

Project Bonds & White & Case

Our global capabilities



Project bond myths

In our global Project Bonds practice, we often encounter a number of myths regarding project bonds. Some of these myths contain more elements of truth than others, but there are many workarounds and solutions to the challenges of using bonds to finance projects. This piece looks at one of the most common of these myths—that bond investors are not willing to take on completion risk.

Compared to commercial bank lenders, bond investors have historically been less likely to assume completion risk. The reluctance to accept completion risk can be attributed to two factors: first, the risk shared by all creditors that an incomplete project will not be able to generate the cash flow necessary to repay its debt and, second, whether bond investors (as opposed to other creditors) have the ability to sufficiently assess completion risk and make determinations about completion.

Despite this reluctance, we see completion risk accepted by bond investors in several different instances. At one end of the spectrum, project bonds close with completion risk in hot bond markets where investors are willing to accept the risk in return for an attractive interest rate. At the other end, project bonds can be successfully marketed where traditional mitigants and credit enhancements are offered (for example, cost-overrun undertakings, parent completion guarantees, sponsor equity support agreements and subordinated debt tranches). Further, project bonds with completion risk close in certain sectors where the risk is tolerated, for example, transportation infrastructure deals and casino financings. Lastly, completion risk can be tolerated by bond investors when the risk is mitigated in the project documentation, either through turn-key construction contracts or enhanced liquidated damage provisions.

For example, in the US\$1.5 billion Odebrecht Norbe VIII/IX project bond offering to finance the construction of two offshore drillships, the parent company agreed to provide cash support (capped at a percentage of total project costs) in favor of the project companies in the event of cost overruns before completion of the drillships.

Representative experience

United States

Interstate 69 Section 5 Project

Representation of Citigroup Global Markets Inc. and Jefferies LLC, as the underwriters, in connection with the public offering and sale of US\$243.8 million in aggregate principal amount of Indiana Finance Authority Tax-Exempt Private Activity Bonds (I-69 Section 5 Project), Series 2014. The proceeds from the offering were loaned to I-69 Development Partners, a Delaware limited liability company controlled by Isolux Infrastructure Netherlands B.V. and Infra-PSP Canada Inc., to fund the I-69 Section 5 Project, which consists of the design, construction and financing of the upgrading of approximately 21 miles of existing State Road 37, a four-lane median-divided highway in Indiana, to an interstate highway.

Mexico

Oaxaca Dos and Oaxaca Cuatro Wind Farms

Representation of BBVA, BNP Paribas, Crédit Agricole Securities, Banco Santander and Société Générale, as initial purchasers, (as co-counsel) in connection with the Rule 144A/Regulation S issuances by CE Oaxaca Dos, S. de R.L. de C.V. of US\$148 million 7.25% senior secured notes due 2031 and by CE Oaxaca Cuatro, S. de R.L. de C.V. of US\$150 million 7.25% senior secured notes due 2031. Located near Oaxaca, Mexico, the Oaxaca Dos and Oaxaca Cuatro projects each generate 102 MWs of power. These were the first two project bond offerings for wind farm projects in Mexico.

Germany

A7 Motorway Project

Representation of the joint lead managers, mandated lead arrangers, bond purchasers and lenders in connection with the €610 million financing for the construction, operation and maintenance of a 1,000-km segment of the A7 motorway (the main north-south route in Germany). The financing is the first PPP project financed by project bonds with EIB project bond credit enhancements and bank bridge financing in the German market. Moreover, it is the first combined bank/bond financing in Europe using the EIB project bond credit enhancement. The issuer for the financing was Via Solutions, an SPV established by a consortium of German construction companies Hochtief and Kemna, and equity investor Dutch Infrastructure Fund.

United Arab Emirates

Shuweihat S2 Independent Water and Power Project

Representation of Ruwais Power Company PJSC and its sponsors Abu Dhabi National Energy Company PJSC, Abu Dhabi Water and Electricity Authority, International Power S.A., Marubeni Corporation and Osaka Gas Co., Ltd., in the inaugural issuance of US\$825 million 6% senior secured bonds due 2036 and the related refinancing of the Shuweihat 2 independent water and power project (IWPP) in Jebel Dhanna, United Arab Emirates. This transaction was the first project bond offering by an IWPP in the Middle East. The project bond was used to partially refinance existing facilities with commercial lenders and Japan Bank for International Cooperation.

Brazil

Odebrecht Offshore Drilling Project

Representation of the initial purchasers and co-managers in a Rule 144A/Regulation S offering of US\$580 million 6.625% senior secured notes by Odebrecht Offshore Drilling Finance Limited, a Cayman Islands subsidiary of Odebrecht Óleo e Gás S.A., the oil and gas division of the Odebrecht Group. This 2014 offering was an issuance of additional new series notes under the indenture relating to the US\$1.7 billion 2013 issuance. The net proceeds from the 2014 offering were used in part to refinance the ODN Tay IV semi-submersible drilling rig.

Macau

Studio City

Representation of Deutsche Bank, ANZ, BofA Merrill Lynch, BOC International, Citigroup, Crédit Agricole CIB and UBS, as initial purchasers, in the Rule 144A/Regulation S issuance in 2012 by Studio City Finance Limited, a subsidiary of Melco Crown Entertainment Limited, of US\$825 million 8.5% senior notes due 2020. The proceeds from the issuance were used to design, develop, construct and equip the Studio City project, including a hotel and related facilities, gaming capacity, retail, attractions and entertainment venues in Macau.

The global reach of our practice

US\$243.8
million

offering of Indiana Finance Authority
Tax-Exempt Private Activity Bonds to fund
the I-69 Section 5 Project in Indiana.



Infrastructure

Europe & United Kingdom

A7 Motorway Project (Germany)
A11 Motorway Project (Belgium)
Alpha Trains (UK)
Axione (France)
Dartford Hospital (UK)
Havering Hospital Project (UK)

North America

Snoqualmie Casino (Washington)
Chicago Skyway (Illinois)
Firekeepers Casino (Michigan)
Four Winds Casino and Resort (Michigan)
LBJ Freeway Managed Lanes PPP (Texas)
Monterrey-Cadereyta Toll Road (Mexico)
North Tarrant Express Toll Road and Reconstruction PPP (Texas)
I-69 Section 5 Project PPP (Indiana)
Valley View Casino (California)

South America

Corredor Sur Toll Road (Panama)
Costanera Norte Toll Road (Chile)
Lima Airport (Peru)
Metro Lima Line 1 (Peru)
Santiago-Talca Toll Road (Chile)

Asia

City of Dreams Refinancing (Macau)
Studio City Casino (Macau)

US\$2.28
billion

aggregate project bond offerings by Odebrecht
Offshore Drilling Finance to refinance the ODN Tay IV
semisubmersible drilling rig.

US\$825
million

notes offering by Studio City
Finance to design, develop,
construct and equip the
Studio City project in Macau.



Power

North America

Dartford Hospital (California)
El Cajón (Mexico)
FPL Energy National Wind (US)
NextEra Energy American Wind (US)
OrCal Project (US)
Oaxaca Dos and Oaxaca Cuatro Wind Farms (Mexico)
Piney Creek (US)

South America

Eten (Peru)

Asia

Dayabumi Salak Pratama (Indonesia)

Middle East

Shuweihat S2 Refinancing (UAE)



Natural Resources

North America

Kern River
Offshore Drilling Holding (Mexico)
Queiroz Galvão Bond Offering (Brit. Vir. Islands)
RDS Ultra-Deepwater (Mexico)
Sabine Pass LNG (US)

South America

Odebrecht Norbe VIII and Norbe IX Bond Offering (Brazil)
Odebrecht Offshore Drilling Finance Limited US\$1.7 Billion Project
Bond Offering (Brazil)
Odebrecht Offshore Drilling Finance Limited US\$580 Million Project
Bond Offering (Brazil)

Middle East

RasGas II/3 (Qatar)
Sadara Petrochemical Project (Saudi Arabia)

Central Asia

Tengizchevroil (Kazakhstan)

Southeast Asia

Nakilat, Inc. (Marshall Islands)

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