

# PROJECT FINANCING DOCUMENTATION & RISK ALLOCATION

PRESENTED

BY

BARRISTER ALI KHAN

PARTNER

HAIDERMOTABNR

# HAIDERMOTABNR & Co. - OVERVIEW

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- **HAIDERMOTABNR & Co.** was established in 1959
- HaidermotaBNR & Co. is one of Pakistan's top law firms with more than 55 years of experience as a premier provider of legal services
- Firm with a national and international reach with offices in Karachi, Lahore, Islamabad and associated office in Dubai
- Particular expertise in various areas of practice (including but not limited to) Power & Energy Sector, Projects, Manufacturing, Joint Ventures, Banking & Finance, Privatization, Mergers & Acquisitions, Oil and Gas, Real Estate, Public & Private Partnership and Litigation
- Globally recognized by international rankings as leading law firm in Pakistan across all sectors including Chambers & Partners, Legal 500 and World Media Expert Guide

# ALI KHAN – SPEAKER PROFILE

- **PROFESSIONAL CAREER SPANNING NEARLY 15 YEARS ACROSS 5 CONTINENTS**
- **BA ECONOMICS – UNIVERSITY OF PENNSYLVANIA**
- **BARRISTER AT LAW – LINCOLN’S INN**
- **WALL STREET INVESTMENT BANKING BACKGROUND**
  - **GOLDMAN SACHS; DEUTSCHE BANK; AES CORPORATION**
- **PARTNER HAIDERMOTA BNR & Co.**
  - **LEADING FIRM’S PROJECTS PRACTICE IN KARACHI, PAKISTAN**
  - **AT THE FORE-FRONT OF PROJECT FINANCE TRANSACTIONS IN THE REGION**
  - **REPRESENTING CLIENTS ACROSS ALL SECTORS & MULTIPLE DIMENSIONS**
  - **ADVISORY PROJECTS PORTFOLIO OVER USD 75 BILLION**
- **INTERNATIONALLY RECOGNIZED AND RANKED**
  - **CHAMBERS & PARTNERS**
  - **ASIA LEGAL 500**
  - **WORLD MEDIA EXPERT GUIDE**

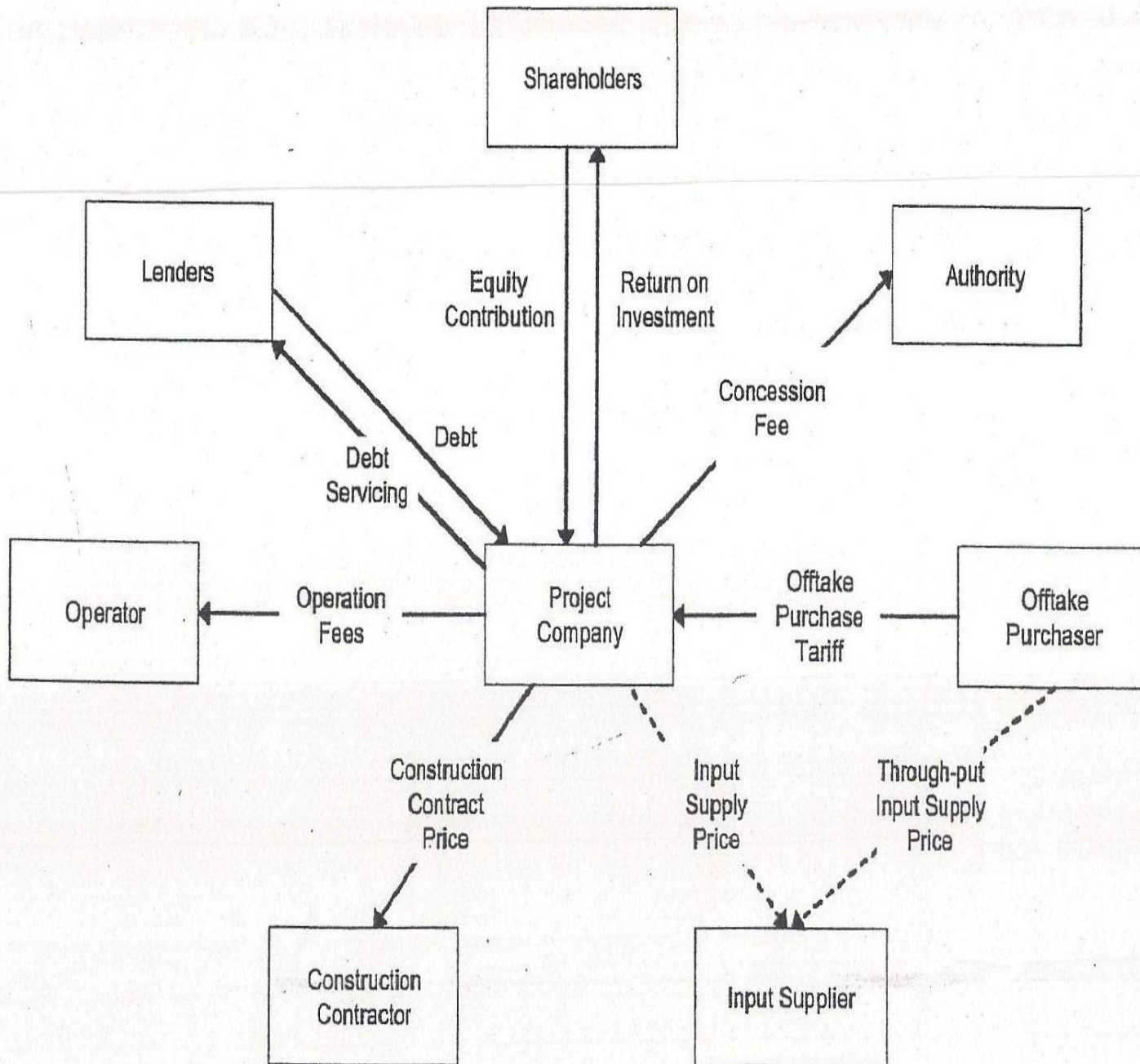


# OUTLINE

- **PART I: WEB OF CONTRACTUAL ARRANGEMENTS**
- **PART II: KEY RISKS & RISK ALLOCATION – A SNAP SHOT**

# FOREWORD – PROJECT FINANCE

- **VISION TO ACHIEVE A FUTURE – NOTHING EXISTS ON GROUND WHEN COMMITMENTS ARE MADE**
- **PROJECT SIZE DOES NOT MATTER – RISKS DO**
- **RISKS OPTIMALLY ALLOCATED**
- **GUIDING PHRASE “BACK TO BACK ARRANGEMENT”**



# WEB OF CONTRACTUAL ARRANGEMENTS

## ❖ SHAREHOLDERS AGREEMENT

- ❖ SPONSOR AGREEMENTS
- ❖ EQUITY OR SUBORDINATED DEBT
- ❖ RESTRICTION ON SHARE TRANSFERS
- ❖ COMPLETION GUARANTEES

## ❖ CONCESSION AGREEMENTS / IMPLEMENTATION AGREEMENT

## ❖ PROJECT DOCUMENTS

- ❖ EQUIPMENT SUPPLY AGREEMENTS
- ❖ ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENTS
- ❖ OFF-TAKE AGREEMENT
- ❖ OPERATIONS AND MAINTENANCE AGREEMENT
- ❖ INPUT SUPPLY AGREEMENTS
- ❖ LAND DOCUMENTS
- ❖ CONSENTS AND APPROVALS
- ❖ BONDS AND GUARANTEES

# WEB OF CONTRACTUAL ARRANGEMENTS (CONTINUED)

## ❖ FINANCING AGREEMENTS

- ❖ LIMITED RECOURSE LOANS
- ❖ FINANCING AND TERM SHEET
- ❖ COMMON TERMS AGREEMENT
- ❖ FACILITY AGREEMENTS
- ❖ PROJECT FUNDS AGREEMENT
- ❖ INTER - CREDITOR AGREEMENT
- ❖ SECURITY AGREEMENTS
  - ❖ MEMORANDUM OF DEPOSIT OF TITLE DEEDS (MODTD)
  - ❖ LETTERS OF HYPOTHECATION (LOH)
  - ❖ SECURITY TRUST DEEDS
  - ❖ ASSIGNMENT DEED
  - ❖ DIRECT AGREEMENTS
  - ❖ LETTERS OF LIEN
  - ❖ SHARE PLEDGE AGREEMENTS

# KEY RISKS & RISK ALLOCATION - I

## ❖ COUNTER PARTY RISKS

## ❖ PRE - PROJECT DEVELOPMENT RISKS

- ❖ CONCESSION BONDS AND GUARANTEES
- ❖ FEASIBILITY STUDY
- ❖ PROJECT COMPANY FORMATION
- ❖ ADVISORY FEES (E.G LEGAL, TECHNICAL, FINANCIAL, INSURANCE ETC.)
- ❖ ADVANCE PAYMENTS TO EPC CONTRACTORS
- ❖ ADMINISTRATIVE COSTS

# KEY RISKS & RISK ALLOCATION - II

## ❖ CONSTRUCTION COMPLETION & COMMISSIONING RISKS

- ❖ TECHNOLOGY AND DESIGN
- ❖ PRICE
- ❖ UNFORESEEN SITE CONDITIONS
- ❖ ASSOCIATED INFRASTRUCTURE & ANCILLARY FACILITIES
- ❖ TRANSPORTATION
- ❖ COMMISSIONING AND TESTING
- ❖ VARIATION & CHANGE ORDERS
- ❖ DELAYS AND LIQUIDATED DAMAGES
- ❖ PERFORMANCE GUARANTEES AND LIQUIDATED DAMAGES
- ❖ DEFECTS LIABILITY
- ❖ COST-OVERRUNS
- ❖ FORCE MAJEURE
- ❖ CONTRACTOR PAYMENTS – BONDS AND GUARANTEES

# KEY RISKS & RISK ALLOCATION - III

## ❖ LAND RISKS

- ❖ DUE DILIGENCE ISSUES
- ❖ CLEAR TITLE
- ❖ ENCUMBRANCES

## ❖ OPERATIONAL PERIOD MARKET RISKS

- ❖ PERFORMANCE
- ❖ OFF- TAKE AND PRICING
- ❖ TAKE OR PAY
- ❖ MINIMUM REVENUE GUARANTEES
- ❖ INPUTS AVAILABILITY AND PRICING
- ❖ PAYMENT SECURITIES
- ❖ FORCE MAJEURE
- ❖ MACHINERY BREAKDOWN

# KEY RISKS & RISK ALLOCATION - IV

## ❖ FORCE MAJEURE

- ❖ RELATIONSHIP WITH INSURANCES
- ❖ COMPENSATION AND RELIEFS

## ❖ POLITICAL RISKS

- ❖ CHANGE IN LAW
- ❖ CHANGE IN TAXES AND CUSTOM DUTIES
- ❖ CHANGE IN GOVERNMENTS AND POLICIES
- ❖ FOREIGN EXCHANGE AVAILABILITY
- ❖ CONSENTS AND APPROVALS
- ❖ LAW AND ORDER AND SECURITY SITUATION

# KEY RISKS & RISK ALLOCATION - V

- ❖ LOSS OR DAMAGE TO ASSETS
- ❖ TITLE TO ASSET RISKS
- ❖ ENVIRONMENTAL RISKS
- ❖ INTELLECTUAL PROPERTY RIGHTS RISKS
- ❖ EXCHANGE RATE RISK
- ❖ INSOLVENCY RISKS
- ❖ DEFAULT RISKS
- ❖ DISPUTE RESOLUTION
- ❖ LIMITATION OF LIABILITY

# INSURANCES – BACKBONE TO RISK ALLOCATION

- ❖ POSSIBLY ONE OF THE MOST NEGLECTED AREA IN ALLOCATION OF RISKS IN INITIAL PROJECT DEVELOPMENT – LENDERS SORT IT ONCE THEY ARRIVE
- ❖ INTEGRAL TO ANY INVESTMENT OR FINANCING
- ❖ WITHOUT TRUE APPRECIATION OF INSURANCE COVERAGE, THERE IS NO PROJECT

# Thank You!

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