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# Project Finance

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# 2019

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Welcome to GTDT: *Market Intelligence*.

This is the 2019 edition of *Project Finance*.

**Getting the Deal Through** invites leading practitioners to reflect on evolving legal and regulatory landscapes. Through engaging and analytical interviews, featuring a uniform set of questions to aid in jurisdictional comparison, *Market Intelligence* offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

*Market Intelligence* is available in print and online at [www.gettingthedealthrough.com/intelligence](http://www.gettingthedealthrough.com/intelligence).

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PROJECT FINANCE IN

# SOUTH EAST ASIA

## A REGIONAL OVERVIEW

Based in Myanmar, Edwin Vanderbruggen is VDB Loi's senior partner and a leading foreign legal adviser. A frequent government adviser on energy, transportation and telecoms transactions and privatisations, he is widely recognised for his expertise and has advised international financial institutions on high-profile transactions, oil and gas supermajors, and on a greenfield multibillion-dollar telecom project.

Maxim Kobzev is a counsel on VDB Loi's regional banking and projects team. His practice focuses on cross-border and local project financings, corporate loans, pre-export facilities and restructurings. Maxim advises borrowers, lenders, commercial banks, corporations and development institutions, focusing on complex projects in various sectors.

Potim Yun is the legal partner in Cambodia. His expertise includes corporate and M&A, banking and capital markets, and real estate. He has worked on many groundbreaking deals in Cambodia, including one of the first initial public offerings, and one of the largest mergers in the telecom industry.

Sornpheth Douangdy is a senior counsel in VDB Loi's Laos office and a key player in advising foreign institutional lenders and commercial banks on a number of large project financings in the energy and real estate sectors.

Antoine Toussaint is the legal partner in Vietnam. He has advised numerous international clients on defining their market entry strategies, setting up joint ventures, structuring their presence in Vietnam, and on land and real-estate matters.







Edwin Vanderbruggen



Maxim Kobzev



Potim Yun

**GTDT:** *What have been the trends over the past year or so in terms of deal activity in the project finance sector in your jurisdiction?*

**Edwin Vanderbruggen:** Project finance has continued to gain momentum in most of the countries of the region. Lenders, sponsors and advisers' teams have been particularly busy with structuring transactions in the power and infrastructure sector.

Development institutions and international financing organisations continue to play leading roles as lenders. VDB Loi advises international and local lenders and sponsors on their transactions in Cambodia, Laos, Myanmar and Vietnam. We have noted more initiatives in putting together club and syndicated structures, and commercial banks (both local and international) have been taking larger shares in the loans.

**Maxim Kobzev:** An interesting regional trend is the focus on projects in the renewables sector, such as hydro and solar power. There is an abundance of renewable resources in most of the jurisdictions of South East Asia and regulators often scrutinise whether fossil fuel projects can go ahead. Renewables projects have a broader potential lender group, as more and more international lenders shift and prioritise green finance, while reducing or completely excluding from their portfolios transactions that relate to fossil fuels. Myanmar is a great illustration of this, as several notices to proceed were signed by the government and sponsors with respect to hydropower projects over the past few years.

**Potim Yun:** A focus on renewables is also the trend in Cambodia, spurred on by government policies and the lower cost of solar technology. We have acted for numerous sponsors of renewable energy projects over the years, including the 90MW biomass power facility in Kampot and more recently, the first industrial-scale solar power farm

to be connected to the national grid, which was funded by the Asian Development Bank (ADB).

**Sornpheth Douangdy:** The Laos government has also been actively promoting the development of hydropower plants and the power grid, to increase power production and transmission.

**GTDT:** *In terms of project finance transactions, which industry sectors have been the most active and what have been the most significant deals to close in your jurisdiction?*

**VDB:** In most of the countries in the region, the main profile of project finance activity continues to be driven by the priority development target of the local economy. Laos and Myanmar have a substantial need for power generation; thus, hydro and solar power projects have been most active. The transportation sector is also gaining a lot of momentum. Projects in these sectors have become most advanced in terms of their financing. International and local sponsors are working actively on developing power stations and on road and port terminal projects.

**PY:** In Cambodia, project finance activity has been concentrated in the energy and real estate sectors. Given that 90 per cent of energy production relies on hydropower and thermal power plants, most transactions continue to be oriented towards these two types of projects.

**SD:** In Laos, most project finance transactions were also in the power sector. These included the financing of hydropower plants and power transmission lines. In the public basic infrastructure sector, most of the transactions have been for the construction and renovation of public roads, bridges, highways and railways.

**Antoine Toussaint:** In the context of the rapid economic growth of Vietnam over the past couple



Sornpeth Douangdy



Antoine Toussaint

*“The region attracts a great variety of international and local sponsors playing active roles in developing projects.”*

of decades, the lack of infrastructure in almost all sectors has been and remains an important obstacle to the development of the country. The vast majority of project finance transactions are related to the energy and infrastructure sectors. It should also be noted that renewable energy has been prioritised by government policy since 2016; the average deal size in energy, including renewable energy, is around US\$2 billion.

**GTDT: Which project sponsors have been most active in driving activity? Which banks have been most active in providing debt finance?**

**VDB:** The region attracts a great variety of international and local sponsors playing active roles in developing projects; and their profiles are very diverse, both in terms of geography and the expertise that they bring.

A good example of this is the recent qualification process for construction of the Yangon Elevated Expressway PPP Project in Myanmar, where companies from China, France, Japan, Korea, Myanmar and Thailand were shortlisted. Quite frequently, international sponsors partner and form a joint venture with a local player.

**PY:** In Cambodia, on the lender side, development financial institutions (DFIs) continue to play a leading role in providing loans on a project-finance basis. ADB and several Belt and Road Initiative (BRI) investment vehicles, such as the Export-Import Bank of China (CEXIM) and China Development Bank (CDB) have provided multiple loans, not only to private investors but also to the Cambodian government, in order to finance large-scale projects.

**SD:** DFIs such as ADB and the World Bank, as well as BRIs such as CEXIM and CDB, also play a big role on the lender side in Laos. As for sponsors, Lao Holding State Enterprise, Électricité du

Laos, and Generation Public Company are the three entities representing the state’s investment in the power sector and are the major players in this sector. A number of hydropower plants, particularly small and medium-sized hydropower plants, are developed by companies that are owned by Lao nationals and businesses.

**VDB:** While commercial banks in some of the jurisdictions (such as Thailand) are also active in the project finance area, because of the remaining prudential and currency control restrictions in other countries, it may sometimes be more difficult for local banks to fully accept relevant project risks. By way of example, there remain certain restrictions on the maximum interest rates on loans in Myanmar. However, these limits have been gradually increased by the regulator over time.

**AT:** In Vietnam, in terms of private sponsors, we note the involvement of major international corporations, such as DF, Korean POSCO, Malaysian JAKS Resources Berhad Group of companies and the American AES Corporation; or oil and gas groups, such as Kuwait Petroleum Europe, Idemitsu Kosan Co, Ltd and Mitsui Chemicals Inc in the Nghi Son Refinery, for example. Multilateral agencies and major foreign institutions, such as the Japan Bank for International Cooperation, Export-Import Bank of Korea, ADB, the China Investment Corporation, the World Bank, International Finance Corporation (IFC), and French Development Agency, remain the main providers of project financing.

**GTDT: What are the biggest challenges that your clients face when implementing projects in your jurisdiction?**

**MK:** The success of project financing depends on the bankability of its overall structure. This

***“As more international sponsors and lenders are entering the active phase of developing their projects, and are thus engaging in discussions with relevant local governments and agencies, it can be expected that the legal framework will continue to evolve rapidly.”***

includes many factors, such as the identity of the sponsors, the proposed debt-to-equity ratio, and the expected cash-flow model of the project company. The reliability and transparency of the local regulatory framework, and the availability and form of governmental support also play important roles.

**VDB:** Myanmar demonstrates a continued focus on developing a more robust regulatory basis for implementing project financings. An example of a step in this direction is the approval of the PPP (Project Bank) Regulation late in 2018. This framework essentially provides for a basic set of rules for developing PPP projects, including their tendering, provision of state guarantees and the possibility of privately initiated projects. The Myanmar government has also prepared (together with the support of its development partners) a new model power purchase agreement, aimed at making the terms of power projects more consistent with the usual bankability expectations of international lenders and sponsors.

**PY:** In Cambodia, the legal framework already provides for a good basis to implement project financing. Loans from foreign entities do not need government approval; the only requirement is that the General Department of Taxation of the Ministry of Economy and Finance be notified. There is also no strict foreign exchange control that facilitates the receipt and repayment of foreign loans. The biggest concern is a lack of confidence in the court system; most lenders are able to mitigate this. Recognition and enforcement of foreign arbitral awards can sometimes be a concern, although with the introduction of some government reforms to the court system, this is beginning to be addressed.

**SD:** The legal framework for project financing is not developed to the same extent in Laos, and there are still inconsistencies in some provisions of the relevant laws and regulations. Another challenge is that a smooth mechanism to register security interests in immovable assets needs to be implemented.

**AT:** To some extent, similar concerns are relevant in Vietnam as well. One of the main issues is the lack of a clear and consolidated legal framework governing project financing. A number of regulatory authorities may also have authority over various stages of projects, depending on the nature and scale. In general, any foreign loan with a term exceeding 12 months would have to be registered with the State Bank of Vietnam and translated into Vietnamese.

**GTDT:** *Are there any proposed legal or regulatory changes that may give rise to new opportunities in project development and finance? Do you believe these changes will open the market up to a broader range of participants?*

**VDB:** As more international sponsors and lenders are entering the active phase of developing their projects, and are thus engaging in discussions with relevant local governments and agencies, it can be expected that the legal framework will continue to evolve rapidly.

By way of example, sponsors of power projects in Myanmar have traditionally faced the need to keep tariffs at a lower level and to sell all power to a single designated off-taker. More recently, there have been shifts to liberalise this, including the possibility of making direct energy sales to specific industrial zones.

**MK:** The permitting regime continues to be quite cumbersome in many of the countries in the region. However, there will likely be continued progress in streamlining this, through ‘one-stop-service’ governmental centres, a regime of special economic zones, and similar tools. Myanmar is going through a very active digitalisation phase for delivery of a great variety of state services and registrations. Most security instruments can now be recorded by an online filing, the company registration process is now very quick, and more public searches can now be independently made to verify information provided by counterparties. Similarly, Cambodia has set up a secured



# THE INSIDE TRACK

## *What three things should a client consider when choosing counsel for a complex project financing?*

International expertise in project financing combined with strong ground connectivity as well as in-depth knowledge and understanding of the local regulatory environment is crucial. Secondly, most project finance transactions require a combination of many different areas of legal research and due diligence; thus, the size of the adviser's team is important, ensuring there are experts available for each area. Finally, the specific nature of each transaction makes having knowledge of the industry involved key, enabling advisers to quickly adapt model structures to the individual circumstances.

## *What are the most important factors for a client to consider and address to successfully implement a project in your country?*

South East Asia is very diverse in terms of the project finance track record of different countries. When considering a new project, it is important to understand the specifics and realities of the relevant market, to be able to realistically determine what can be achieved and in what time frame. Clients should look at whether precedents of similar structures have already been tested, and whether it will be possible to meet

the expectations of potential lenders based on the sponsors' targeted rates of return and the size of equity investments.

## *What was the most noteworthy deal that you have worked on recently and what features were of key interest?*

We continue to work on several large-scale hydropower projects in Myanmar. We also work with the IFC, which is assisting the Myanmar government with a 50-kilometre elevated motorway in Yangon; this will likely represent one of the largest PPPs in South East Asia to date. These projects are good examples of taking the most recent international expertise and adjusting it for implementation in a particular market and regulatory environment. Procurement, construction, financing and corporate aspects of the transaction have to be bankable, while remaining within the expectations and requirements of local sponsors and governments.

**Edwin Vanderbruggen, Maxim Kobzev, Potim Yun, Sornpheth Douangdy and Antoine Toussaint**  
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transaction filing office to register security interests, which has proved to be very efficient.

**PY:** The ongoing reform of the court system in Cambodia, which includes facilitating the recognition and enforcement of foreign arbitral awards, will give investors more confidence.

**SD:** In Laos, a new initiative will be led by the IFC to review the existing laws and regulations related to enterprise registration and licensing with the purpose of developing an online enterprise registration system and improving the business licensing process. In addition, the Ministry of Justice is developing the Lao Civil Code, which is intended to combine all (currently separate) civil laws, such as the Ownership Law, Contract Law, Tort Law, Family Law, Secured Transactions Law, and other such laws into one instrument, thus simplifying and eliminating contradictions in the provisions across these laws.

**AT:** In May 2018, the Vietnamese government issued a new decree on the PPP investment form, aimed at removing various difficulties and obstacles in the implementation of PPP projects over time. We also note an ongoing consultation between Vietnam and the World Bank, aimed at improving and strengthening the environment for PPPs in the country. Vietnam has also recently introduced new regulations on renewable energy (solar and wind), generating more interest from foreign investors and potential sponsors.

**GTD:** *What trends have you been seeing in terms of range of project participants? What factors have influenced negotiations on commercial terms and risk allocation? Are there any particularly innovative features?*

**MK:** Consistent with what can be seen in many other parts of the world, DFIs (both international and regional) will likely continue to play a leading role at the initial stages in those jurisdictions that are just opening up for international project financing. The role of the sponsors, their expertise in the relevant sector, and the identity and track record of the construction companies and off-takers will be key to the bankability of each project.

**VDB:** It is interesting to note that while some of the markets are still in the early stages of project finance use, discussions are already taking place regarding the use of quite sophisticated financing structures, such as project bonds, based on international and regional expertise. As an example, project bond markets of substantial size have been reported in Malaysia and Indonesia. It cannot be excluded that countries such as Myanmar and Cambodia, and possibly others, will leapfrog directly to the most advanced and diversified ways of attracting project financing.

**SD:** In Laos, there will likely be more domestic private investors investing in the power sector. However, with regard to the basic infrastructure



**“PPP structures will gain further traction, as there is increasingly a legal framework for concession-based projects.”**

sector and real estate, foreign investors still continue to play a leading role.

**AT:** Local commercial banks are becoming more active in the project finance market in Vietnam, which is a positive development, especially taking into account that under Vietnamese laws, only Vietnam-based and duly licensed credit institutions can take mortgage of land and assets attached to land.

**GTDT:** *What are the major changes in activity levels or new trends you anticipate over the next year or so?*

**VDB:** Most of the jurisdictions in the region will very likely move to a new level in terms of project finance development. Experienced international sponsors as well as leading DFIs and commercial banks have been bringing a lot of expertise to the region.

Given the size of many of the projects that have received the green light from governments, their implementation will not be possible without large-scale international funding. Structures will likely be in line with classic international project finance arrangements. In terms of sectors, energy and infrastructure will likely be key areas of focus.

PPP structures will gain further traction, as there is increasingly a legal framework for concession-based projects, which brings more comfort for both the sponsors and their lenders.



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