

Project Finance – Some Thoughts on Structure and Post-Contractual Issues

15 February 2011
Serena Hotel, Kigali

Simon Cook

Partner

T +971 (0)4 405 4313

simon.cook@snrdenton.com

snrdenton.com

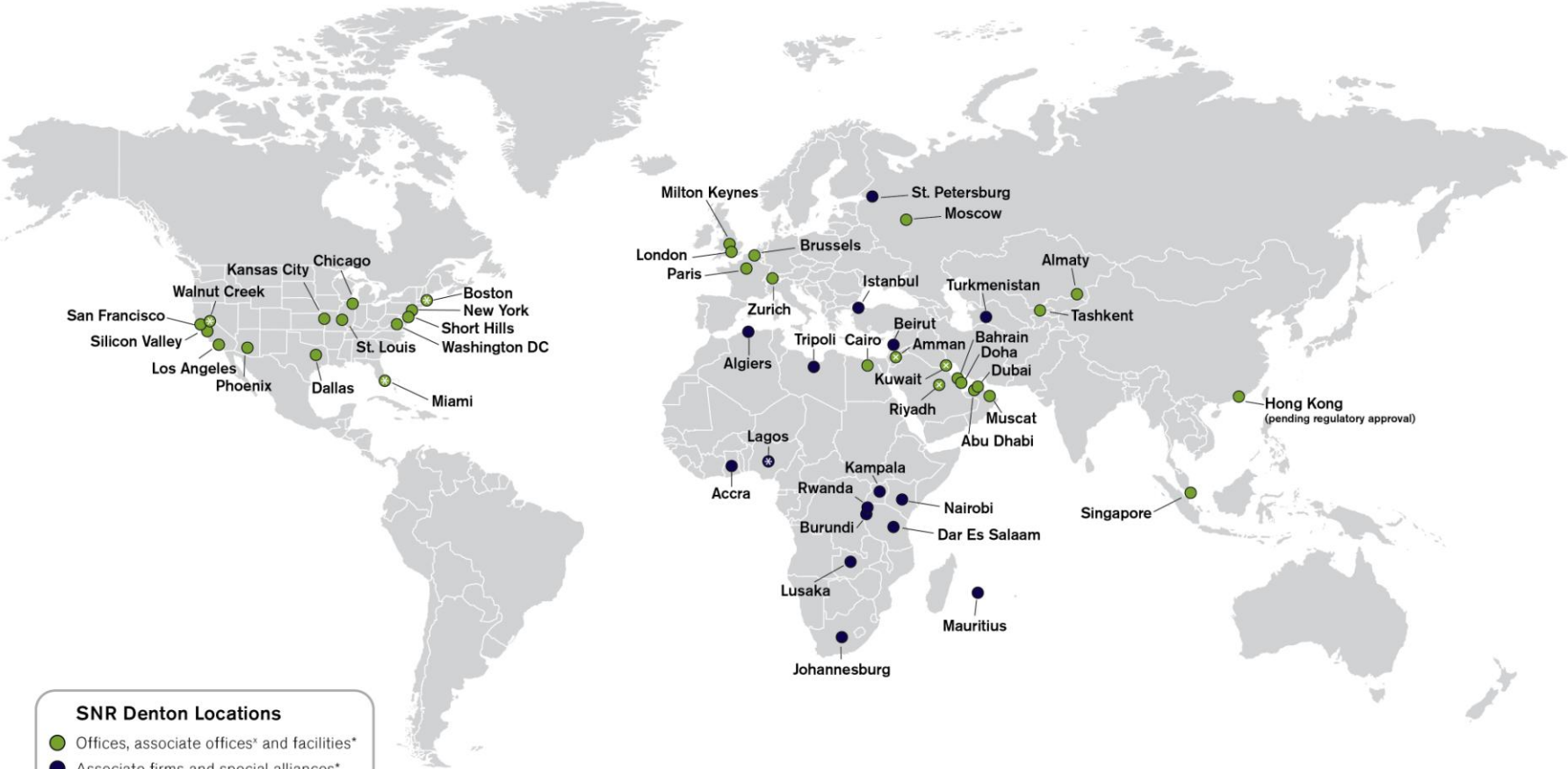
About SNR Denton

SNR Denton is a client-focused international legal practice delivering quality and value.

We serve clients in key business and financial centers from 49 locations in 33 countries, through offices, associate firms and special alliances across the US, UK, Europe, the Middle East, Russia and the CIS, Asia Pacific, and Africa, making us a top 25 legal services provider by lawyers and professionals worldwide.

Joining the complementary top tier practices of its founding firms—Sonnenschein Nath & Rosenthal LLP and Denton Wilde Sapte LLP—SNR Denton offers business, government and institutional clients premier service and a disciplined focus to meet evolving needs in eight key industry sectors: Energy, Transport and Infrastructure; Financial Institutions and Funds; Government; Health and Life Sciences; Insurance; Manufacturing; Real Estate, Retail and Hotels; and Technology, Media and Telecommunications.

Our Locations



Overview of presentation



- The key players
- Key objectives associated with those involved
- What can and does go wrong and how to deal with problems
- What can be done to minimise problems arising

Key Players

- The identity and concerns of the following key players will be a factor in whether or not a project is successful:
 - Funders
 - Project Company/Sponsors (roles)
 - Government
- How is the deal put together?
 - Contractual matrix
 - Bargaining position

Funders and Their Primary Objectives

- To obtain bigger margins
- To focus risk analysis
- To share project risk
- To have control over the Project
- To have a bankable project

Project Company/Sponsors and Their Primary Objectives

- To create business opportunities
- To take advantage of Host Country incentives
- To achieve high returns
- To limit their risk
- To avoid borrowing restrictions
- To access more funding sources

Government and Its Primary Objectives

- To have access to additional sources of finance
- To access private sector efficiencies and innovation
- To accelerate development
- To transfer risk
- To limit non-financial commitments
- To protect end users
- To obtain social & political benefits
- To adhere to regulations regarding health and safety and the environment

What Issues May Arise Post-Signing?

- Divergent Interests
- Performance
- Relationship
- Legal

Divergent Interests

- Various project parties with many diverse interests
- Sponsors/Shareholders vs Lenders
- Host Government vs other project parties
- Negotiation vs desperation

Performance (1)

- Successful risk allocation?
 - Funder approach
 - Practical/suitable?

- Monitoring/control?
 - Covenants
 - Accounts

Performance (2)

- Project parties' ability to perform
 - Commercial defaults
 - Funder events of default
- Sponsor support
- Government support

Relationship Issues

- Often arise when interests diverge
- Was there really a relationship?
- Usually between Government and Sponsors
 - Was it clear what the deal was?
 - Public perception changes
 - Training/skills transfer
 - Support expectations exceeded
 - Tariffs
 - Information flow
 - New projects?

Legal Issues

- Legislative changes not effected
- Licensing renewals etc
- Change in law
 - Discriminatory
 - Structural/security related
- Enforcement issues (time, cost, availability)

Some Specific Deal-Related Examples (1)

- Project vs Project Finance
 - Cashflows/project accounts
 - Project Company control
 - Funders
 - Government as shareholder
- Giving away the Crown Jewels

Some Specific Deal-Related Examples (2)

- Sponsor/Government support called
 - Sponsor cashflow/liquidity
 - Government expectations (eg incentives) and redress
- Future projects
- Insolvency/non-performance

Solutions?

- Replace non-performers?
- Negotiation (leverage?)
- Unilateral action (reputation?)
- Formal dispute/enforcement proceedings
- Better advice at the outset?
 - Funder/sponsor issues
 - Government issues

And finally...

ANY QUESTIONS?

SNR Denton & Co
26th Floor
API World Tower
Sheikh Zayed Road
PO Box 1756
Dubai
United Arab Emirates

© 2011 SNR Denton.

SNR Denton is the collective trade name for an international legal practice. SNR Denton & Co is registered with the DFSA and regulated by the Solicitors Regulation Authority of England and Wales. The SNR Denton & Co partnership comprises SNR Denton Middle East Partners LLP and SNR Denton Middle East Limited. Any reference to a "partner" means a partner, member, consultant or employee with equivalent standing and qualifications in one of SNR Denton's affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see snrdenton.com for Legal Notices, including further information on our professional obligations.