

The clauses of resource-backed loans: what a lawyer examines

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Resource-backed loan agreements, drafted in English and most often governed by English law, combine a credit agreement with a long-term supply contract, with clauses that Geneva lawyers have learned to read. The repayment mechanism ties deliveries to debt service through escrow accounts held abroad, into which the sale proceeds are paid before any payment to the state. The pricing clauses fix the discount applied to deliveries, which is often substantial. The default and enforcement clauses allow the lender to seize deliveries and sometimes other assets, while confidentiality clauses, which are common, prevent publication of the terms. As for the governing law and arbitration clauses, they refer disputes to London, Geneva or Paris.¹

These clauses have given rise to litigation when states in difficulty have challenged the validity of the loans, invoking the absence of parliamentary authorisation, corruption in their conclusion or their one-sided character. Several arbitrations and court proceedings, some of them in Geneva, have pitted African states against trading houses and banks.² The Geneva lawyer advising a lender therefore verifies, beyond the clauses themselves, the borrower's capacity, the authorisations, the anti-corruption compliance of the negotiation and the publication of the terms, the absence of which, long regarded as normal, has become a risk factor.

1 Notes

1. Mihalyi and Hwang, Resource-Backed Loans in Sub-Saharan Africa, World Bank, 2022: loans secured by future deliveries of oil or minerals, with Angola accounting for nearly half of the USD 46.5 billion recorded, Chinese lenders (Eximbank USD 17 billion, CDB USD 18 billion) and private trading houses (Glencore, Trafigura); NRG, 27 February 2020; TXF, "The Rosneft prepayment: Deal of the Year 2013"

(prepayment structure through a special-purpose vehicle secured by offtake contracts); International Crisis Group, 6 October 2021 (Trafigura: around USD 300 million in prepayments to South Sudan between March 2013 and May 2018). ↩

2. Jeune Afrique, dossier “Mines, pétrole : les États africains aux mains des traders ?” [Mining and oil: are African states in the hands of the traders?] (jeuneafrique.com): a prepayment is a loan granted by a trading house and repaid, principal and interest, “in kind” through cargoes of oil; Glencore, Trafigura, Gunvor and Vitol make use of it, and the fall in Brent in July 2014 put Congo-Brazzaville (SNPC) and Chad (SHT) in difficulty, forcing them to renegotiate with their trading-house creditors. ↩

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