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PROJECT FINANCE

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Project Finance

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CREATING COLLATERAL SECURITY PACKAGES

Types of collateral
What types of collateral and security interests are available?

Collateral in the US can include almost any type of property, whether personal or real property, though a regulatory filing or approval is required in limited circumstances to grant or foreclose on a security interest over certain types of collateral (as discussed further under the heading "Enforcing collateral rights" below).

While real property generally includes land and the items attached to the land with a degree of permanence (eg, buildings, improvements and certain fixtures), personal property is broadly defined to include all other property (eg, tangible/movable assets such as vehicles and furniture, as well as intangible assets such as stocks and patents).

Collateral is sometimes categorised into two buckets: (1) collateral (eg, personal property and fixtures) covered under Article 9 of the Uniform Commercial Code (UCC) (a model statutory code adopted by each US state to varying degrees) and (2) all other collateral (including collateral for which there may be other requirements in order to obtain a security interest either outside or in addition to article 9 of the UCC such as pursuant to other state laws — eg, real property, vehicles, certain intellectual property, etc).

A security interest is a contingent type of property interest that secures payment or performance of an obligation.

Law stated - 28 July 2026

Collateral perfecting
How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

To perfect a security interest in the US, the security interest must first be created and "attach" to the collateral.

For collateral covered by Article 9 of the UCC, attachment occurs when the security interest becomes enforceable against the debtor, which generally requires: (1) that the party taking a security interest gives value (which includes a pre-existing debt) to the debtor; (2) that the debtor has rights in the collateral; and (3) that the debtor and the secured party agree to create the security interest (eg, the debtor has signed a security agreement meeting certain requirements).

Once the security interest attaches to the collateral, a secured party’s rights as against third parties can be maximised by perfecting the security interest. There are various methods of perfecting collateral.

Depending on the type of collateral, there may be more than one method for perfecting the security interest under the UCC (though some methods of perfection will prevail over other methods of protection, as discussed further below). For most kinds of collateral under the UCC, however, the security interest can be perfected by filing a UCC-1 financing statement in respect of each debtor, usually with the office of the Secretary of State in the debtor's jurisdiction of organisation as well as in the jurisdiction where the project is located. Other types of collateral (such as certificated securities, deposit accounts, securities accounts, electronic chattel paper or letter of credit rights) under Article 9 require the secured party to "control" the collateral in order to perfect the security interest. Note that some collateral that is covered by Article 9 of the UCC may also have other requirements for perfection — for example, although a UCC-1 should be filed covering all intellectual property, in certain circumstances the relevant security agreement should also be filed with the US Copyright Office and/or the US Patent and Trademark Office.

In terms of priority, the general rule in the US is that first in time has priority, including as between two equally perfected secured parties. A perfected secured party will have priority over an unperfected secured party, and in the case of two unperfected secured parties, the first to attach will have priority. For collateral with more than one way to perfect a security interest under the UCC, the UCC may provide that a certain method of perfection is better than another method (eg, for certificated security, perfection by possession has priority over a conflicting security interest that was perfected by a method other than control). UCC filings and recordations of any documents per the above serve to provide notice to third parties regarding the secured party's security interests.

For collateral that is not covered by Article 9 of the UCC, the applicable laws on creation, attachment and perfection of the security interest vary by state, but generally, creation of a security interest requires an instrument or agreement to be signed by the debtor and perfection occurs when that instrument or agreement is recorded in the appropriate office. For example, in the case of real property, the debtor typically signs a mortgage or deed of trust and it must be recorded in the recorder's office of the county where the real property is located. Note that other materials are often obtained in tandem with mortgages, such as a survey, title insurance policy, zoning report and local counsel opinion.

Filings and recordations in connection with perfection often carry a minor fee, which varies by state and jurisdiction. In the case of real property collateral, certain states charge more significant mortgage recording taxes that are based upon the value of the collateral.

In project financings, a collateral agent typically holds the collateral for the benefit of the secured parties. Per the UCC, in order for a collateral agent to do so, it must execute a document (typically a collateral agency agreement or per an appointment clause in the credit agreement) acknowledging that it is holding the collateral for the benefit of the secured party.

Law stated - 28 July 2026

Assuring absence of liens

How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

A secured party can order a variety of searches at federal, state and/or local levels to determine if there are any existing liens on the relevant collateral, including UCC searches, tax lien searches, title searches, judgment liens and litigation searches, bankruptcy searches and, if applicable, intellectual property searches. These searches are generally run prior to signing and, if there is a bifurcated signing and closing, again as close as possible prior to the closing. For real property collateral, it is typical for the borrower to purchase a title insurance policy for the benefit of the collateral agent, as such policies protect the lenders for any losses caused by the failure to perfect (with the proper priority) the collateral agent's lien on the collateral.

Some liens with priority to a secured party's lien do not need to be registered for perfection and are often not disclosed in a routine search (eg, most relevantly to project financings, mechanic's and workman's liens, which construction contractors and subcontractors often claim fall under this category). Other liens (eg, liens arising due to certain principles of equity established by case law – so-called "equitable liens") may not be knowable to a secured party in a project financing until a court proceeding is pursued by the third-party claiming a lien. Accordingly, secured parties often seek other means of protection (including through representations and warranties in credit agreements which would disclose fact patterns to facilitate the secured party's ability to undertake further due diligence, and covenants to procure lien waivers from contractors and major subcontractors as a condition to a drawdown of funds under a credit facility).

Law stated - 28 July 2026

Enforcing collateral rights

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Outside of the context of a bankruptcy proceeding, the necessary steps for a secured party to enforce its rights on the collateral will be delineated in the underlying financing documents (typically the security agreements) and are subject to state laws (including the UCC).

The steps required to enforce rights over collateral can differ depending on the nature of the collateral itself. For example, enforcement of collateral with respect to nuclear generation facilities typically requires a separate approval from the Nuclear Regulatory Commission (NRC) to transfer an operating licence to a secured party (or designee of a secured party); certain electric power assets – unless falling under an exemption – require the approval of the Federal Energy Regulatory Commission (FERC) before effecting changes of control for such assets (and similar rules apply in certain states, including New York); radio licences granted by the Federal Communications Commission require approval for ownership transfers. Assets benefiting from a certificate of public convenience and necessity (whether granted under state law or granted by FERC, such as interstate gas transmission pipelines) ordinarily require approval before approval for transfers.

Enforcement rights generally become available after the occurrence and during the continuation of an event of default. Typically, the security agreement confirms the rights of the secured party under the UCC and sets forth any additional remedies agreed to by the parties. Per the UCC, after an event of default a secured party can enforce its rights via any judicial procedure or via non-judicial enforcement.

Note that financing documents often include other remedies (eg, a drawstop, acceleration of loans, terminating loan commitments, triggering certain restrictions on the borrower, etc) and in practice, prior to proceeding with enforcement actions on the collateral, secured parties often negotiate with the borrower regarding amendments to the financing agreements or waivers in an attempt to find mutually agreeable alternatives that may lead to quicker resolution of the event of default while expending less resources (and avoiding a potential bankruptcy filing by the debtor).

Under the UCC, a secured party also has the right to take possession of the collateral without judicial process if there is no "breach of the peace" by the secured party, which courts have broadly defined to capture acts of, or likely to produce, violence or acts that by causing alarm disturb the peace and quiet of a community.

In project financing arrangements, there are often intercreditor arrangements which establish the relationship between secured parties providing project financing indebtedness, and secured parties which are party to secured commodity hedging or secured offtake arrangements. These intercreditor arrangements address, among other things, when a group of secured parties can take enforcement action with respect to collateral, how votes are allocated between different groups of secured parties, and their relative entitlement to collateral and proceeds from collateral.

Law stated - 28 July 2026

Enforcing collateral rights following bankruptcy

How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

Chapter 11 and Chapter 7 of the US Bankruptcy Code are the bankruptcy proceedings most relevant to a project financing in the US, as both apply to corporate debtors. Once a petition has been filed under either chapter, the filing triggers an automatic stay preventing creditors from taking any action against the debtor, its property or the estate, including sending notices of default or exercising any remedy under a credit agreement. Generally, the automatic stay does not extend to the debtor's guarantors, co-debtors or affiliates that are not subject to the bankruptcy proceeding (and accordingly, secured parties can try to pursue claims against those non-debtor entities), but courts have sometimes extended the stay to such entities if (1) a claim against such entities will have an immediate adverse economic consequence for the debtor's estate or (2) to protect any such entities that the court deems important to the success of the reorganisation of the debtor.

Although courts are generally reluctant to grant any relief from the automatic stay, secured parties can seek relief on various grounds, such as to have adequate protection against actual or threatened diminution in the value of the collateral during the bankruptcy proceeding or if the debtor has no equity in the property (because the total of all the liens exceeds the value of the property) and the property is not necessary for an effective reorganisation.

A debtor can claw back preferential transfers and fraudulent transfers. Generally, preferential transfers are certain transfers by the debtor to or for the benefit of a creditor within the 90-day period (a "preference period") prior to the filing of the bankruptcy petition, while the debtor was insolvent, for a debt that existed prior to the transfer and which transfer allowed the creditor to receive more than it otherwise would have in a Chapter 7 liquidation if the transfer had not been made. The "preference period" for transfers to an "insider" of the debtor is one year. A secured party can raise several defences against a preference attack made during a bankruptcy proceeding: eg, that the transfer was an exchange for new value given to the debtor, that the debt and repayment was made in the ordinary course or that the secured creditor would have received the same or better recovery in a liquidation if the secured creditor can show the value of its collateral exceeded the amount of its claims.

Fraudulent transfers are certain transfers by the debtor within two years before a bankruptcy filing where the debtor made such transfer with the actual intent to defraud creditors or, regardless of intent, where the debtor received less than reasonably equivalent value for the transfer and was insolvent at the time of or rendered insolvent by the transfer. As a defence, a secured party can assert that it was a good faith transferee that provided actual value, that no information emerged that would have caused a reasonable person to investigate further or that it conducted a diligence investigation that did not uncover the insolvency or fraudulent purpose. Certain transfers related to swaps, margin loans, securities contracts and other derivatives are also safe harboured from fraudulent transfer claims. Note that each state also has fraudulent conveyance laws that the debtor can utilise in bankruptcy and those statute laws typically give the debtor a longer look back period (ie, four to six years).

A few claims that arise after the filing of the bankruptcy petition may be granted ultimate priority status that allow it to be paid ahead of all other claims (even pre-petition secured claims), including claims for costs and expenses of preserving or disposing of collateral and priming liens for lenders that provide debtor-in-possession financing (provided the debtor can show the value of the collateral can support both the pre-petition debt and the debtor-in-possession financing).

Law stated - 28 July 2026

FOREIGN EXCHANGE AND WITHHOLDING TAX ISSUES

Restrictions, controls, fees and taxes

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange and transfer?

Generally, the US does not have foreign exchange or transfer controls. However, lenders are subject to regulatory requirements under, eg, the rules of the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury and the USA PATRIOT Act that restrict transfers of property or engaging in transactions involving property belonging to entities or individuals on certain sanctioned or terrorist organisations lists.

Law stated - 28 July 2026

Investment returns

What are the restrictions, controls, fees and taxes on remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions? Are any withholding taxes applicable to payments of interest or premiums on loans or bonds?

Foreign investors engaged in a US trade or business are generally subject to US federal income tax at the same tax rates applicable to US investors on income effectively connected with such US trade or business, and foreign investors that are corporations (for US tax purposes) may also be subject to an additional branch profits tax. If a foreign investor is not engaged in a US trade or business, some categories of income, such as dividends and interest, are generally subject to a 30% withholding tax, which may be reduced by an applicable income tax treaty between the US and the foreigner investor's country of residence. However, US tax law provides a general exemption from withholding taxes for interest that is considered "portfolio interest" – generally non-contingent interest paid to a foreign investor acting in the capacity of a passive investor. Certain investors additionally may qualify for other exemptions from withholding under US tax law (eg, sovereign wealth funds with non-controlling interests).

Payments of principal on a loan or bond are generally not subject to US federal income tax or withholding. However, absent an exemption, the gross amount of interest paid on a US loan or bond will be subject to US withholding tax notwithstanding any premium paid by the foreign investor.

In addition, foreign investors in the US must comply with the Foreign Account Tax Compliance Act (FATCA), which imposes information reporting requirements on certain foreign investors and up to a 30% withholding tax on certain payments (including, eg, payments of interest, dividends and premiums) made from a US entity (and some US branches of non-US entities) to a non-US entity, for failure to comply regardless of any applicable exemptions from withholding under other US tax law.

To obtain any reduced rate or withholding or exemption (including with respect to FATCA), a foreign investor generally will be required to provide the applicable withholding agent with an applicable IRS Form W-8 certifying the foreign investor's entitlement to such benefits.

Returns of capital are generally not subject to US federal income taxation or withholding.

Law stated - 28 July 2026

Foreign earnings

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

While project companies are not required to repatriate foreign earnings, such earnings may be subject to taxation by the US prior to repatriation. Foreign investors should consult their tax advisors regarding US taxation of unrepatriated foreign earnings.

Law stated - 28 July 2026

Foreign earnings
May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Yes, project companies can establish and maintain foreign currency accounts in other jurisdictions and locally in the US.

Law stated - 28 July 2026

FOREIGN INVESTMENT ISSUES

Investment restrictions
What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

The Committee on Foreign Investment in the United States (CFIUS) is authorised to review transactions that could result in foreign control over US businesses for potential impacts on US national security, and to negotiate and implement agreements to mitigate any national security risks raised by such transactions (or if the risks cannot be mitigated, CFIUS can recommend the US President suspend, prohibit or unwind a transaction). Under the Foreign Investment Risk Review Modernization Act (FIRRMA), CFIUS is authorised to review certain "other investments", including those that do not convey potential control, by a foreign person in "TID US Businesses" (eg, critical infrastructure; critical technologies or personal data of US citizens), and real estate acquisitions and leaseholds near sensitive government facilities. Investments made by foreign investors from excepted foreign states are exempt from the mandatory filing requirements, provided that the investor fulfils the required criteria. CFIUS keeps a current list of excepted foreign states (which currently includes Australia, Canada, New Zealand and United Kingdom of Great Britain and Northern Ireland) on its website.

While loans or similar financing arrangements made by foreign entities to a US business do not necessarily constitute covered transactions subject to CFIUS review, they may be considered covered transactions if a foreign lender obtains control over the US business after a borrower defaults or through some condition in the transaction, or obtains financial or governance rights of the US business that is characteristic of an equity investment.

Note that foreign ownership in the US is also restricted at the state level, as a number of US state legislatures have proposed or passed laws that restrict foreign investment in the state, including laws prohibiting or otherwise restricting the acquisition of interests in real property located in the state by certain foreign investors.

Further, the US Department of the Treasury's Outbound Investment Security Program, which became effective on 2 January 2025, provides a targeted national security regulatory framework directed at regulating outbound investment from the US into entities from the People's Republic of China, Hong Kong and Macau engaged in the semiconductors and microelectronics, quantum information technologies and artificial intelligence sectors and imposes notification requirements and prohibitions for certain categories of transactions involving such entities. Signed into law on 18 December 2025, the National Defense Authorization Act for Fiscal Year 2026, which includes the Comprehensive Outbound Investment National Security (COINS) Act of 2025, codifies the Outbound Investment Rule and provides the US Department of Treasury with 450 days to promulgate the new regulations. Among other things, the COINS Act expands the list of covered technology sectors and countries of concern to include the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, and the Bolivarian Republic of Venezuela.

Depending on the nature of the US business, cross-border transactions may also require other national security regulatory approvals in conjunction with CFIUS reviews, such as from the Federal Communications Commission (with possible referral to the US Team Telecom review process), the Defense Counterintelligence and Security Agency with respect to facility security clearances or the Department of State's Directorate of Defense Trade Controls with respect to registrations and licences issued pursuant to the International Traffic in Arms Regulations, among others.

Foreign investment in certain projects or property may also have implications under federal tax laws such as the Foreign Investment in Real Property Tax Act (FIRPTA), which provides for a separate taxation regime for foreign equity investments in certain real property. Real property under FIRPTA is broadly defined to include inherently permanent structures on the land such as broadcasting towers, oil derricks, oil and gas pipelines and oil and gas storage tanks. FIRPTA generally does not apply to debt investments unless the debt has certain characteristics such as being convertible to an equity interest or having terms that would allow the lender to participate in the profits of the real property.

Taxpayers generally will be ineligible for US federal income tax credits determined with respect to any renewable generation project that begins construction after 31 December 2025 and is deemed to receive "material assistance" (including the provision of certain equipment) from "prohibited foreign entities" (generally, entities deemed to have substantial ownership, or under control of, certain entities with nexus to China). Additionally, taxpayers (whether US or foreign) that are classified as "prohibited foreign entities" generally are not permitted to claim US federal income tax credits with respect to renewable generation and energy transaction projects, notwithstanding that a project otherwise may qualify.

Finally, foreign persons or entities who acquire or transfer any interest (other than a security interest) in US agricultural land may be required to report such holdings and transactions to the US Department of Agriculture (USDA) under the Agricultural Foreign Investment Disclosure Act (AFIDA) within 90 days of the acquisition or transfer. Foreign persons include foreign individuals, foreign governments, entities organised outside of the US or having a principal place of business outside of the US, and domestic entities where foreign persons hold a significant interest or substantial control. On 25 June 2026, the USDA published a proposed rule, which, among other objectives, aims to broaden reporting requirements, expand definitions of "agricultural land", and bolster enforcement under AFIDA.

Law stated - 28 July 2026

Insurance restrictions

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Insurance policies issued by foreign insurance companies over project assets may be subject to a federal excise tax on the premiums paid under such policies. Additionally, insurance policies issued by foreign insurance companies may be made payable to foreign secured creditors in a project financing, subject to the restrictions on foreign investment.

Law stated - 28 July 2026

Worker restrictions

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

There are several steps and government agencies that may need to be involved in order for foreign workers, technicians or executives to be able to work on a project in the US, including, for example, seeking certification through the US Department of Labor, petitioning the US Citizen and Immigration Services for a visa and establishing that the applicant is admissible to the US under the provisions of a foreign labour certification programme. Immigration advisers should be consulted in connection with any restrictions that may exist.

Law stated - 28 July 2026

Equipment restrictions

What restrictions exist on the importation of project equipment?

Restrictions on imported project equipment depend on factors such as the means of production, origin, and the type of equipment. Project equipment may be subject to certain customs duties, which have been in the spotlight in recent years given the sweeping tariffs applied under the Trump administration. Under US federal laws and regulations, the importation into the United States of any goods produced by forced labour, including forced child labour, is prohibited, as is dealing in goods or technology produced or provided by certain designated foreign person, or in which designated foreign persons have an interest. The US has also prohibited the importation of certain goods from Russia since the onset of the Russian invasion of Ukraine. The Uyghur Forced Labor Prevention Act prohibits the importation of goods containing any inputs made in the Xinjiang Uyghur Autonomous Region of China or by blacklisted entities and continues to be actively enforced.

Investors in renewable power projects that seek to qualify for the US federal production tax credit and investment tax credit and did not begin construction prior to 2026, as well as investors seeking to qualify for the advanced manufacturing production credit, should be aware that projects will be ineligible for such credits if they receive “material assistance” from a "foreign entity of concern" and (or) certain other "prohibited foreign entities" (including entities engaged in the types of forced labour practices discussed above). Whether a project has received "material assistance" is determined based on the ratio of the direct costs of manufactured products produced by these types of blacklisted entities that are incorporated into the project to the total direct costs of all manufactured products that are incorporated into the project. Consequently, appropriate monitoring of the supply chain for project equipment for any project seeking to qualify for one of these tax credits is essential.

Law stated - 28 July 2026

Nationalisation laws

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected (from nationalisation or expropriation)?

Both the federal and state governments have the power to take private property for public use under the doctrine of eminent domain, subject to paying just compensation to the property owner for the relevant property. The US is party to a number of bilateral investment treaties prohibiting expropriation or nationalisation of a covered investment except generally for a public purpose, in a non-discriminatory manner, in accordance with due process of law and upon payment of prompt, adequate, and effective compensation.

Law stated - 28 July 2026

FISCAL TREATMENT OF FOREIGN INVESTMENT

Incentives

What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Although there are generally no tax incentives provided preferentially to foreign investors or creditors, engaged in a US trade or business, such foreign investors are generally entitled to the same tax incentives available to US investors to reduce US tax liability. In addition, exemptions from and reduced rates for withholding are available on certain payments, including interest and dividends, to certain foreign investors that are not engaged in a US trade or business. No taxes apply for purposes of effectiveness or registration of agreements, although there may be minor fees at the state level for filing or recording certain documents in connection with perfection of a security interest.

Law stated - 28 July 2026

GOVERNMENT AUTHORITIES

Relevant authorities

What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

There are many federal, state and local government agencies and departments that may have authority over a project depending on the type of project at hand and the stage of development or operation of the project, as well as the location thereof.

Below is a handful of examples of federal government agencies that may have authority over the project. Given the many government authorities that may be involved, parties should make sure to engage specialists as applicable.

- Federal Energy Regulatory Commission (FERC) – Jurisdiction includes: (1) transmission and wholesale sale of electric energy in interstate commerce; (2) transportation and sale of natural gas for resale in interstate commerce; (3) transportation of oil and oil products by pipeline in interstate commerce; and (4) hydroelectric dam licensing and safety (as well as other matters related to the operation of oil, natural gas, electric, and hydro-projects).
- Committee on Foreign Investment in the United States (CFIUS) – Authority to review foreign control transactions with potential impacts on US national security, including in connection with "TID US Businesses" (eg, critical infrastructure; critical technologies or personal sensitive data of US citizens), and real estate acquisitions and leaseholds near sensitive government facilities.
- Environmental Protection Agency (EPA) – Enforces federal environmental statutes and issues some water, wastewater and air permits.
- The United States Army Corps of Engineers (ACOE) – Regulates and issues permits regarding operations in and about navigable waters and certain wetlands.
- Bureau of Ocean Energy Management (BOEM) – Jurisdiction over offshore wind projects and offshore petroleum, as it manages the development of US Outer Continental Shelf energy, mineral and geological resources.
- Nuclear Regulatory Commission (NRC) – Regulates nuclear power plants and governs the licensing thereof.
- Federal Trade Commission (FTC) and the Antitrust Division of the US Department of Justice (DOJ) – Review transactions that could potentially harm competition.

At the state level, state public utility commissions (PUCs) generally have authority over utilities that distribute or sell energy at retail (ie, to consumers) and there will be various state level departments of transportation, environmental protection, agriculture, etc, involved in other aspects of the project, including state or local required studies and permits.

Law stated - 28 July 2026

REGULATION OF NATURAL RESOURCES

Titles

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

Title to natural resources in the US can be held by US federal or state government as well as private entities or individuals.

Generally, the owner of land owns both the "surface rights" of the land and "subsurface mineral resources" (ie, the rights to extract, utilise and sell the minerals beneath the surface) of that land – commonly referred to as a "unified estate". However, in many states, the mineral rights can generally be "severed" from the ownership of the surface land by agreement whereby one entity owns the severed mineral rights, and another owns the surface rights. The interaction between these rights is governed by state law, and there are often state dispute resolution bodies that adjudicate between the competing interests of allowing mineral right owners to benefit from their assets against surface rights owners' desire to minimise damage and disturbance to the surface.

Foreign parties may acquire rights to natural resources subject to restrictions around foreign ownership both at the federal and state level, as many states have adopted laws restricting foreign ownership in certain land.

Law stated - 28 July 2026

Royalties and taxes

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

Companies must pay royalties (as a percentage of the sales value of the extracted resources) to the federal government when they extract natural resources from federal land, as well as a coal excise tax when coal producers mine coal. However, there is generally no federal tax or royalty for natural resource extraction on private land.

Companies may also be required to pay royalties (eg, as a percentage of production) or severance taxes under some states' laws in connection with extraction of natural resources.

Note that federal and state income taxes on income earned from the natural resources (and potentially other fees) may also apply.

Law stated - 28 July 2026

Export restrictions

What restrictions, fees or taxes exist on the export of natural resources?

The US Constitution prohibits taxation on exports. However, note that there may be fees for services performed in connection with exports as well as potential restrictions on certain natural resource exports by federal regulatory agencies. For example – and perhaps most notably – a project seeking to export liquefied natural gas or compressed natural gas to countries with which the United States does not have a free trade agreement requires approval of the Department of Energy (DOE). Generally, the DOE is required under the Natural

Gas Act to grant export authority to non-free trade agreement countries, unless the DOE finds that the proposed exports will not be consistent with the public interest, or where the trade is expressly prohibited by law or policy.

Law stated - 28 July 2026

GENERAL LEGAL ISSUES

Government permission
What government approvals are required for typical project finance transactions? What fees and other charges apply?

Many different government approvals at the federal, state and local levels may be required in connection with a project financing in the US. Any necessary consents or approvals will depend on factors such as location, type and stage of development/operation of the project and can include everything from land use, water, air quality, wildlife conservation, construction, operation and zoning permits to interconnection approvals from public utility commissions as well as approvals from federal agencies.

For example, the rates charged by interstate oil and gas pipelines are subject to FERC approval. Offshore petroleum and offshore wind projects require approval from the BOEM (and the BOEM also acts as the lessor for these projects). Nuclear energy projects – and operators thereof – require licensing from the NRC. Certain hydroelectric projects and dams for navigable waters (and their tributaries) require a licence from FERC (state law covers non-navigable waters and their tributaries).

The issuance of necessary governmental approvals for projects may also be contingent on the completion of time-consuming environmental impact studies, including reviews under the National Environmental Policy Act.

Law stated - 28 July 2026

Registration of financing
Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Although financing documents do not typically need to be filed with government authorities, in some cases project documents such as concession agreements or interconnection agreements may need to be filed with a government authority, such as the Federal Energy Regulatory Commission or state-level public utilities commissions.

Additionally, in order to perfect a security interest in certain kinds of collateral, filings are often necessary (eg, for most collateral covered by the UCC, by filing a UCC-1 financing statement with the office of the Secretary of State in the debtor's jurisdiction of organisation as well as in the jurisdiction where the project is located, or for real property, by recording mortgages or deeds of trust in the recorder's county office where the real property is located).

Law stated - 28 July 2026

Arbitration awards

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

In the US, parties must agree in writing to arbitrate in order for a dispute to be subject to arbitration (ie, there is no automatic domestic arbitration).

The US is a member of the New York Convention and the Panama Convention (each incorporated into the Federal Arbitration Act (FAA)) as well as the ICSID Convention (also codified into US law). Under the FAA, to enforce an arbitration award the parties must seek confirmation of such award in a federal district court within three years after the award is made and binding on the parties. Generally, US courts must recognise the award unless a ground for refusal under the New York Convention is available (eg, invalidity of the underlying agreement to arbitrate or recognition is contrary to public policy of the enforcing state).

An ICSID Convention award must be enforced and given the same full faith and credit as if it were a final judgment of a state court of general jurisdiction in the US and procedural requirements under the Foreign Sovereign Immunities Act must be complied with to have such an award enforced.

Law stated - 28 July 2026

Law governing agreements

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Project agreements are typically governed by the laws of the state where the project is (or will be) located, but this sometimes vary, with some counterparties preferring to include the governing law where said counterparty is located. If the relevant project agreement is primarily real estate focused, such as a site lease, such project agreement would typically be governed by the laws of the state where the project is (or will be) located.

Financing agreements are typically governed by New York law but in rarer cases may be governed by the laws of the state in which the project is located.

Law stated - 28 July 2026

Submission to foreign jurisdiction

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable? Do local courts enforce judgments of foreign courts without re-examination of the merits of the case?

Yes, generally submission to a foreign jurisdiction and waivers of immunity are effective and enforceable.

States generally enforce foreign judgments without re-examination of the merits of the case if certain factors are present, including that (1) the judgment is final, conclusive, and enforceable where rendered; (2) the foreign court was impartial and offered due process of law; (3) the foreign court had jurisdiction; and (4) the foreign judgment does not violate US public policy.

Law stated - 28 July 2026

Anti-money laundering rules
Are investors in your jurisdiction subject to any anti-money laundering compliance checks or other rules? Are these required by all sectors or only certain regulated sectors?

US persons are generally prohibited under US law from knowingly dealing in the proceeds of crime or facilitating money laundering. US financial institutions have affirmative anti-money laundering (AML) compliance obligations under US federal laws, including the Bank Secrecy Act (as amended), the USA PATRIOT Act, and the Anti-Money Laundering Act of 2020. These laws and regulations require financial institutions to institute extensive compliance programmes (eg, internal controls, customer due diligence, independent testing, and training programmes) and to comply with reporting requirements, including regarding any suspicious activity. Financial institutions are subject to other regulatory requirements, for example, economic and financial sanctions enforced by the Office of Foreign Assets Control of the US Department of the Treasury and the USA PATRIOT Act. These laws restrict transfers of property or engaging in transactions involving property belonging to entities or individuals on certain sanctioned or terrorist organisations lists, in comprehensively sanctioned countries or territories, or with jurisdictions and persons that have been identified as being of primary money laundering concern by the US Department of the Treasury's Financial Crimes Enforcement Network.

Law stated - 28 July 2026

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

Relevant ESG issues
What environmental, social and governance (ESG) issues are relevant in typical project sectors? Are project companies in your jurisdiction subject to any ESG reporting requirements or other ESG laws or regulations?

There are several different ESG and sustainability-related laws and reporting requirements both at the federal and state level which may impact project finance borrowers and lenders.

At a federal level, under the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 and Securities and Exchange Commission (SEC) rules, public companies are required to make certain ESG-related disclosures (eg, regarding conflict minerals in its supply chain, compensation ratios, certain payments made to foreign or the US federal government involving development of oil, natural gas or minerals, and cybersecurity risk management).

At the state level, certain states have advanced their pro-sustainability agendas through the enactment and enforcement of laws and regulations (in particular focusing on climate change but also social issues). For example, California has passed laws requiring climate-related disclosure from US-organised entities that meet certain revenue thresholds and do business in California, as well as laws requiring disclosure from entities that participate in the voluntary carbon offset market, or that make certain claims about their carbon dioxide or GHG emissions. In 2026, New York and New Jersey introduced climate-related disclosure bills that would similarly require certain in-scope entities to annually disclose GHG emissions. Note, however, that, "anti-ESG" and "anti-DEI" sentiment has gained momentum across the US, with several dozen states, Congress and the Executive Branch enacting or proposing anti-ESG or anti-DEI policies, legislation, executive orders or initiatives. For example: (1) state-level boycott laws target financial institutions that "discriminate against" companies in certain industries (eg, energy and mining) and prohibit state entities from doing business with such institutions and/or investing the state's assets through such institutions; and (2) ESG investment prohibitions require that state entities or managers/administrators of state investments make investments based solely on pecuniary factors without consideration of ESG factors. In April 2025, the Trump administration issued the "Protecting American Energy from State Overreach" executive order explicitly requiring the Attorney General to prioritise identifying state laws that address climate change or involve ESG or sustainability initiatives and take all appropriate steps to stop the enforcement thereof. More recently, in March 2026, the Trump administration issued the "Addressing DEI Discrimination by Federal Contractors" executive order requiring federal contractors and subcontractors to include specified anti-DEI language in their contracts or risk cancellation, termination or suspension of the contract.

Several states and the federal government have scrutinised the rise of large-scale data centre construction and are increasingly seeking to further regulate the industry. For example, New York's governor imposed a statewide moratorium on large-scale data centre construction while state regulators develop a comprehensive regulatory framework that evaluates data centres' effects on energy demand, water use and quality and air quality. At the federal level, legislators introduced a bill that would impose an immediate federal moratorium on the construction of new data centres or upgrades to new or existing data centres until Congress passes comprehensive legislation addressing the economic, environmental and safety impacts of artificial intelligence.

Law stated - 28 July 2026

PROJECT COMPANIES

Principal business structures

What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

Project companies are typically formed as special purpose vehicles (usually as LLCs (limited liability companies)) that are bankruptcy remote and whose sole purpose is to develop, own and operate the project as well as borrow funds needed to develop and construct the project.

There is often a holding company sitting above the project company, formed as a separate entity but whose only purpose is to hold the equity interests in the project company. This structure is typically created in anticipation of project financing to ensure that any liability in connection with the project is kept at the project company level.

Commercial banks have traditionally been the most common financing source for project financings in the US, but a variety of other financing sources are also available (eg, institutional investors like hedge funds or insurance companies, private credit providers, the capital markets, multilateral development agencies, export credit agencies and others) depending on many factors such as the project size, type and location, whether the project is still in construction or operational and/or the sponsor, market conditions, etc. For larger projects or sponsors, there may be a more complicated capital structure in place with various types of financings from a combination of sources at different levels in the structure.

Law stated - 28 July 2026

PUBLIC-PRIVATE PARTNERSHIP LEGISLATION

Applicable legislation
Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

PPP enabling legislation in the US exists at both the federal and state level and the PPP market was valued at US$24.8 billion in 2024. At the federal level, the Infrastructure Investment and Jobs Act was passed in 2021, which included support for PPPs in the infrastructure industry. However, the act is set to expire in 2026 and it is unclear whether it will be replaced. PPPs sponsored by a state government are a majority of the PPP projects in the United States, and predominate over federal PPPs.

Availability-based PPPs are the predominant structure, accounting for a majority of PPPs, with "Build-Operate-Transfer" appearing as the most common contractual model.

Law stated - 28 July 2026

PPP – LIMITATIONS

Legal limitations
What, if any, are the practical and legal limitations on PPP transactions?

There are a few practical and legal limitations on PPP transactions. Although the Infrastructure Investment and Jobs Act allocated many government funds to PPPs, that legislation is set to expire in 2026 and absent a replacement or alternative, federal funding to support PPP transactions will be reduced. However, this may lead to greater state government-led PPPs to fill this gap.

The deep pool of capital available from commercial banks, the bond market and private credit funds in the United States has generally meant that PPPs comprise a smaller portion of the project finance mix compared to other major project financing jurisdictions.

Law stated - 28 July 2026

PPP – TRANSACTIONS

Significant transactions
What have been the most significant PPP transactions completed to date in your jurisdiction?

Some significant PPP transactions completed to date in the United States include the State Route 400 Express Lanes project, the Utes Student Housing project, the Hornet Place Student Housing P3, and the Portsmouth Natural Gas Fired Power Plant – a 9.2 GW gas-fired power plant located in Portsmouth, Ohio.

Law stated - 28 July 2026

UPDATE AND TRENDS

Key developments of the past year
In addition to the above, are there any emerging trends or 'hot topics' in project finance in your jurisdiction?

A confluence of factors has led to significant growth in the demand for new fossil-fuel fire power generation.

First, in July 2025, President Trump signed into law the "One Big Beautiful Bill Act" (OBBB Act), making sweeping changes to US federal income tax credits provided to the clean energy sector that were enacted under the Biden administration as part of the Inflation Reduction Act of 2022 (the IRA). Key features of the OBBB Act include: (1) elimination of the US federal production tax credit (PTC) and investment tax credit (ITC) for solar and wind projects that begin construction after 4 July 2026 unless the project is "placed in service" by 31 December 2027; and (2) denial of the PTC and ITC to projects that began construction after 31 December 2025 and received "material assistance" (including the provision of certain equipment) from "prohibited foreign entities". In addition, FEOCs and other prohibited foreign entities are (or) will also become ineligible to claim the PTC, ITC, and other tax credits determined with respect to renewable generation and other energy transition projects. Projects that began construction prior to 2025 are not affected by the OBBB Act.

Second, the federal government is promoting the construction of new nuclear power plants and power plants which run on fossil fuels. However, some states like California, have imposed permitting restrictions that impede the development of new power plants fired by fossil fuels.

Third, the United States has seen rapid growth in the construction and deployment of data centres. The power supply to meet the demand of data centres has not met the pace of this rapid growth, causing the cleared forward capacity prices in key power markets – such as PJM (the largest competitive wholesale electricity market in the United States) – to reach record-high levels. Approximately 50% of the growth in electricity demand until 2030 is expected to be driven by data centre demand.

Law stated - 28 July 2026