INTERNATIONAL PROJECT FINANCE  
(COURSE #: LAWG-928-09; 3 Credit Hours)  

SYLLABUS  

Course Description:  
This course examines legal, business and public policy issues that arise in international project financings, particularly in emerging markets, and analyzes how such transactions are structured and negotiated and how related risks are allocated and mitigated. We consider the typical roles of parties to such transactions (equity sponsors, lenders, customers, suppliers and host governments), interests associated with such roles, and how competing interests tend to be reconciled. We will focus on how negotiated arrangements are embodied in and supported by typical transaction documentation such as project documents, financing documents and legal opinions. Coverage will include illustrative international law, contract law, local law and political risk issues. Selected international investment transactions, both actual and hypothetical, will be used to illustrate issues and recurring themes.  

Course requirements include a series of drafting exercises culminating in a half-day simulated negotiation of a project loan agreement in which students will serve as counsel to clients drawn from Washington's international project finance community.  

The course will be taught jointly by Marissa Alcala, a partner in the Project Finance Group at the law firm of Chadbourne & Parke LLP, Kenneth Hansen, also a partner in the Project Finance Group at Chadbourne (and formerly General Counsel of the Export-Import Bank of the United States and Associate General Counsel of the Overseas Private Investment Corporation), and Leocadia (“Lee”) Zak, former Director of the United States Trade and Development Agency.  

Course Requirements:  
Project Loan Negotiation: Special MANDATORY double class session on Saturday, April 8: 8:30 a.m. to 12:45 p.m.  
Various preparatory exercises related to the Project Loan Negotiation will also be required. The loan agreement drafting assignment (see February 15 below) will count for 10% of the course grade.  

Readings:  
The required course textbook is E.R. Yescombe, Principles of Project Finance (San Diego: Academic Press, 2nd Ed., 2014), referred to herein as “Yescombe.” Required materials also include several “Sample Documents” and assorted readings available on our Canvas site. Additional required readings may be distributed from time to time.  

Class Meetings: Wednesdays, 7:55-9:55 p.m., in Hotung 2000; no classes on February 22 or March 15.  
Final examination: Saturday, May 6, 2:30 p.m., in-class, lasting three (3) hours.
Program and Readings

Jan. 18: **Nuts and Bolts of an International Project Financing.** Who’s who in the cast; functional and contractual relationships; identifying project risks and deal issues.

Yescombe: Ch. 1: Introduction, pp. 1-3;  
Ch. 2: What is Project Finance, pp. 5-27;  
Ch. 3: Project Development and Management, pp. 29-44; and  
Ch. 4: The Project Finance Markets, pp. 61-77.

Jan. 25: **Documenting the Deal I.** Structure and substance of project documents; due diligence. (Ms. Alcala)

Yescombe: Ch. 6: Types of Project Agreements, pp. 103-127;  
Ch. 7: Common Aspects of Project Agreements, pp. 129-161; and  
Ch. 8: Subcontracts and Other Related Agreements, pp. 163-196.

Feb 1: **Documenting the Deal II.** Structure and substance of finance documents; introduction to credit agreements. (Ms. Zak)

Yescombe: Ch. 5 Working with Lenders (§5.2.7: Term Sheet, Underwriting and Documentation), pp. 86-87;  
Ch. 12: Financial Structuring, pp. 313-343; and  
Ch. 14: Project Finance Loan Documentation (§14.1 through §14.15), pp. 367-405; and

Sample documents:  
Term Sheet; and  
Finance Agreement (read closely Articles I to V).

Feb. 8: **Documenting the Deal III.** More about credit agreements. (Ms. Alcala)

Yescombe: Ch. 8: Commercial Risks, pp. 197-256; and  
Ch. 9: Macro-Economic Risks, pp. 257-294 (skim §§10.2-§10.4); and

Sample document:  
Finance Agreement (read closely Articles VI to IX and the annexes).

Feb. 15: **Documenting the Deal IV:** Supporting the credit: collateral and guaranties. (Mr. Hansen)

Barkley Clark and Barbara Clark, The 24 Defenses of a Guarantor (pts. 1-3), Secured Lending Alert (Nov., Dec. and Jan., 1987-88);

Joshua Stein and Elaine Wang, Revisiting the 24 Defenses of the Guarantor—24 Years Later, The Practical Real Estate Lawyer, Jan. 2012, pp. 9-12; and

Sample documents:
Program and Readings

Project Completion Agreement;
Security Agreement; and
Share Pledge Agreement.

[Project Loan Negotiation: Individual loan agreement drafting assignment and negotiation simulation schedule distributed.]

Feb. 22:  No class (Faculty Retreat)

Mar. 1:  **Documenting the Deal V.** Ancillary documentation: a cornucopia of paper required for closing, such as legal opinions, certificates and ancillary agreements.  
(Ms. Zak)

Committee on Legal Opinions, “Guidelines for the Preparation of Closing Opinions,” *The Business Lawyer* (v. 57, Nov. 2001), at 8;

Opinion issues list; and

Sample documents:
- Legal opinion;
- Closing certificates; and
- Consent to assignment.

[Project Loan Negotiation: Individual loan agreement mark-ups due; teams established and lender teams commence work.]

Mar. 8:  **Political Risks, Part I.** Origins and terms of PRI; qualifying for coverage.  
(Mr. Hansen)

Yescombe:  Ch. 10:  Regulatory and Political Risks, pp. 295-311;

Hansen, “Rise and Fall of Private Investment in Public Infrastructure” in Moran, International Political Risk Management: The Brave New World (World Bank Group, 2004), at 75;

MIGA Convention (focus on Articles 12 to 14); and

Sample document:  Form of OPIC Insurance Contract for equity investments.

[Project Loan Negotiation: Lender team drafts of loan agreement due and distributed to Borrower teams. Draft client letters also due from lender teams. Borrowers commence review and preparation of mark-ups.]

Mar. 15:  No class (Spring break).

Mar. 22  **Political Risks, Part II.** Using PRI: a review of assorted claims.  
(Mr. Hansen)

OPIC Memoranda of Determinations:
- Nord Resources Corporation (Sierra Leone, 1993);
- Sector Resources Ltd. (Colombia, 2002); and
Program and Readings

Caribe Crown, Inc. (Haiti, 1987).

Sample document: Form of OPIC Insurance Contract for equity investments.

*Project Loan Negotiation*: Loan Agreement mark-up and client letter due from each Borrower team; clients identified and assigned.

Mar. 29: **Alternative Finding Sources; Intercreditor and Inter-Agency Issues.** Who’s who among the international financial institutions; identifying and addressing conflicts between the programs and interests of project participants. (Mr. Hansen and Ms. Zak)

Yescombe, Ch. 16: Export-Credit Agencies and Development Finance Institutions, pp. 443-476;


IFC Statement on Preferred Creditor Status; and

Sample document: Intercreditor Agreement.

Apr. 5: **Negotiating the Terms of a Project Financing**. (Leads - Ms. Alcala and Ms. Zak)


Cooper, "Varied Negotiation Approaches" in K. Blankley, ed., Cross-Cultural Negotiation for U.S. Negotiators (2006), ch. 2 (U.S. Air Force, pp. 11-16) ; and


Apr. 8 **Project Loan Negotiation**
(Saturday) (8:30 a.m. to 12:45 p.m.; 1200 New Hampshire Ave., NW, Suite 300).

Apr. 12: **Investment Promotion and Regulation**. FCPA, OFAC, anti-terrorism laws; bilateral investment treaties; investment codes; sustainable investment. Also, simulated loan negotiation debriefing. (Ms. Alcala)

Martin, “Foreign Corrupt Practice Act” (Practicing Law Institute, 2015), Appendix A6, 1-17;

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April 19: Investments Awry. Dispute resolution; litigation vs. arbitration. Project financing workouts; a sampler of investment disputes illustrative of recurring issues. (Mr. Hansen)


Apr. 26: Special Challenges in the International Project Financing of Renewable Energy Projects. (Ms. Alcala, Mr. Hansen and Ms. Zak)

Case studies of OPIC in India, CAF in Chile, and IFC in Honduras. [Readings TBD]

May 6: Final Examination (2:30 p.m.)