

# What Does a Project Finance Attorney Do?

The [project finance attorney](#) deals in financing solutions to fund major energy, transportation, and other industries.

## What is Project Finance?

Project finance refers to the funding of energy, long-term infrastructure, industrial, and other large-scale projects. It uses a non-recourse financial structure. This means that a lender's remedy is limited to the project's assets in the event of a default.

Cash flow generated by the project pays back the debt and equity used to finance it. The project's assets and rights are used as secondary collateral. One of the critical aspects of making project finance attractive in the private sector is using an off-balance sheet (OBS).

[OBS items are assets and liabilities not recorded on the company's balance sheet.](#) While they are still assets and liabilities, OBS items generally are not owned by the company or a direct obligation. Recent laws have restricted the use of the OBS.

Project finance often uses a special purpose vehicle (SPV). [This is when a parent company creates a subsidiary to isolate financial risk.](#) The subsidiary is a separate entity from the parent company. This makes its obligations secure in the event of [bankruptcy](#) of the parent company.

The subsidiary's main activity is to carry out the project through subcontracting much of the work using construction and operations contracts. There is no revenue stream while the project is being constructed. "EUR" debt service begins during the operations phase.

## The Role of the Project Finance Attorney

A project finance attorney [represents major financial institutions](#), sponsors, and developers in complex domestic and cross-border project financings. Attorneys prepare loan documents and various types of security agreements associated with these types of transactions, including structuring, negotiating, and drafting them. To produce detailed due diligence reports for clients, attorneys must spend a lot of time reviewing the project agreements, including construction contracts, revenue contracts, and supply and service contracts. [The purpose of such due diligence reports is to advise clients on contingent liabilities and legal risks associated with a project that would be material to an investment or a lending decision.](#) Since project agreements are technical in nature, project finance attorneys participate in coordinating input from the various technical, financial, insurance, and market consultants hired by clients to assist in the due diligence and documentation processes.

## The Project Finance Attorney in Private Practice

There are many career paths for a private project finance attorney. They can work in private equity firms, banks, energy suppliers, construction companies, and law firms.

### Typical Projects, Cases, and Deals

Possibilities include representing:

Government-affiliated lenders in connection with a multi-billion-dollar energy infrastructure project;

Investors for a renewable energy power project;

An export credit agency as the lead creditor for an infrastructure project; and

A power producer in connection with the construction of a wind power project.

In general, the project finance attorney represents many different clients involved in the construction of

energy, long-term infrastructure, industrial, and other large-scale projects.

## Daily Activities

The project finance attorney has several typical daily activities, including:

Performing due diligence on a proposed project;

Calling and meeting with clients;

Analyzing issues with other team members (those specializing in technical, environmental, and logistical matters);

Brainstorming strategies for mitigating risk; and

Negotiating deals and documenting the final solutions.

## Regulation of Project Finance

Federal and state governments heavily regulate the financing of significant energy, long-term infrastructure, industrial, and other large-scale projects. The agency with oversight powers depends on the nature of the project. For example, the Federal Energy Regulatory Commission regulates energy and power projects, while the U.S. Department of Transportation has responsibilities over federally-funded infrastructure projects like highways and bridges. The Federal Aviation Administration may be involved in the construction of airports. We will focus on just one area of responsibility EUR" the energy industry EUR" as an example.

## Federal Energy Regulatory Commission

This commission, known as [FERC](#), gained much regulatory oversight power with the Energy Policy Act of 2005. Among many responsibilities, FERC:

Reviews electric company mergers, acquisitions, and corporate transactions;

Monitors energy markets and investigates them;

Enforces regulatory requirements; and

Administers regulations governing accounting, financial reporting, and conduct of regulated companies.

[FERC has a robust enforcement program. The agency focuses on these priorities:](#)

Market manipulation and fraud;

Anticompetitive conduct;

Violation of standards governing electric reliability; and

Conduct that may impact the transparency of regulated markets.

FERC has immense authority to investigate potential wrongdoing and has the information-gathering tools to do so.

Within FERC, the Division of Audit and Accounting (DAA) has the statutory authority to conduct audits. When a target company is chosen for an audit, it receives a Commencement Letter. This letter "describes the purposes and scope of the audit." The target company must provide DAA's audit team unfettered access to its property and relevant documentation.

Once DAA has completed its audit, it issues a draft audit report to the target company. This includes proposed corrective actions and the underlying findings and recommendations supporting the proposed measures. The target business generally has 15 days to respond informally. A response may consist of alternative suggestions to those presented by DAA.

After reviewing the target company's informal response, DAA issues the company with its conclusions. The audited company then responds formally, stating:

The extent to which the company agrees or disagrees with audit findings and conclusions;

The progress of any corrective actions being implemented; and

Proposed alternatives, if appropriate, to any of DAA's corrective actions.

Once the targeted company's responses are received, commission staff will review them. If they determine the response is insufficient, they likely will recommend further action to the Director of the Office of Enforcement. If the Director agrees, FERC will issue a Preliminary Notice of Violation. During this time, FERC and the target company will try to settle any differences.

If settlement talks are successful, then FERC and the company will enter into a Stipulation and Consent Agreement. However, if a compromise is not feasible, FERC sends the company an Order to Show Cause, and the parties will likely engage in further settlement discussions once again. If these talks break down, FERC's next step is to take administrative actions against the company in an Order to Show Cause Proceeding. The target company has the right to appeal the results of this proceeding in federal court.

Most targeted companies make significant efforts to avoid administrative actions because the resulting fines can be severe.

## State Regulation

The states are responsible for regulating the energy and power industry as well. This includes regulation of:

- Construction of electric generation facilities;
- Activities of municipal power systems;
- Mergers and acquisitions of natural gas and oil companies; and
- Local distribution pipelines of natural gas.

Each state is different, but California provides a model for those aggressively regulating the industry, including the project financing of new energy and power projects.

## Opportunities for the Project Finance Attorney in Government Regulation

The project finance attorney can work for FERC or any other state and federal agencies that regulate the project financing of significant energy, long-term infrastructure, industrial, and other large-scale projects. At FERC, the attorney can work with DAA and oversee audits. They can draft Commencement Letters, Preliminary Notices of Violation, Stipulation and Consent Agreements, and Orders to Show Cause.

The project finance attorney represents FERC in administrative actions, as well as appeals in federal court.

## Opportunities for the Project Finance Attorney in Private Practice

Alternatively, the project finance attorney can work in the private sector defending clients against FERC and other federal or state regulators' actions. Concerning FERC, they work with DAA on audits of their client. [The attorney also prepares responses to Commencement Letters](#), Preliminary Notices of Violation, Stipulation and Consent Agreements, and Orders to Show Cause. Finally, the project finance defense attorney represents their client in administrative actions or appeals in federal court.

## Law School Professor

If the project finance attorney has distinguished experience in either working for a regulatory agency [or defending clients in private practice](#), they can consider a career in education. Typically, law schools look for candidates with the requisite experience, stellar law school grades, and a clerkship with a judge. Many law schools offer LLMs in finance and related disciplines, and they need professors for these programs.

## How Do I Become a Project Finance Attorney?

A law degree and bar membership is required. Other qualifications, such as a [bachelor's degree in finance](#) or an LLM in finance law, are helpful to get you on the right path to a successful career as a project finance

attorney.

## Who Makes a Good Project Finance Attorney?

The skills of an attorney specializing in project finance range from creating complex financial covenants to drafting security over every asset class imaginable with the same legal and financial knowledge.

Additionally, they should assess whether large industrial facilities will be able to generate enough revenue to service their debt obligations over decades. Learning how to get to the heart of the matter while also applying sound legal principles is a challenging endeavor. The documentation to be considered includes not just the usual realm of financing and security documents, but also several commercial contracts, permits, and licenses that define how the underlying project will operate.

### See also:

[\*Energy Project Finance Attorney Jobs - Related Job Titles\*](#)

[\*Project Finance Lawyer Jobs - Related Job Titles\*](#)

[\*Finance Project Finance Attorney Jobs in New York City - 30 jobs\*](#)

[\*Finance Project Finance Attorney Jobs in Houston - 7 jobs\*](#)

[\*Energy Project Finance Attorney Jobs in Washington - Related Job Titles\*](#)