

Locke Lord's Pakistan Project Development Practice

The business opportunities available in Pakistan are best approached with the guidance of a team of legal advisors versed in Pakistani law, connected to key governmental officials in both Pakistan and the U.S., and experienced in international project development and finance. Locke Lord's team of U.S. and Pakistani trained lawyers and governmental strategists provide this unique and essential team of professionals. Our Pakistan Project Development Practice provides our clients with access to local and national Pakistani and U.S. government officials, agencies and decision-makers, which helps our clients efficiently take their business initiatives from inception to completion. Our professionals' experience and contacts in Pakistan are extensive.

www.lockelord.com

This *Client Alert* is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. Readers should obtain legal advice specific to their enterprise and circumstances in connection with each of the topics addressed.

If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive *Client Alerts*.

Attorney Advertising

© 2010 Locke Lord Bissell & Liddell LLP

Finding Financing for Pakistan

OPIC's Commitment to Developing Projects in Pakistan

The Overseas Private Investment Corporation's (OPIC) financial support of project development in Pakistan is becoming increasingly important to developers, sponsors and investors in their decision and ability to undertake such projects.

Overview of OPIC

OPIC was established as an agency of the U.S. government in 1971 to support private sector investment by U.S. businesses in developing and emerging markets. OPIC's stated mission is to mobilize and facilitate the participation of U.S. private capital and skills in the economic and social development of developing and emerging countries and regions in transition from nonmarket to market economies. By fostering economic development, OPIC supported-projects leverage U.S. private capital to advance U.S. foreign policy and development initiatives to encourage political stability and free market reforms. OPIC's services are provided through three main sectors: (1) Financing, (2) Insurance, and (3) Investment Funds.

Today, OPIC offers its services in more than 150 countries across the globe. OPIC provides funding for projects in frontier and emerging-market nations for which traditional financing may be unavailable or cost-prohibitive or commercial lenders may be willing to lend only with the backing of the U.S. OPIC targets regions where the inherent political, security and economic risks of operating in those countries make financing difficult to obtain without its support.

OPIC in Pakistan

OPIC has been active in Pakistan since 2002. OPIC's focus on projects in Pakistan has

intensified in the past few years due, in part, to the Obama Administration's increased focus on creating economic stability in the region. The Obama Administration has repeatedly stated the importance of promoting sustainable long-term development efforts to support Pakistan's own efforts in achieving a stable, secure and prosperous Pakistan. The U.S. Government believes that providing economic support for Pakistan's industrial development, including loans to private entities investing in Pakistan, can help to stabilize the nation and increase overall security both for Pakistan and the U.S. Additionally, the U.S. has acknowledged that Pakistan has lost economic competitiveness by helping to fight the "forces of extremism" and has pledged to provide "trade-based sustainable development" to "assist in the reconstruction and development of areas affected by the insurgency."¹ This commitment was reinforced last fall when the U.S. Congress passed the Enhanced Partnership with Pakistan Act of 2009, commonly referred to as the "Kerry-Lugar-Berman Bill" which authorized \$7.5 billion in nonmilitary aid to Pakistan over the next five years. In recognition of the importance of using this aid money to support private sector investment in Pakistan, Sens. Lugar and Kerry recently introduced Senate Bill 3665 to establish the "Pakistan American Enterprise Fund." The Fund will focus on strengthening the private sector in Pakistan using existing funds from the Kerry-Lugar-Berman aid package, including providing direct financial capital and technical assistance to commercially viable small and medium-sized businesses in Pakistan. OPIC is similarly focused on promoting and financially supporting economic development in Pakistan and has visibly committed significant resources

to evaluating projects in Pakistan. In recent months, senior-level executives from OPIC have made multiple trips to Pakistan and confirmed that the agency is committed to providing financing and political risk insurance to viable projects in Pakistan that meet OPIC stated investment criteria.

The ongoing credit-crunch has made obtaining financing for projects in Pakistan markedly more difficult in terms of availability and cost. As a result, OPIC's involvement and support for the development of many projects in Pakistan continues to be crucial to the successful completion and implementation of projects pursued by U.S. companies. Many Pakistani companies and project developers are looking to the U.S., and to OPIC specifically, to engage with them to evaluate and undertake various ventures. Additionally, many foreign lenders and investors view OPIC investment in a project in Pakistan as crucial to investing and lending in Pakistan as it signals the U.S. Government's support for the project and assuages concerns that U.S. policy in the region is not backed by U.S. financial commitment.

Understanding OPIC's products, their investment criteria and the application process is the first step to evaluating if a project might benefit from OPIC support. The following provides a brief overview of the financing products OPIC offers, general guidance regarding qualification for OPIC loans and indication of what to expect when OPIC becomes involved in a project.

Financing

OPIC provides medium and long-term financing in the form of (1) direct loans to a project sponsor or project company, and (2) loan guarantees to private lenders to a project. In most circumstances, the amount of these loans will vary generally from \$100,000 up to \$250 million. In the case of oil and gas projects, OPIC may loan up to \$400 million. In the event certain large-scale projects require more financing than OPIC is willing to lend, OPIC will work with commercial lenders and other multi-lateral lending agencies as a consortium to achieve the necessary funding levels. Typically these will be corporate finance or project finance transactions. In the case of a corporate finance loan, OPIC lends money to the U.S. corporate sponsor of the foreign-based project. The credit decisions are based on the ability of the U.S. corporate sponsor to repay the loan and provide adequate collateral. In a project finance transaction, OPIC will loan the money to the special purpose vehicle established to develop the project. In order to determine the creditworthiness of the project company, OPIC will look at all aspects of the project to ensure that there will be adequate cash flow upon completion of the project to service the debt and to pay for the project's operational and maintenance costs. The project company will be expected to grant a first priority security interest to OPIC and the other lenders, if any, of all of its assets, including owned or leased real property, if permitted by local law, personal property and physical assets, intellectual property, onshore and offshore accounts, all project agreements, including concession, stabilization or other host

country agreements, supply or input agreements, off-take agreements, operation and maintenance agreements, service agreements, guarantees, warranties, equipment and procurement agreements, construction agreements, technology license agreements and management agreements, along with the equity interests in the project company. In some cases, OPIC may structure the loan as a hybrid loan, in which case OPIC would look to both the sponsor and the project company for cash flow and collateral. Often, the sponsor guarantee provided in this situation will be able to be terminated once specific conditions are met and the project can be shifted to a project finance basis.

Project Considerations and Major Financing Terms

OPIC's direct loans to project companies require the project company to have significant U.S. participation. This requirement is satisfied if: (1) the project company is owned by a U.S. company or companies or U.S. individuals, or (2) a U.S. financial institution acts as a co-lender with OPIC to provide long-term debt to the project. In order to satisfy the ownership requirement, the ultimate beneficial owner of at least 25 percent of the equity in the project company must be a U.S. company, which may include a U.S. listed company, or a U.S. individual, which includes permanent residents, but excludes green-card holders. There are exceptions to this standard for certain projects. For example, because of the current Administration's focus on economic development in Pakistan, OPIC may consider lending to projects in Pakistan that have a lower percentage of U.S. ownership.

In addition to these threshold eligibility requirements, OPIC will require that the borrower be financially sound, the business be commercially viable and the management team possess the requisite competence and proven experience to make the enterprise successful. Foreign governmental ownership in the project company will not necessarily prevent OPIC from lending so long as there is contractual agreement that the project company will be managed by private sector participants. OPIC cannot lend to projects that could result in the loss of U.S. jobs.

OPIC will require that the sponsors contribute a minimum amount of equity to the project and maintain certain debt-to-equity ratios throughout the duration of the loan to prevent the project from becoming excessively leveraged. OPIC generally looks for a debt-to-equity ratio in the range of 60:40. OPIC has demonstrated a good deal of flexibility regarding that ratio. Required equity levels may vary depending on the financial structure, the nature of the project and the expected consistency of cash flows. The level of required equity is often a heavily negotiated point between OPIC and the borrower.

OPIC considers the environmental and social impact of projects. Support is denied for projects that would have an unreasonable or major adverse impact on the environment, on the health and safety of workers in the host country or on the social welfare of the local population. Generally, OPIC evaluates the impact and safety consideration using the most stringent of World Bank or host-country environmental, health and safety and workers' rights guidelines.

OPIC also evaluates the degree to which the project engages the development needs of the host country and encourages private sector development and competition. A project's contribution to the host country's development is evaluated in terms of a number of factors, including: leveraging private capital, demonstration of social responsibility, support for developmental infrastructure, job creation, increased availability or quality of goods or services, lower-cost goods or services, and willingness and ability to abide by international project and development standards, amongst other criteria.

Other OPIC Products: Insurance and Direct Investment

In addition to financing, OPIC offers insurance products for the same types of projects it is able to offer financing to and provides funding to support privately managed funds investing in such projects.

Insurance

OPIC's financing and political risk insurance products help U.S. businesses of all sizes to invest in emerging markets and address the challenges of investing overseas when private sector support is not available or is cost-prohibitive. OPIC insurance can cover up to \$250 million per project and \$300 million for projects in the oil and gas industries. OPIC political risk insurance is available to cover the risks of currency inconvertibility, loss of investment because of nationalization or confiscation by the country, political violence and terrorism. OPIC promotes U.S. best practices by requiring projects to adhere to international

standards on the environment and worker and human rights.

Private Equity

The resurgence of private equity includes a focus on developing and emerging markets. OPIC has developed products to support this type of investment as well, chiefly through direct funding of privately-owned and managed investment funds that target projects in developing and emerging regions. OPIC has provided over \$3.6 billion in funding to private equity funds in emerging markets, which funds are the primary providers of equity in these markets. OPIC recently committed \$50 million in funding to a private fund targeting projects in Pakistan. The fund invests in companies in Pakistan that could benefit from technological upgrades, including the health care, agriculture, education and telecom sectors.

OPIC will consider making investments in funds with goals in line with those of OPIC. OPIC assesses the overall ability of the fund manager to add value to the portfolio of investments. The fund manager must have a proven track record in direct equity investments, portfolio management and relevant regional and/or industry sector experience.

Conclusion

In accomplishing its mission, OPIC seeks projects and investments that promote positive effects on the business of the U.S. company and economic development in the host country. OPIC's requirements and review process are designed to ensure that the projects it

Offices

Atlanta
 Austin
 Chicago
 Dallas
 Houston
 London
 Los Angeles
 New Orleans
 New York
 Sacramento
 San Francisco
 Washington DC

Pakistan Projects Practice: Finding Financing for Pakistan (cont'd.)

supports are consistent with sound environmental and workers' rights standards. In conducting its programs, OPIC will take into account guidance from the Administration and Congress on a country's observance of, and respect for, human rights. OPIC will thoroughly evaluate the economics of a project, as OPIC operates on a self-sustaining basis and must be reasonably assured that the project will provide adequate debt service cash flow or that the fund will create value.

For a detailed analysis of whether a project may benefit from OPIC support, Locke Lord's Pakistan Project Development Practice can offer guidance and experience to companies in Pakistan and seeking to do business in Pakistan and other OPIC supported regions. Our practitioners are experienced in negotiations with OPIC, with the national and regional governments of Pakistan and with projects in this region.

Endnotes

- 1 <http://www.ustr.gov/about-us/press-office/press-releases/2010/april/joint-statement-us-pakistan-trade-and-investment-cou>

Our Pakistan Business Development Practice Professionals**Mark Siegel**

Partner, Locke Lord Strategies
 Mark Siegel has 25 years of experience at the highest levels serving and providing strategic counsel to a broad range of domestic private and public sector clients. For 15 years, Mr. Siegel served on the Board of the National Democratic Institute for International Affairs, chairing the Institute's party building and election monitoring in Asia. Mr. Siegel was instrumental in the passing of the Kerry-Lugar-Berman Bill and is one of the premier advisors to Pakistan. (Please [click here](#) to view related press release.) Mr. Siegel coauthored "Reconciliation: Islam, Democracy, and the West" with former Pakistani Prime Minister Bhutto before her death.
 Phone: (202) 220-6926
 Email: msiegel@lockelord.com

Xanthe Larsen

Partner, LLB&L

Xanthe Larsen is an experienced international project finance and development attorney. Ms. Larsen's work includes energy and infrastructure projects both in the U.S. and abroad.

Phone: (202) 220-6985

Email: xlarsen@lockelord.com

Philip Lau

Partner, LLB&L

Phil Lau has been involved in international project finance in various capacities over the past 15 years, including as a project developer with an international power company, and as an attorney representing both developers and lenders in complex financings. Mr. Lau's energy experience includes both thermal and renewable projects in the U.S. and abroad.

Phone: (713) 226-1236

Email: plau@lockelord.com

Shannon Grewer

Counsel, LLB&L

Shannon Grewer has years of experience as an attorney in energy and infrastructure project development and finance. Ms. Grewer has served as an advisor to non-U.S. governmental entities in connection with the development of renewable energy resources.

Phone: (202) 220-6986

Email: sgrewer@lockelord.com

Shane Doucet

Senior Policy Advisor, Locke Lord Strategies

Shane Doucet has worked on trade, defense and appropriation issues on behalf of Pakistan. Mr. Doucet has also lobbied on issues relating to health care reform, legal reform, and energy, tax and environmental regulations. He served as a Legislative Assistant to Rep. Chris John (D-LA) and was a member of the Health Subcommittee on the Energy and Commerce Committee.

Phone: (202) 220-6929

Email: sdoucet@lockelord.com

Mohsin Kamal Awan

Foreign Law Consultant

Mohsin Kamal Awan is a Pakistani trained corporate and project finance lawyer with his LL.M. from Berkeley. Mr. Awan has handled corporate, M&A and commercial transactions and litigation in Pakistan for non-Pakistani corporations and is currently working with U.S. clients in Pakistan.