

What will kickstart Myanmar project finance?

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KEY TAKEAWAYS

- Before large project financings can take off in Myanmar, the legal framework must enable lenders to take security at an international standard;
- Expect developments in the power and infrastructure sectors, as well as telecommunications;
- Although parliament has voted to accede to the New York Convention, the government has not yet formally acceded to the treaty. Arbitration awards are not yet enforceable in Myanmar;
- Deal structures are innovative, but may also follow those seen in Indonesia and Thailand.

Project financings in Myanmar are materialising, and counsel expect interesting deal structures. But the government must establish contractual and regulatory frameworks before the market can take off.

Infrastructure and power development is also a precursor, but Myanmar's legal regime does not provide banks with the necessary measures to take security over mortgages.

Regardless, there is heated competition among project lenders. Market participants expect that innovative structures utilised elsewhere in Southeast Asia will appear Myanmar, and that deals will soon be announced.

Albert Chandler of Chandler & Thong-ek told *IFLR* that it's still early days to make predictions about the country's project finance sector.

One of the problems presented by proposed gas-fired, coal-fired power plants and other infrastructure projects is that the government hasn't established the necessary contractual and regulatory frameworks that international banks would recognise, he said.

First movers

Establishing a reliable electricity supply is key to attracting further investments.

Asian Development Bank's (ADB) Daniel Wiedmer, senior investment specialist in the private sector operations department, said only 27% of the population has access to electricity.

"The first objective is to increase overall supply," he said. "The first move would likely be to get baseload power at the most affordable rates."

William Greenlee of DFDL said that traditionally in Myanmar, he's seen quite a few hydropower projects.

But he said that the Ministry of Energy now appears to be moving away from hydropower possibly because in the dry season, the reservoirs are lower and the power plants in the dams do not function at 100% - which is of course the time it is needed the most. Instead, the government is shifting towards gas-fired plants.

Although privately-owned [Thai company Green Earth Power recently announced plans for a \\$275 million solar project](#) in Myanmar, Wiedmer doesn't expect renewables to take off immediately.

Green power generally require subsidies and aren't typically first movers in the power sector, he said.

"But solar power could work very well, especially in the central region where there's very little development," he said. "There's a case for decentralised solar power because it would help communities save on diesel-generated power."

Infrastructure projects, such as the renovation of the Yangon airport, and the construction of deep-sea ports are expected in due course.

This year's telecommunications licence auction is proving especially exciting.

In April, the government shortlisted [12 bidders for its telecom tender](#), including Singapore Telecommunications, Bharti Airtel, Sumitomo Corporation, KDDI Corporation and Axiata. The winners will be announced by June 27, and the market is eagerly awaiting the financing work involved to meet the government's aim of giving 75-80% of Myanmar's population mobile access by 2015-16.

As for ADB's involvement, Weidmer said assistance is open to any infrastructure sector, including telecoms, power, transport or hotels as tourism infrastructure. He said port projects might be a possibility – they are on the ADB's radar – but this is not something the Bank is actively working on at the moment.

Legal regime

Taking security

But Myanmar's legal regime does not provide for certain provisions and agreements that international lenders expect in other markets.

Greenlee said that in the past, it was difficult to obtain all necessary security in large projects. A lot of projects were going forward, even if banks might not have been completely satisfied with the collateral they were able to secure.

But to encourage rapid development of the infrastructure and energy sectors, he said that sponsors must be able to readily obtain financing. As such, lenders must be able to take security to an international standard.

“The government appears to understand this and may now be willing to provide a broader package of collateral – a package of collateral that international banks generally require,” he said.

Chester Toh, Rajah & Tann's Myanmar head, agreed. He said that the issue on everyone's mind is whether or not the country's legal regime project finance in the traditional sense.

“There is still uncertainty over whether the security package of rights can be enforced in Myanmar and reforms in the financial services sector are still ongoing,” he said. “These could have an impact on the repatriation of monies and repayment of the lenders.”

Although laws from the Burma Code – written when Myanmar was a British colony – provide for security over seven types of mortgages, counsel have only seen one type in practice.

Greenlee noted that the new [foreign investment law passed in November 2012](#) provides encouraging signs of future changes regarding collateralisation of loans.

It permits companies to mortgage rights provided to them by the government, so that sponsors can provide collateral to offshore lenders.

“It is still early days, but the law represents a huge step forward,” he said.

International arbitration

Another concern is dispute resolution. Chandler noted that for project financings, banks expect contracts to include a fair allocation of risk so that a borrower’s rights will be enforceable against counterparties, and disputes will be settled by international arbitration awards which can be enforced.

But Myanmar hasn’t acceded to the New York Convention on enforcement of foreign arbitration awards, although it was approved by the Assembly 14 months ago, and again two months ago.

Another development is a new arbitration law based on the United Nations Commission on International Trade Law (UNCITRAL) model law.

It will be enacted in the Myanmar language, which may lead to some amendments, he added. But is confident that it will be a good law given the high level of international assistance on a government-to-government basis.

Deal structures and contracts

Although the country has seen international project financings, namely the Yadana – Yetagun gas pipeline, lenders have not been able to take security to an international standard.

But banks are eager to compete in Myanmar, and counsel expect to see new deal structures.

Rajah & Tann’s John Cordova said it’s no secret that Thai and Singapore banks are eager to move into the project financing in Myanmar. But he warned that the market is very competitive, and the legal grey areas invite some innovative thinking.

“Bankers probably need to be more creative than they would be on Myanmar deals than if they were doing a financing in Singapore or Thailand,” he said. “And there has to be a bigger appetite for risk having regard to the potential upside in this frontier market.”

The agriculture, energy and infrastructure sectors all require financing. If these companies can’t find funding through traditional financing means, Cordova predicted they may tap the capital markets, although this can be a more lengthy process.

Although there is structural innovation, he said these are established examples for structuring deals that we’ve seen in other markets such as Thailand and Indonesia.

“Rather than reinventing the wheel, structures may be adapted and applied in the context of Myanmar,” he added.

But as sponsors and lenders rush in, they must take a long-term view and take care to draft fair contracts. Resource nationalism is an issue in many emerging jurisdictions, especially those in which residents feel that multinationals are taking advantage of their resources and labour pool.

Wiedmer noted that Myanmar has only recently opened, and all these private sector projects are new. It’s very important for sponsors and lenders to ensure that concessions and contracts are drafted in such a way that all interests are balanced – that they’re fair to the consumers and in the future, that these concessions are tenable.

“Myanmar is going through a political transition: although bank loans have a tenor of 10 years, the next elections are quite soon,” he said. “It’s very important that whatever the concessions or the memorandums of understanding are, that the underlying price and conditions are done so that five to ten years from now, all stakeholders – including consumers – will agree that they are beneficial.”

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