

IN-DEPTH

Project Finance Law

USA



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Davis Polk & Wardwell LLP

In-Depth: Project Finance Law (formerly The Project Finance Law Review) provides a living guide to project finance worldwide. Updated on a regular basis, it tackles the core project finance concepts that every practitioner needs to understand – covering the most salient legal and commercial issues while also addressing key emerging trends and topics.

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Introduction

Project finance has become a cornerstone of infrastructure investment in the United States over the past several decades, and in 2025 transaction volumes are projected to remain strong. Sponsors and project developers are increasingly turning to diverse financing sources – including commercial bank syndicates, institutional investors and private equity and credit funds – to secure flexible capital.

Commercial banks continue to play a central role in anchoring large project financings, but private credit, private equity and institutional investors are increasingly co-lenders or co-investors, especially where bank participation is constrained. In particular, private credit providers and infrastructure funds are playing a larger role in shaping deal structures and market dynamics by offering flexibility, bespoke structuring and faster execution versus traditional bank loans. At the same time, deep and liquid capital markets – when combined with projects that have well-established legal frameworks and stable contractual structures – have allowed institutional investors to continue to participate at scale.

Certain federal and state government programmes complement the private and commercial bank markets. Programmes such as the Department of Energy's Loan Programs Office, Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programmes and the Environmental Protection Agency's Water Infrastructure Finance and Innovation Act (WIFIA) programmes have historically helped de-risk early-stage or capital-intensive projects, catalysing private participation. More recently the US Export-Import Bank (US EXIM) has also launched new initiatives, including the Make More in America Initiative, to support strategic energy and infrastructure sectors.

This ecosystem in the United States has proven highly adaptable, financing increasingly complex projects.

Year in review

2025 is a dynamic year for US project finance, marked by surging infrastructure demand and a shifting political and regulatory landscape. The market continues to see strong demand for energy and power driven by rapid expansion of artificial intelligence infrastructure, ongoing electrification and efforts to onshore critical supply chains. Greenfield renewable energy projects remained central in 2025, but in light of tighter tax incentives and policy pressure, many sponsors and developers are again considering a broader 'all-of-the-above' approach, including greenfield liquefied natural gas, midstream and conventional power projects. Still, headwinds from supply chain constraints and shifting capital flows may hamper some of these projects, particularly in the near-term outlook. Interest in next-generation nuclear, particularly small modular reactors (SMRs), has increased amid long-term power demand forecasts, but there as well cost, licensing, and technological risk still limit near-term deployment. Nonetheless, the project finance model has been deployed at scale for other types of large-scale infrastructure projects,

particularly for the financing of data centres. Project financings for data centres has exploded over the past 18–24 months.

During much of 2025, renewable energy sponsors have had to navigate regulatory uncertainty, especially as Congress debated changes to the Inflation Reduction Act (IRA). On July 4, 2025, President Trump signed HR 1, the 'One Big Beautiful Bill' Act (OBBBA), which rolled back or tightened several clean energy incentives, specifically imposing stricter domestic content and foreign entity rules and compressing eligibility windows. As a result, renewable energy developers and sponsors are shifting toward highly capitalised projects that are resistant to such risks and tariff risks that impact supply chains.

Financing sources and methods

The US project finance market draws on a wide range of capital sources, each tailored to project risk profiles, tenors and sponsor needs. Sponsors are increasingly turning to a diverse mix of financing structures, and the result is a more complex and layered capital stack, blending traditional bank lending with institutional capital markets, private credit, tax credit-based financing and public-sector partnerships, where applicable.

Term Loan A (TLA)

TLAs may be characterised as follows.

1. Typical structure: Term Loan A facilities are long-tenor, amortising loans with conservative covenants. They are typically provided by commercial banks and structured to support stable, contracted projects.
2. Key players: Large commercial banks are the principal lenders, often participating through syndicated club deals.
3. Use cases: These facilities are most frequently used to finance core infrastructure and energy projects with predictable, long-term cash flows. They are often structured as construction loans that convert into mini-perm facilities following commercial operations.

Term Loan B (TLB)

TLBs may be characterised as follows.

1. Typical structure: Term Loan B loans are institutional term loans with longer tenors, bullet or back-loaded amortisation and looser covenants compared to TLAs. They are typically syndicated to a broad range of non-bank investors.
2. Key players: Investors include collateralised loan obligation funds (CLOs), pension funds, insurance companies, credit funds and other institutional loan investors seeking yield and longer-duration exposure.
3. Use cases: TLBs are commonly used for later-stage or operational projects with established revenue streams, leveraged refinancings and acquisition financings.

They provide an important source of liquidity beyond the traditional commercial bank market.

Capital markets and private placements (144A/Reg S/Reg D)

Capital markets and private placements may be characterised as follows.

1. Typical structure: Capital markets and private placements involve issuing debt securities or private notes to institutional investors under Rule 144A, Regulation S, or Regulation D exemptions. These structures offer access to long-tenor, fixed-rate financing and are often used to refinance shorter-term construction loans.
2. Key players: Institutional investors such as insurance companies, pension funds, asset managers and infrastructure debt funds are the primary purchasers. Investment banks typically act as arrangers and bookrunners for these transactions.
3. Use cases: These instruments are well suited for utility-scale renewables, midstream and LNG projects, and transportation or transmission assets. They allow sponsors to access deep institutional capital pools, match long-term liabilities, and secure stable pricing.

Direct lending/private credit

Direct lending/private credit may be characterised as follows.

1. Typical structure: Direct lending and private credit facilities are bilateral or clubbed loans extended by non-bank lenders. They feature flexible documentation, tailored covenant packages and faster execution timelines than traditional syndicated loans.
2. Key players: Private credit funds, infrastructure debt funds, business development companies (BDCs), and alternative asset managers are the primary lenders. In recent years, many infrastructure-focused private credit providers have expanded their market presence, competing directly with commercial banks on both mid- and large-scale transactions.
3. Use cases: Private credit is well suited for projects requiring bespoke financing structures, such as mezzanine tranches, holdco or back-levered debt, delayed-draw facilities and bridge-to-transfer loans. These lenders can underwrite a broader range of risks – including merchant exposure, regulatory uncertainty and emerging technologies – and have rapidly increased their market share as sponsors seek execution certainty amid tighter bank capital and higher interest rates.

Tax incentive monetisation (tax equity + tax credit sales)

Tax incentive monetisation may be characterised as follows.

1. Typical structure: Tax incentive monetisation allows sponsors to convert federal tax credits into upfront capital. This is achieved either through traditional tax equity partnership structures or through the transferability provisions introduced by Section 6418 of the Inflation Reduction Act, which enable direct sales of tax credits for cash. Capital is raised through either (1) traditional tax equity partnership structures (e.g., 'flip' partnerships and lease-pass-throughs) where investors monetise investment tax credits (ITCs) or production tax credits (PTCs), or (2) tax credit transferability under Section 6418 of the IRA, allowing credits to be sold for cash at a discount.
2. Key players: The market is anchored by large financial institutions, insurance companies, and corporations with stable tax liabilities. In addition, specialised tax credit marketplaces have emerged to improve price transparency and transaction efficiency.
3. Use cases: These structures are particularly important for renewable energy, battery storage, renewable fuels, carbon capture, hydrogen, advanced manufacturing, nuclear and other energy transition projects. Sponsors frequently combine tax equity or credit transfers with project-level debt to optimise their capital structure and reduce the equity capital required to reach financial close.

Public sector partnerships and credit programmes

Public sector partnerships and credit programmes may be characterised as follows.

1. Typical structure: Public-sector partnerships and federal credit programs blend private capital with public financing tools to enhance credit quality, lengthen maturities, and attract institutional investors. These structures may take the form of availability-payment or user-fee public-private partnerships (P3s) or involve direct or guaranteed loans from federal or state agencies.
2. Key players:
 - Public sponsors: Federal agencies such as the Department of Transportation (DOT), Department of Energy (DOE), Environmental Protection Agency (EPA) and US EXIM play central roles. State and local governments also contribute through P3 authorities, transportation departments and infrastructure development offices. Many states, including Virginia, Texas and California, have established dedicated P3 frameworks with standardised concession models and procurement processes.
 - Private participants: Developers, infrastructure and pension funds, commercial banks, and construction contractors are frequent participants in these financings.
3. Use cases: These programmes often support transportation (e.g., roads, bridges, airports and transit), water and wastewater systems, broadband, clean energy and social infrastructure. Federal credit support and state P3 programmes are frequently layered with bank debt or institutional capital to lengthen tenors, improve credit profiles and pull in private investment.

Documents and transactional structures

Transactional structures

In a conventional single-asset project finance structure, the project is financed on a stand-alone, non-recourse or limited-recourse basis, with lenders and investors relying primarily on the project's own cash flows for repayment rather than the balance sheet of the sponsor. A special purpose vehicle (SPV) is established to own the project and enter into all key contracts, including engineering, procurement and construction (EPC) agreements, long-term offtake or concession arrangements and operations and maintenance (O&M) contracts. Financing typically consists of a combination of senior secured debt and sponsor equity, with security interests granted over substantially all project assets and contractual rights in favour of the lenders. Cash flows are typically waterfalled through a controlled account structure, prioritising operating costs, debt service and reserves before distributions to equity. Lenders rely on robust contractual frameworks for the commercial and project arrangements, including fixed-price EPC contracts, creditworthy counterparties and long-term revenue agreements (e.g., power purchase agreements or tolling agreements), to mitigate construction, operational and market risks. This structure allows sponsors to raise large amounts of debt relative to equity while allocating risks among multiple parties in a way that enhances bankability and creditworthiness.

In addition to conventional single-asset project finance structures, a range of alternative financing structures are increasingly used to address evolving capital and risk allocation needs. Pre-NTP financings are typically short-term bridge or development facilities provided before construction begins and often rely more heavily on sponsor support and a broader pool of collateral including entire development pipelines. Holdco financings occur at the parent or holding-company level and are structurally subordinated to project debt but offer sponsors flexibility to raise capital across portfolios or fund development equity. Mezzanine and preferred equity structures provide capital between senior debt and sponsor equity, featuring tailored pricing, governance, and intercreditor terms that differ from traditional project finance structures. Tax equity structures, such as partnership flips or transferability arrangements, monetise federal tax benefits and introduce distinct economic allocations and cash-flow priorities. These structures often feature different security packages, intercreditor dynamics and cash-flow waterfalls than that of conventional project financings and are frequently combined to optimise the overall capital stack.

Documentation

Conventional project finance transactions rely on a comprehensive suite of documentation that allocates risk, secures financing and governs relationships among sponsors, lenders and counterparties. These documents typically fall into three broad categories: (1) project contracts, which define the commercial and operational framework of the project; (2) financing documentation, which establishes the rights and protections of lenders; and (3) equity documentation, which governs the obligations and risk exposure of project

sponsors. Together, these agreements create the contractual ecosystem that enables projects to be financed on a limited- or non-recourse basis.

Project contracts form the commercial and operational foundation of a project finance transaction. These agreements allocate key risks, establish revenue certainty, and provide the contractual framework on which lenders rely. They typically include the following.

1. Construction and supply agreements: These include EPC contracts, equipment supply agreements, and balance-of-plant contracts. They allocate construction and completion risks among the project company, contractors, and suppliers and are often structured on a fixed-price, date-certain basis to provide lenders with greater certainty regarding cost and schedule.
2. Revenue contracts: These consist of long-term offtake agreements, power purchase agreements, tolling agreements, or concession agreements that establish the project's primary cash flow streams and secure predictable revenues over the life of the financing.
3. Operations and maintenance (O&M) contracts: These include O&M agreements and long-term service agreements (LTSAs) with experienced operators or original equipment manufacturers. They mitigate operational risks and ensure the project's reliable performance and availability once commercial operations commence.

Financing documentation governs the rights and obligations of lenders and secures their interests in the project's assets and cash flows. These documents define the financial structure, creditor protections, and mechanisms for enforcing security. They typically include the following.

1. Credit agreement: The loan agreement sets out the terms of the senior debt facility, including representations, covenants, repayment mechanics, conditions precedent, and events of default.
2. Security documents: Security agreements, mortgages, and pledge agreements grant lenders perfected security interests in substantially all of the project company's assets, including key contracts, bank accounts, real property, equity interests and other personal property.
3. Direct agreements: Direct agreements or consents to collateral assignment are executed between lenders and key project counterparties (such as EPC contractors, O&M providers and offtakers) and provide step-in and cure rights that enable lenders to preserve key project contracts, and therefore preserve project value and maintain revenue streams, even in the event of sponsor or counterparty default.
4. Depositary and intercreditor agreements: These agreements establish the cash waterfall and set out rules governing control of project bank accounts, reserve funding, distributions and the relative priority of claims among different creditor classes.

Equity documentation ensures that project sponsors commit sufficient capital and remain financially aligned with lenders throughout construction and early operations. These

agreements address funding obligations, risk allocation and sponsor incentives. They typically include the following.

1. **Equity contribution agreements:** These agreements obligate sponsors to contribute equity or subordinated debt to fund project costs and maintain agreed debt-to-equity ratios, supporting the overall financing structure.
2. **Sponsor support or guarantees:** Sponsors may provide limited support, including completion guarantees, contingent equity commitments, or undertakings to cover cost overruns or specific project risks not fully mitigated through contractual arrangements.

Sponsors often back their commitments with letters of credit or other credit support instruments, giving lenders assurance that equity funding will be available when needed and are provided from creditworthy sources.

Note also that given their distinct structural features and risk allocations, alternative financing structures (such as pre-NTP, mezzanine, holdco, tax equity or preferred equity financings) often require documentation that differs in both form and substance from the conventional project finance suite, with bespoke security packages, intercreditor arrangements and cash flow provisions designed to reflect their unique characteristics.

Security and collateral

Lenders typically require a comprehensive security package to secure repayment and preserve project value. This package generally includes a first-priority security interest over substantially all project assets – such as real property, physical assets, contracts, bank accounts and equity in the project company. Lenders also insist on direct agreements (with key project counterparties) to embed step-in and cure rights, which help ensure continuity if the sponsor defaults. Control over project accounts via depositary agreements enables lenders to enforce the cash waterfall consistent with the credit agreement.

The collateral package often spans multiple asset classes, each perfected by a distinct legal method. Real property interests (e.g., fee simple, leaseholds and easements) are secured via local mortgages, deeds of trust or leasehold deeds and must be recorded in the county or municipality where the land lies. Personal property – including equipment, receivables, and contractual rights – is typically secured via UCC-1 financing statements filed under Article 9 of the Uniform Commercial Code (UCC) in the state where the debtor is 'located'. Bank accounts are perfected by control through account control agreements, and equity interests are pledged and perfected via possession or control under Article 8 or through possession of share certificates. Lenders often also have rights to insurance proceeds, performance bonds or other ancillary collateral to preserve value in distress. Step-in rights and enforcement mechanisms are well accepted in US project finance structures. Step-in and substitute owner clauses in direct agreements grant lenders the right, upon defined default triggers, to assume the borrower's rights and obligations under project contracts and maintain operations. Legal diligence is critical: lenders demand opinion letters confirming the creation, perfection and priority of their security interests and enforceability of the interlocking contractual architecture.

In enforcement scenarios, secured creditors may foreclose on collateral, sell project assets, or exercise rights over pledged equity—subject to UCC, real property, and state law principles – and often must navigate the automatic stay under the US Bankruptcy Code before proceeding in insolvency contexts. As a result, lenders often prefer negotiated restructurings or consensual sales to preserve value. Note also that depending on the location and type of asset federal, and in some instances state, regulatory consents may be required to exercise rights on the pledged collateral. For example, a change in control over electric generating assets subject to the jurisdiction of FERC may be require FERC approval.

As noted above, alternative financing structures (such as pre-NTP, mezzanine, holdco, tax equity or preferred equity) commonly rely on tailored collateral arrangements and intercreditor frameworks rather than the full project-level security package typical in traditional project financings. For example, in tax equity partnership flip transactions, the collateral package typically 'flips to back-leverage' (i.e., flips from the conventional project finance all-assets security package to security only in the sponsor-member's interest in the tax equity partnership once the tax equity investor has funded its investment and the project is substantially complete, whereas in development or pre-NTP holdco facilities, lenders may forgo project-level collateral entirely and instead rely on a pledge of the holdco borrower and its assets and covenants that reach down to subsidiary project entities, including debt and lien restrictions).

Bonds, guarantees and insurance

Project-level credit support plays a critical role in allocating risk and providing assurance to project owners, lenders, utilities, and project counterparties that the applicable party will meet its obligations. For interconnection, utilities often require letters of credit (LCs) or other forms of credit support be procured by the project to backstop obligations, including ones concerning network upgrades and interconnection costs. Similarly, under the EPC contracts, projects are often required to provide performance credit support to backstop the project's obligations under the applicable construction contract. Conversely, bonds, parent guarantees or other forms of credit support are often required to be procured by the EPC contractor to backstop timely completion of construction or supply obligations and remedy contractor nonperformance. On the offtake side, and buyers of the project's output frequently require the project company to provide LCs, parent guarantees, or other credit support to secure performance of the project's obligations under offtake agreements, including liquidated and delay damages. These reciprocal credit support arrangements are designed to give the project and the project's key counterparties (and, by extension, the lenders to a project), confidence in contractual performance throughout the life of the project.

Insurance coverage plays a central role in US project finance, both as a credit enhancement and as a mechanism for risk allocation. During construction, sponsors are typically required to maintain builder's risk, construction all-risk, third-party liability and delay in start-up (DSU) or business interruption policies. Following completion, coverage shifts to property damage, general liability, operational all-risk and continued business interruption insurance. Lenders generally expect policy limits that reflect a significant portion of, if not

full, replacement cost for physical assets and material temporal coverage for lost revenue under business interruption or DSU insurance and will engage insurance consultants to advise on the sufficiency and cost of insurance procured by the project. In some extraordinary cases, specialised insurance – such as political risk insurance, export credit insurance and or bespoke performance insurance – may also be procured, particularly for projects with cross-border elements or regulatory uncertainty. In any case, lenders are named as additional insureds, loss payees or lender loss payees, and the assignment of insurance proceeds is usually a standard part of the collateral package.

In recent years, tax credit insurance has emerged as a critical risk allocation tool in renewable energy and clean infrastructure transactions involving tax equity investments or tax credit transfer deals under Sections 6417 and 6418 of the Internal Revenue Code. These policies are typically procured by tax credit sellers for the benefit of tax credit buyers or tax equity investors to cover the risk that the IRS disallows or recaptures ITC or PTC tax credits, or asserts penalties after the credits have been claimed or transferred. Coverage typically often includes loss of the tax benefit, interest and contest costs, and policy terms and limits typically tailored to the transaction structure, asset type and relevant recapture period. Tax credit insurance has become a critical enabler of the growing tax credit transfer market, giving buyers and lenders confidence in the stability of tax benefits and thereby improving liquidity and pricing in renewable energy and clean infrastructure financings.

Outlook and conclusions

The US project finance market in 2025 remains resilient and active, supported by large-scale infrastructure demand and increasingly diversified capital sources. Commercial banks continue to anchor major financings, but private credit is taking on a greater share of construction-stage and complex transactions, leveraging faster execution and broader underwriting capabilities. As tax-credit monetisation, capital markets access and targeted federal credit programmes continue to mature, the US market is well positioned to support transformational investment across a wide array of infrastructure sectors.

Looking ahead, various opportunity pillars are expected to drive capital deployment in the coming decade, shaped by artificial intelligence, electrification and the onshoring of strategic industrial capacity, including the following.

1. (Grid resilience and advanced transmission solutions. Accelerating load growth, rising renewable penetration and interconnection delays are stressing system reliability. Investment opportunities include high-voltage direct current (HVDC) lines, interregional transmission to relieve congestion and grid-enhancing technologies that add near-term capacity to existing wires. The US Department of Energy's recently announced 'Speed to Power' initiative is focused on expediting and delivering at scale grid and transmission infrastructure to support economic expansion.
2. (Data centre development. Artificial intelligence and cloud growth have triggered extraordinary demand for digital infrastructure, with large-campus data centre developments increasingly exceeding gigawatt-scale power needs. These projects are now routinely structured as project financings, supported by long-term

tenancy agreements that create stable revenue streams. As power availability becomes a critical gating factor, data centre financings are becoming more closely integrated with power-supply strategies and hybrid campus-plus-infrastructure delivery models.

3. Power solutions to meet soaring load growth. To meet the rapid expansion of electricity demand – especially that driven by data centres – sponsors are deploying a broad mix of generation and storage solutions. New and repowered natural gas-fired plants are experiencing renewed momentum as one of the faster pathways to scalable, dispatchable capacity. Meanwhile, battery storage and hybrid renewable systems are being developed at scale to support grid flexibility. In regions facing grid bottlenecks or long interconnection queues, behind-the-meter generation – including onsite gas generation, solar-plus-storage microgrids and emerging SMR concepts – are gaining traction to ensure reliable power delivery and compress development time lines.
4. Critical mineral processing and strategic supply-chain infrastructure. The drive to onshore and 'friend-shore' energy-transition and semiconductor supply chains is transforming commodities into infrastructure financings. Facilities supporting lithium, nickel, cobalt, rare earths, graphite and other advanced battery materials – as well as component manufacturing for solar, battery and chip production – are becoming high-priority financing candidates. Strong federal incentives and national-security priorities are expected to sustain investment momentum across this asset class for years to come.

Beyond these four core pillars, adjacent sectors – such as industrial decarbonisation, clean-fuel production (hydrogen, SAF, CCUS hubs) and long-duration energy storage – continue to progress toward bankability. All contribute to the same overarching drivers: reliability, electrification and domestic capacity building.

Challenges remain. Tariffs and global trade volatility create cost uncertainty, while permitting constraints, FEOC compliance considerations and interconnection delays continue to impact execution and bankability. The OBBBA's changes to clean energy incentives are expected to reinforce disciplined project selection and favour sponsors with capital depth, supply-chain sophistication and strong counterparties.

Overall, the forward outlook remains robust. The demand for infrastructure is accelerating, capital markets – particularly private credit – are increasingly adaptive and financing structures are continuing to evolve to accommodate new technologies and delivery models. Sponsors and lenders who proactively navigate permitting and supply chain risk, secure durable revenue frameworks and pursue staged execution strategies will be best positioned to capture the next wave of infrastructure investment in the United States.

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