



Asian Cleantech Guarantee Facility

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Clean energy companies in developing Asia need cutting-edge technology and financing to expand.

Companies who own the technology (Licensors) needed for this sector to develop may be cautious about transferring proprietary technologies to companies in developing countries (Licensees) because of possible payment defaults, enforcement issues or unauthorized use of the technology.

The Asian Cleantech Guarantee Facility (ACGF) is a new business model. When launched the ACGF will facilitate the development, deployment, transfer and diffusion of proven, proprietary technologies from Licensors to Licensees.

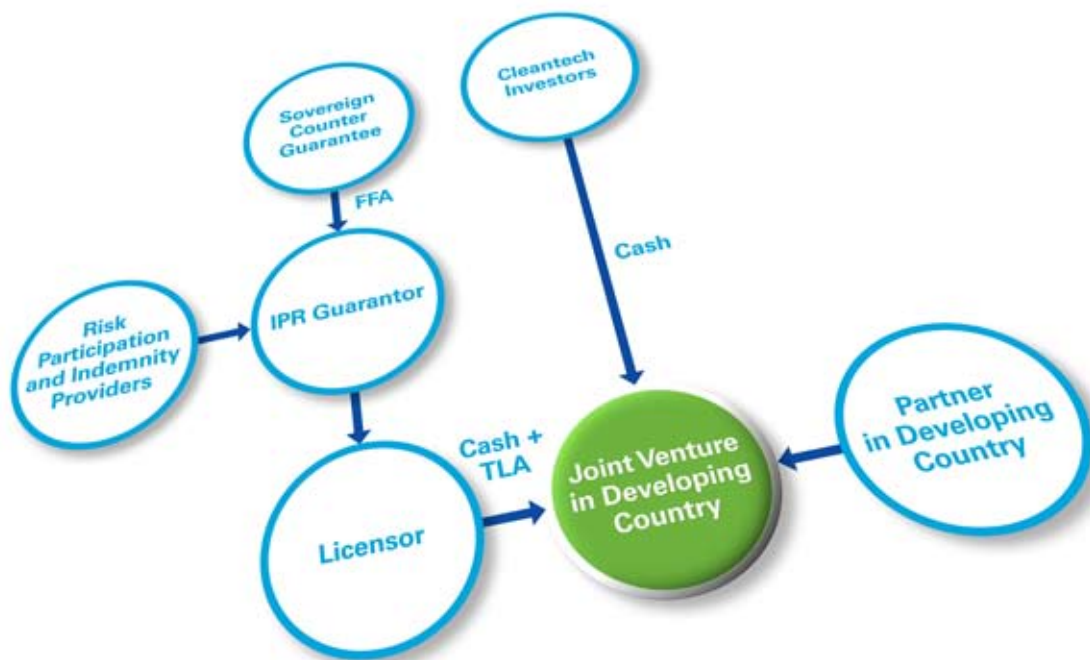
Licensors and Licensees will enter into a Technology License Agreement (TLA) to license the use of technology related to the mitigation of (and adaption to) climate change or the efficient use of energy. The TLAs will meet international commercial standards and be consistent with the Charter requirements of a guarantor as set out in the next paragraph. The royalty will be on commercial terms to be agreed upon by the Licensor and the Licensee but may take the form of cash, an equity interest in the Licensee, or both.

The ACGF will provide Licensors with an unconditional guarantee (Guarantee) from a triple A-rated international financial institution (Guarantor), such as Asian Development Bank, against the non-enforcement of arbitral awards following defaults by a Licensee under the TLA. Defaults could include failure to pay compensation to the Licensor or the unauthorized use of the technology in violation of the terms of the TLA.

Licensors must satisfy certain conditions to be eligible for the Guarantee. The Guarantor will receive a suitable counter guarantee (Counter Guarantee) from the relevant agency of the government (national or sub-national) in Asia (Host Country) where the Licensee is located.

The Host Country and the Guarantor will enter into a Facility Framework Agreement (FFA) containing the terms of the Counter Guarantee and the commitment of the Host Country to implement, over time, reform measures to strengthen the enforcement of laws and regulations in the Host Country which protect rights in technology, including patents, copyrights, trademarks, trade secrets and other industrial property rights. Specific policy and legal system reform programs will vary from country to country. In addition, the FFA may consider steps that the Host Country may take to prosecute illegal use of the relevant technology by third parties.

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The Importance of the ACGF in Asia

Owners of cutting-edge clean technologies are reluctant to transfer the technology to developing countries because of perceived weak, or lack of, enforcement of laws protecting ownership rights. The ACGF addresses their problems head on and is a “win” for all concerned. It is anticipated the ACGF will encourage the rapid diffusion of cleantech technology in Asia and create conditions to promote equity investment in Licensees by investment funds and others.

The principal benefits are as follows:

Asian Governments

Many Asian governments already provide incentives for private investment in clean energy in the form of feed-in tariffs, grants, tax holidays and other subsidies. While the government of the Host Country will need to give the Guarantor a Counter Guarantee, which may have an impact on its balance sheet, this incentive may be a lower cost way of encouraging the development of clean energy, creating employment and expanding the knowledge base of the country. The ACGF will complement government policies which give priority to the further development of clean energy.

The Licensees

Clean energy companies in developing Asia will gain access to cutting-edge technology, to which they may not otherwise be exposed. Once they are working with the technology, these companies will be in a better position to attract financing from private equity sources and banks. They may also be able to enter into joint ventures with foreign partners for sales to domestic and international markets.

The Licensors

Currently, many owners of cutting-edge, proven technologies are reluctant to expose know-how, trade secrets and software, or license patents related to clean energy to companies in developing Asia because of the risks described above. Licensors will take great comfort from a guarantee provided by the Guarantor and the inherent “deterrent value” of the Host Country’s Counter Guarantee. The Host Country’s commitment to enact new laws or enforce existing laws protecting technology property rights will mean that technology Licensors will favor those countries that make the ACGF scheme available.

Non-Asian Governments

It is likely that non-Asian governments will support the ACGF as a means of facilitating more trade and investment between their companies and companies in Asia. It will enable new licensing, joint-venture and M&A activities to emerge in situations where they might not otherwise be feasible. This will encourage the development of new cleantech industries and employment. It will also help developed countries to meet their carbon reduction commitments as the licensed projects may create transferrable carbon credits under the Clean Development Mechanism.

Guarantor

The Guarantor, whether the Asian Development Bank or another triple A-rated International Financial Institution, can catalyze more investment and finance in the cleantech sector in Asia than would otherwise be the case by implementing the ACGF, at a relatively low cost.

Strategy

Multi-lateral development banks such as Asian Development Bank have only limited resources which can be committed to the ACGF and must initially provide this facility to participating Asian countries on a pilot basis.

If the pilot programs gain acceptance in the region, the ACGF can be scaled up by participating out the majority of the risk to the Risk Participation and Indemnity Providers as set out in the above diagram, in a manner which is similar to a “reinsurance” concept.

Both public institutions, such as the European Investment Bank, the Japan Bank for International Cooperation or the China Development Bank and private institutions with an A-rating or better can participate in this way. As noted above, private equity sources will also be interested in investing in companies in developing Asia that gain access to cutting-edge clean technologies by virtue of the ACGF.

As other IFIs such as the Inter-American Development Bank and the African Development Bank have similar Charter and regulatory frameworks, the ACGF concept can be applied by those institutions to countries where they conduct operations, thereby facilitating technology transfer on a worldwide basis.

Financial Sustainability

The foregoing is a proposal that has been submitted to the Asian Development Bank for its consideration. It is subject to the approval of the management and the Board of Directors of Asian Development Bank as well as the government of each Host Country that wishes to participate.

As guarantee fees will be paid by Licensors (e.g. 30-40 basis points per annum on the face amount of the Guarantee), it will be self financing.

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About Our Clean Energy Expertise

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About Arthur Mitchell

Mr. Mitchell has over thirty six years of experience, much of it in Asia and is one of the leading American lawyers specializing in investment and financing transactions around the world. Prior to joining White & Case in September 2007, Mr. Mitchell was General Counsel of the Asian Development Bank (ADB). He became General Counsel of the ADB in 2003 and supervised all aspects of legal advice given with respect to documentation of public sector and private sector loan transactions, equity investments, political risk guarantees and bond financings. Mr. Mitchell managed an office comprised of 42 attorneys from 18 countries and was responsible for compliance with Bank policies and procedures. He advised the President and the Board of Directors on corporate governance, institutional and administrative matters, and all litigation involving the bank.

Tokyo

White & Case LLP
White & Case Law Offices
(Registered Association)
Marunouchi Trust Tower Main, 26th Floor
1-8-3 Marunouchi, Chiyoda-ku
Tokyo 100-0005, Japan
Tel: + 81 3 6384 3300
Fax: + 81 3 3211 5252

Arthur M. Mitchell

Tel: + 81 3 6384 3288
Email: amitchell@whitecase.com

www.whitecase.com

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