

Typically address project completion deliverables
Example: Substantial Completion Certificate

Conditions Precedent to each **Credit Event**

Apply to closing, funding, conversions, LC issuance
Example: Bring Down of Reps & Warranties

#7 – Representations and Warranties



Borrower statements made at Credit Events (Closing, Funding, Conversion):

Borrower and Borrower Entities Related	Business Related	Project Related
<ul style="list-style-type: none">• No default• Required approvals• Compliance with laws and regulations• Litigation• Title	<ul style="list-style-type: none">• Examples:<ul style="list-style-type: none">• Conduct of business; location• Material adverse effect - pitfalls• Taxes• Knowledge & Materiality	<ul style="list-style-type: none">• Examples:<ul style="list-style-type: none">• Permit• Environmental• Project Documents• Knowledge & Materiality

#8 – Affirmative and Negative Covenants



Affirmative Covenants (Promise TO DO something)	Negative Covenants (Promise NOT TO DO something)
<ul style="list-style-type: none"> ▪ Reporting Requirements ▪ Delivery of Financial Statements ▪ Provide Construction Budget and Schedules ▪ Use of Proceeds ▪ Financial covenants (DSCR) 	<ul style="list-style-type: none"> ▪ Will not incur indebtedness/liens ▪ Will not make distributions unless various conditions have been met ▪ Will not amend or enter into project documents without lender’s consent ▪ Will not sell assets

#9 – Events of Default



Immediate Defaults

- Principal non-payment
- Misstatements
- Breach of negative covenants and certain affirmative covenants
- Bankruptcy

Default with cure periods

- Interest non-payment
- Breach of various Project Documents
- Breach of certain affirmative covenants
- Project-related: loss of permit; loss of QF status, etc.

#9 – Events of Default



Borrower Cures

- Correct breach of material contract
- Replace material contract counterparty
- Equity cure limitations (if available)
- Special prepayment cures for portfolios

#10 – Lender Remedies



Lender Remedies upon Default

- No further Loans
- Acceleration
- Exercise rights and remedies under collateral documents
 - During Construction
 - After Construction
- Real property foreclosure
- Remedies subject to tax equity interparty agreement

Appendix 1: Closing Conditions Precedent

Standard Conditions Precedent to Closing

- Executed Financing Documents and Material Project Documents in full force and effect
- Secretary's Certificates, resolutions, incumbency, good standing certificates and certified formation documents
- Legal opinions
- Insurance deliverables
- Third party reports (e.g., insurance consultant report, IE report, Phase I report)
- Funds Flow, payments of all fees and expenses

Standard Conditions Precedent to Closing (Cont'd)

- Delivery of all Applicable Permits
- Financial statements
- UCC lien searches, payoff/termination of existing debt
- Perfection of security interests (including filing of UCC-1s and possession of membership interest certificates)
- Project budget and schedule
- Base case projections
- ALTA survey, title insurance
- Flood deliverables (Flood Hazard Determinations, Insurance)

Standard Conditions Precedent to Closing (Cont'd)

- Establishment of Accounts
- Absence of litigation; no Material Adverse Change
- Representations and warranties are true, correct and complete in all material respects
- No Events of Default
- KYC, Patriot Act Compliance, Beneficial Ownership Certification
- Notices of Collateral Assignment
- Sponsor equity investment

Appendix 2: Credit Agreement Negotiations, Pitfalls and Collateral Release

Credit Agreement Pitfalls

- Follow the money mechanics – make sure Debt Sizing, Applicable Margin and all payment provisions actually fit together
- Confirm consistency of major milestones (tax equity funding termination dates, PPA guaranteed COD, loan maturity dates)
- Threshold for any changes to the Events of Default
- Equity Cure impacts Credit Committee approval
- Compare and harmonize conditions precedent and corresponding representations

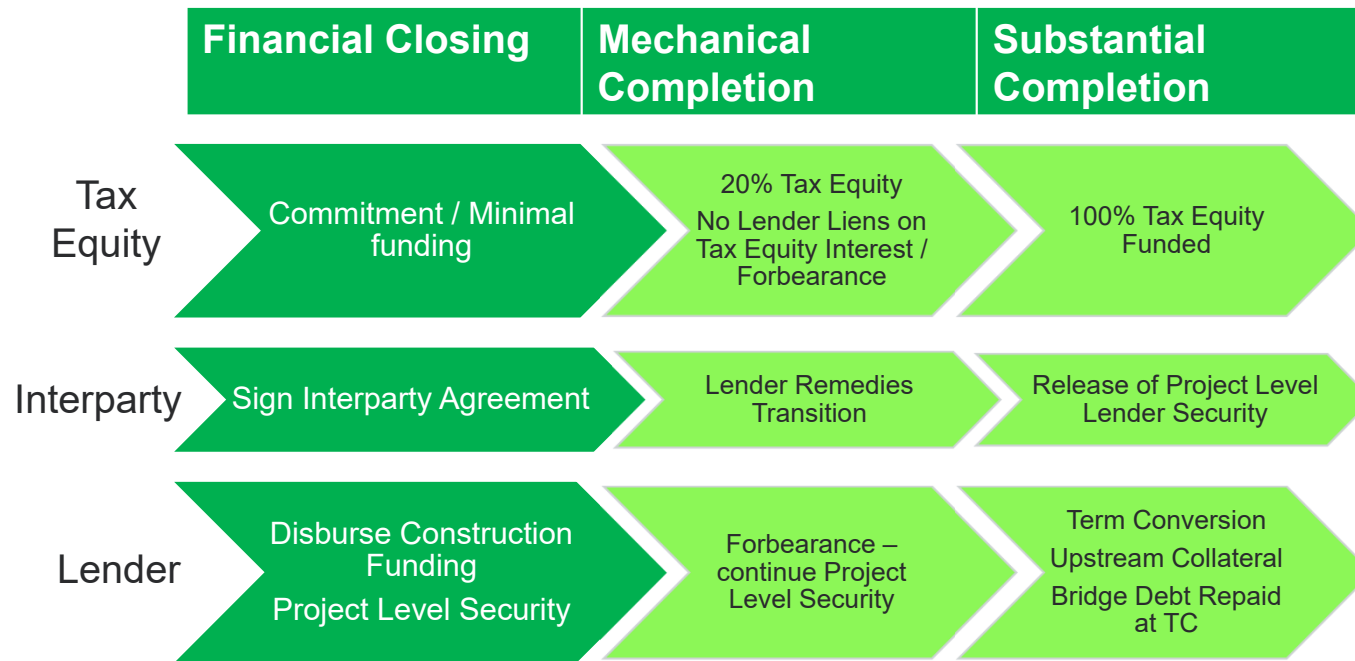
Credit Agreement Negotiation Points

Items Commonly Negotiated:

- Materiality and Knowledge Qualifiers
- Cure Periods
- Monetary Thresholds (for disclosure, applicable material agreements)
- Handcuffs of Precedent Documents
- Portfolio funding / term conversion requirements
- Distribution Conditions (12 months v. 18 months)
- SOFR spread adjustments
- Casualty proceeds on and after Term Conversion
- Diligence Cost Management

Construction Timing Impact on Collateral Package

Overview of construction loan collateral release for back-leverage term loans



Questions?

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