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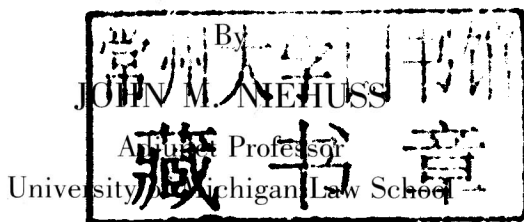
JOHN M. NIEHUSS

International Project Finance

in a
nut
shell

WEST[®]

INTERNATIONAL PROJECT FINANCE IN A NUTSHELL



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DEDICATION

This book is dedicated to, and was inspired by, the memory of my father, Marvin L. Niehuss (1903–2003). He was an educator associated with the University of Michigan for over fifty years as a student, faculty member and administrator serving as Vice President, Dean of Faculties and Executive Vice President. When he retired in 1973, the Regents of the University noted that his “commitment and service to the University have rarely been equaled” and that “few men in the history of the University have come to know it so well or done more to shape its destiny.”

PREFACE

This is a book that deals with the legal aspects of a very practical subject: how to raise funds for the construction and operation of major projects using a type of finance known as project finance. This method is commonly used to help fund the investments needed to expand the infrastructure and obtain the energy, minerals and other commodities needed for economic growth in both developed and emerging market economies.

The book introduces the concept of project finance and then focuses on the main legal issues that arise during each phase of a typical international project finance transaction. It is intended as an introduction for law students and lawyers who have had no previous exposure to the field and emphasizes basic concepts while leaving most details to more in-depth books and articles. While the focus is legal in nature, the book may also be of interest to non-lawyers involved in preparing and implementing international projects and public-private partnerships.

The content is based on materials used in a course taught at the University of Michigan Law School and is divided into five main sections as follows:

PREFACE

Part I—Introductory. This section provides an explanation of the concept of project finance and outlines the role of the lawyer in an international project financing transaction.

Part II—Basic Project Preparation. Part II describes the extensive preparatory work that must be done for each project to assess its risks, conduct due diligence, plan for procurement, and create the basic legal structure.

Part III—Project Documents. This part of the book deals with the agreements that establish the relationship with the host government, allocate risk among the project participants, govern the construction and operation of the project, and create the revenue stream that serves as the basis for raising finance for the project.

Part IV—Financing Documents. This section describes the process of arranging finance. It covers the sources of finance and the various agreements that govern the funding, credit support and administration of loans for the project.

Part V—When Problems Arise. The final section deals with the fact that the long term nature of most project financings means that problems inevitably arise and need to be dealt with through renegotiation and restructuring or various dispute settlement mechanisms.

I would like to thank Ned Neaher, a project finance partner at the law firm of White & Case, for his contribution to this work. He read and commented on drafts of the manuscript, spent time

PREFACE

answering questions about current practices in the project finance field and provided valuable suggestions which led to changes that substantially improved the final product.

JOHN M. NIEHUSS

May 2010
Washington, D. C.

ABBREVIATIONS

AAOIFI	Accounting and Auditing Board for Islamic Financial Institutions
BIT	Bilateral Investment Treaty
BNDES	O Banco Nacional de Desenvolvimento Economico e Social (Brazilian Development Bank)
CDM	Clean Development Mechanism
CER	Carbon Emission Reduction
ECA	Export Credit Agency
EDFI	European Development Finance Institutions
EPC	Engineering, Procurement and Construction
FIDIC	Federation Internationale des Ingenieurs-Conseils (International Federation of Consulting Engineers)
FM	Force Majeure
IFC	International Finance Corporation
IFI	International Financial Institution

ABBREVIATIONS

ISDA	International Swaps and Derivatives Association, Inc.
JBIC	Japan Bank for International Cooperation
KfW	Kreditanstalt für Wiederaufbau/KfW Bankengruppe
LD	Liquidated Damages
MDB	Multilateral Development Bank
MIGA	Multilateral Investment Guarantee Agency
NAFTA	North American Free Trade Areas
NPC	Negative Pledge Clause
OECD	Organization for Economic Co-operation and Development
OECF	Japanese Overseas Economic Cooperation Fund
OPIC	Overseas Private Investment Corporation
PCG	Partial Credit Guarantee
PRG	Partial Risk Guarantee
PPP	Public-Private Partnership
SPV	Special Project Vehicle

**INTERNATIONAL
PROJECT
FINANCE
IN A NUTSHELL**

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