

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	Finance Direct Deed
Type of Agreement:	Deed
Year of Agreement/ Draft:	2009
Principal Author(s) Reviewed by:	Law firm of Corrs Chambers Westgarth Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	<p>(1) Under the Financing Documents, financial accommodation is to be provided for the purpose of enabling Project Co. to perform and comply with its obligation under the Project Deed.</p> <p>(2) It is a condition of the provision of that financial accommodation that Project Co grants, to the Security Trustee, Security Interests over its right, title and interest in the Project.</p> <p>(3) Thus, this Finance Direct Deed sets out the terms on which the parties wish to record the agreement between the State, Project Co., Finance Co., Finance Co. No.2, the Agents and the Security Trustee in relation to the remedying of any events of default by Project Co. under the Project Deed; the exercise of rights under the State Security Deed and the Financiers' Security Documents; and otherwise the recognition by the State and the Security Trustee of the Security Interests held, or to be held, by the other in relation to the Project.</p>
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This Finance Direct Deed was drafted by the law firm of Corrs Chambers Westgarth to be entered by and between the State (Minister for Water of the State of Victoria); the Project Co. (AquaSure Pty Ltd); the Finance Co. (AquaSure Finance Pty Ltd); the Finance Co. No.2 (AquaSure Finance No.2 Pty Ltd); the Intercreditor Agent (National Australia Bank Ltd); the HVAC Agent (National Australia Bank Ltd); and the Security Trustee (National Australia Bank Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• Except in the case of gross negligence on the part of the Security Trustee, any liability incurred by it will be limited, and it will not be obliged to satisfy the liability except to the extent to which it is entitled to be indemnified out of assets of the trust created by the Financing Documents (clause 4.1)• Each of the Project Entities, the Agents and the Security Trustee agree that no amount will be payable to them by the State under any Project Document, and that they will have no rights against the State (clause 4.2)

- Each Project Entity, the Intercreditor Agent and the Security Trustee agree that the State’s rights under clause 69 of the Project Deed¹ have priority over any rights granted to the Security Trustee (clause 8.1)
- Priority of payment between the State Security Deed and the Financiers’ Security Documents follows the order set out in this clause (clause 8.2)
- Application of payments on enforcement of the State Security Deed or the Financiers’ Security Documents follows the order of priority set out in this clause (8.3)
- Security Trustee’s general rights and undertakings: (clause 9)
 - Appointment of Controller
 - Exercise of Project Entity Rights
 - No exercise of any right of set-off or combination of accounts in relation to the Project Accounts
- Financiers’ right upon issue of notice of intention to terminate (clause 11):
 - Financiers have an option to cure prior to termination of the Project Deed by the State (clause 11.1)
 - State’s right to terminate (11.2)
 - Financiers’ “Cure Program” (determination of program, cure periods, incurable events, etc.) (11.3)
- Delayed achievement of completion: if completion has not occurred by the “Date for Commercial Acceptance” and a “Late Completion Date” has been agreed or determined pursuant to the Project Deed – and further formal requirements are met –, then the State will, at the request of Project Co, grant an extension to the “Late Completion Date” to the Project Co, provided that it is not later than the “Backstop Date” (defined in clause 1.2) (clause 12)
- Cap on aggregate remedy periods (clause 13)
- Finance Default and Enforcement Action (clause 14)
 - Security Trustee and Agents must copy the State with any notice of Finance Default promptly after a Finance Party gives notice of that Default to a Project Entity
 - Security Trustee and the Agents must ensure that no enforcement action is taken unless the Security Trustee first gives the State not less than 6 business days’ or 24 hours’ (depending on the case) prior notice of intention to take the action
- Appointing replacement Contractors (clause 15)
 - Security Trustee and Agents will ensure that no person is engaged as a replacement Contractor by it, a Financier or a Controller without first obtaining the State’s consent and disclosing to the State such details of the relevant person and the terms of replacement (15.1)
- State’s right under other documents – the Security Trustee acknowledges the rights of the State under certain contracts (and their Direct Deeds) to require an assignment of the respective contracts if the State becomes entitled to terminate the Project Deed: (clause 17)
- Any disputes arising between the parties in relation to a matter under this deed must be resolved in the same manner that disputes are resolved under the Project Deed (clause 19)
- This deed terminates if the parties agree so in writing or the Project Deed terminates. Termination does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Project Deed (clause 22)

¹ That clause sets out the rules for the handover by the Project Co to the State of the Desalinated Water Supply System and all the other Lands, rights, interests, etc. at the end of the Project Term.

Possible additional provisions that it might be appropriate to include: N/A

Experience Since Coming Into Force (including any amendments)/ if draft form, whether it has been applied: N/A

Tracking Number: *Ref #: Finance Direct Deed (September, 2009)*