

# Turkish - American Clean Energy Conference

January 29 - 30, 2008, İstanbul, Turkey

CLEAN COAL / HYDROELECTRIC / WIND / SOLAR / BIO-FUEL

## **Types of security for clean energy project financing**

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## 1. Introduction

- What is project finance?
- Contractual matrix
- Legal documentation
- Motives for taking security
- Initial questions

## 2. Types of security for clean energy project financing

- Step-in rights
- Pledge of shares
- Assignment of receivables
- Commercial enterprise pledge
- Pledge of on-shore account
- Mortgage over immovable assets

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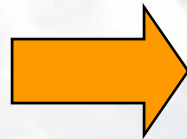
## Part 1

## Introduction

# What is project finance?

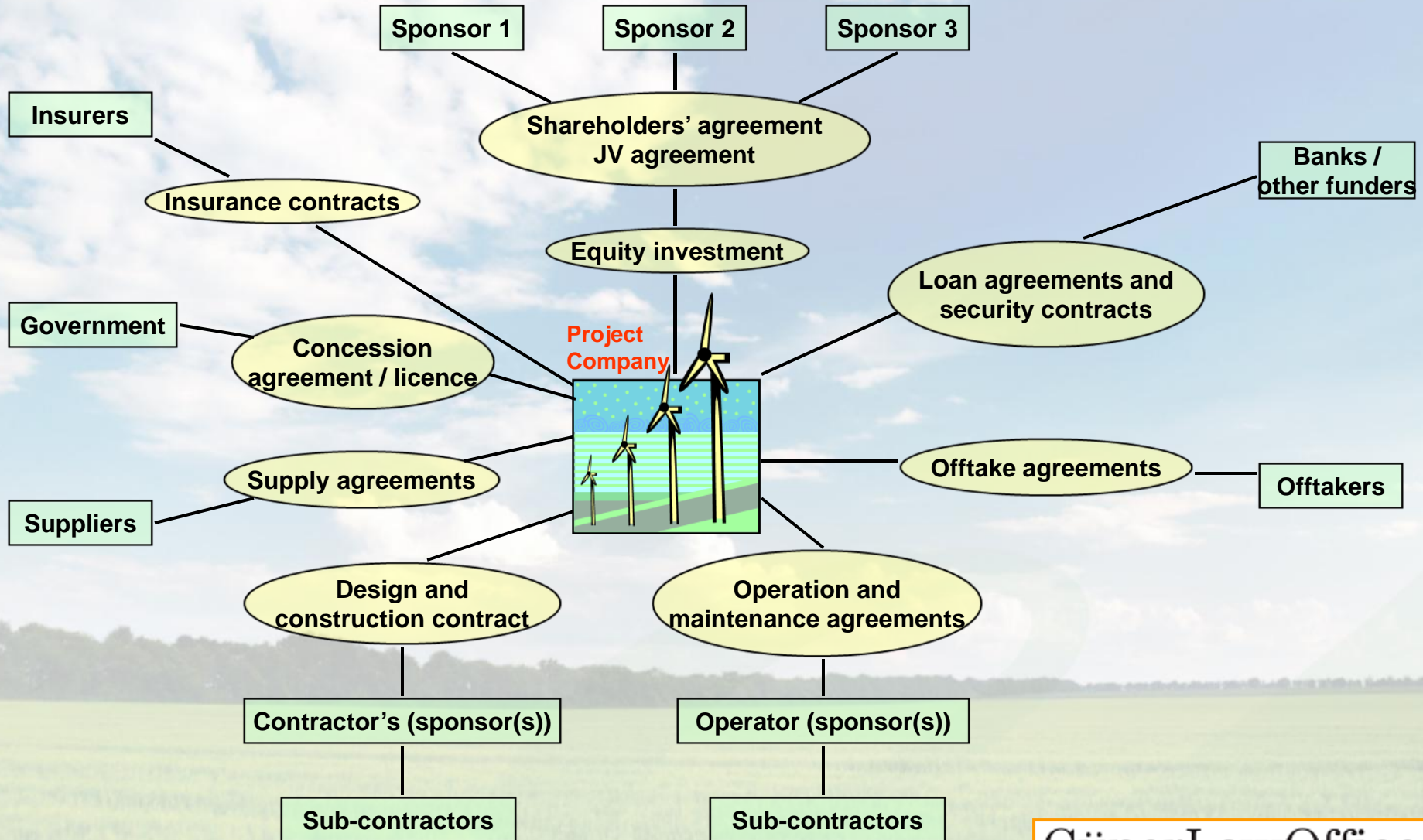
The financing of the development or exploitation of a right, natural resource or other asset, where the bulk of the financing is to be provided by way of debt and is to be repaid principally out of the assets being financed.

Key elements



- 1) Debt finances specific project
- 2) Lenders look (primarily) to project cash flows for repayment
- 3) Recourse to sponsors is limited
- 4) Debt is secured on project's assets

# Contractual matrix



# Legal documentation

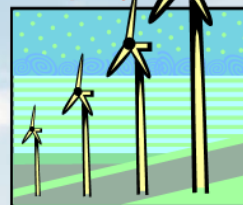
## Lending documents

Loan agreements with:  
banks / export credit agencies / multilaterals

## Shareholder / sponsor documents

Pre-development agreements  
shareholders' agreement  
sponsor support agreement

Project  
Company



## Security documents

Security documents covering  
all project assets

## Project documents

Construction agreement; operation and maintenance agreement;  
fuel supply agreement; sales / offtake agreement

# Motives for taking security

- Contrast with other asset finance e.g. ships, aircraft, property
- More difficult with projects because
  - assets have little value
  - real security is cash flow
  - contractual rights are key
  - many key project parties
- Motives for taking security different
  - defensive
  - control

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## Initial questions

- Is the project company a SPV?
- Collective security recognised?
- Level of registration charges

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## Part 2

### Types of security

# Step-in rights

- *Art.5* of the Electricity Licensing Regulation (“ELR”) stipulates licenses can not be transferred
- If limited or non-recourse project finance is provided to the licensee then
  - by sending a reasoned notification to EMRA, lenders can suggest that it grant a license to a third party
  - suggested third party must assume all liabilities of current licensee

## Step-in rights (cont'd)

- *Art. 15* ELR: licensee can transfer generation facilities by sale, transfer or any other arrangement
- EMRA approval required
- Transferee must be licensed before the transfer
- License of new licensee only effective after
  - completion of the transfer of generation facilities
  - cancellation of previous license

# Pledge of shares

- Registered shares – written agreement and endorsement of shares
- Bearer shares – delivery to pledgee or his custodian
- Advisable to register the pledge in the borrower company's share register (puts third parties on notice of share pledge)
- Covers financial rights but not voting rights unless specifically agreed in pledge agreement
- *Art.47 ELR*: Any pledge or acquisition of a right to vote representing more than 10% (5% for publicly held companies) of a licensee's shares is subject to EMRA approval

# Assignment of receivables

- Security over all receivables under project company agreements preferred
- Single assignment of receivables agreement
- Consent of counterparty not required but prudent to notify and obtain written acknowledgment
- Future receivables assignable if identified or identifiable

## Assignment of receivables (cont'd)

- Ancillary rights (e.g. security rights) automatically transferred but advisable to amend relevant registers
- Can also assign receivables under agreements between project company and retail sellers (agreements stipulating purchase and price guarantee pursuant to Law No 5346 concerning the use of renewable energy sources for the generation of electrical energy)
- EMRA approval required for assignment of licensee's rights under *para.3 of Art.5* of ELR

# Commercial enterprise pledge (“CEP”)

- Commercial Enterprise Law No 1447
- Created only in favour of financial institutions
- Whole enterprise not individual assets
- Scope
  - trade and business names
  - all machinery, tools, equipment and vehicles
  - IP inc. trademarks, patents, licenses, etc.
  - contractual rights, raw materials and immovables are not covered

## **Commercial enterprise pledge** (cont'd)

- CEP agreement certified by Notary Public
- Registration at Trade Registry within 10 days of execution
- Registration of IP at Turkish Patent Institute
- EMRA approval required?
- In practice EMRA reviews and comments on CEP agreements

# Pledge of on-shore account

- Must be a written agreement
- Consent of account holding bank not required but advised especially if any obligations (e.g. restricting withdrawals on paying funds direct to pledgee) are to be assumed by it
- EMRA approval required?
- Unofficial view of EMRA officials that approval not required

# Mortgage over immovable assets

- Official deed prepared by local title registry office
- Recorded on title records
- Covers integral parts and fixtures
- Constant degree principle
- Capital amount vs. upper limit mortgages
- EMRA approval required?
- *Art. 15* ELR implies that approval is only required for assets classified as “generation facilities”

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