

FINANCING SOLAR ROOFTOP PORTFOLIOS IN ASEAN – PART II

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In our previous briefing on photovoltaic (“PV”) power generation projects in the Association of South East Asian Nations (ASEAN) (available [here](#)), we considered the general trends for solar projects in ASEAN and discussed some of the key issues which developers and financiers should be alive to when looking to fund an ASEAN solar project by way of a limited recourse project finance facility.

A substantial number of solar rooftop projects already exist in ASEAN, most notably in Singapore, Malaysia, Thailand and Vietnam. There are also substantial rooftop solar projects in the Philippines and Indonesia where they are increasingly being used for electrifying remote areas with limited access to the grid. Overall, residential customers are currently the leading end users of rooftop solar PV power in Malaysia, the Philippines, and Indonesia.

As rooftop solar projects are usually smaller scale than utility size solar projects (1), it has become increasingly common for developers to look to finance projects of this nature on a portfolio basis. Such an approach will involve a single loan facility with multiple tranches being used to fund a portfolio of smaller solar projects rather than a single medium/large scale project.

In this briefing note we highlight a number of key structuring and documentation issues which parties looking to finance their solar projects on such a basis should be aware of.

LENDER PRE-APPROVAL OF OFF-TAKERS AND PROJECT DOCUMENTS

It is often the case that the solar projects in any given portfolio will be in various stages of development. Whilst some may be close to the start of the construction phase – with project documents that are either in an agreed form or already executed by the project parties – others may not even have been envisaged when the facility was put together.

Lenders will certainly expect to retain some control over the individual solar projects which make up the portfolio being financed given that their credit approval for the facility would have been based on credit requirements regarding the bankability of said projects and the relevant project documents. These bankability issues would include (amongst others) the credit worthiness of the off-taker/lessee, the sufficiency of the cash flow for the project to cover financing costs, the certainty of cash flows being available for the project and any additional parent/government support (if any) for the project.

The ideal position for lenders would be to have unfettered discretion to decide if each incoming project can form part of the portfolio being financed. This approach would however create a natural tension with the commercial requirements of the developer who will, quite understandably, want some certainty about their ability to draw down the facility to fund a potential project at an early stage of negotiation with a potential customer.

An appropriate compromise will therefore need to be reached by parties. One possible option may be to agree on the following:

1. a pre-approved list of off-takers/lessees or (alternatively) a set of minimum requirements for incoming off-takers/lessees;
2. the minimum commercial requirements for a solar project to be included in the portfolio for the facility; and
3. (if appropriate) standard form versions of the key project documents, with direct agreements for those which are These standard form documents will be used as the basis for the equivalent project documents for each project in the portfolio.

Provided that the eligibility requirements above are met and the project documents are in substantially the same form as the pre-agreed standard form documents, lenders will have limited scope to refuse the facility being drawn down for a proposed solar project. Drawdown of the facility to fund such projects will, of course, remain subject to satisfaction of the documentary conditions precedent of the relevant drawdown.

Examples of circumstances where lenders could refuse to allow a drawdown for a project which meets the pre-agreed eligibility criteria listed above would include:

1. the occurrence of materially adverse changes in the circumstances of the project counterparties;
2. the relevant customer/off-taker of a project being unable to satisfy lenders' anti-money laundering checks; and
3. signing the relevant project documents or the performance of the transactions set out therein being likely to result in a breach of

PROJECT SPECIFIC SECURITY

We would expect the security package required by lenders to include security over assets which are project specific such as:

1. asset security over the relevant PV equipment;
2. an assignment or equivalent security over the project documents ;
3. an assignment or equivalent security over the receivables and insurances (and, if relevant reinsurances); and security over the developers' rights to use and access the project

The creation of such security in respect of a project's assets will often be a condition precedent to drawdown the relevant loan provided to fund said project.

It is often the case that the relevant project specific security documents can (or should) only be executed on or shortly before financial close (i.e. first drawdown) for that project.

Notwithstanding that project specific security documents are only likely to be required for financial close, it would nonetheless be beneficial to pre-agree the forms of project specific security documents at an earlier stage (2).

Such pre-agreed documentation would minimise related negotiations at a later stage which could delay financial close. They could also be used as a helpful tool for negotiations between developers and potential clients. Developers could point to the project undertakings required by lenders in said security documents to justify their requirements for equivalent undertakings from a potential client.

PROJECT-RELATED MANDATORY PREPAYMENTS AND EVENTS OF DEFAULT

The size of individual rooftop solar projects will vary. It would be particularly harsh for the developer if a single default or mandatory prepayment event relating to a relatively small rooftop project triggered either an event of default which would allow lenders to accelerate the entire loan or a mandatory prepayment event which would require the prepayment of the entire loan.

It is therefore important for all parties to agree appropriate thresholds for project related defaults or mandatory prepayment events. In respect of mandatory prepayment events, it may also be appropriate to consider limiting the prepayment amounts for any project specific mandatory prepayments to the loan amounts drawn down to fund that particular project.

CLOSING THOUGHTS

The above issues are just some of the key practical and commercial considerations for developers and financiers of solar projects being financed on a portfolio basis. The solutions suggested above are by no means the only options one could adopt. As with most project finance transactions, the parties are likely to be presented with a whole host of issues for each project as well as diverse options to resolve them. We would expect the rooftop solar market to continue to grow and develop in ASEAN in the coming years and, as banks and financial institutions become more familiar with financing solar portfolios. There is no doubt that the structures put forward for such financings will continue to evolve.

Watson Farley & Williams LLP has extensive experience structuring and advising on the development and financing aspects of solar energy projects throughout Asia generally and ASEAN specifically, having worked on solar projects (including rooftop projects) in Cambodia, Thailand, Vietnam, Japan, Pakistan, Malaysia, Bangladesh, the Philippines and Indonesia. We have based this note on our experience working on solar power projects in ASEAN.

1 Most residential solar rooftop projects tend to have a capacity of up to 1 MW with rooftop solar projects in industrial parks (or similar) generally having a capacity of between 1 MW to 10 MW. Utility sized solar power installations usually have a capacity of 10 MW or more.

2 It could, for example, be a condition precedent to first draw down under the facility that the standard form pro-forma precedents of the project specific security documents are in agreed form.

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