



International Project Finance & Business Development Consulting

How In3CAP Cash Deposit Security is contractually arranged and held

The following synopsis is meant to provide the foundation for contractual handling of Cash Deposit Security and does not constitute an offer to invest in any project.

Clients using a verified Cash Deposit as Security can pre-qualify for funding. Upon completion of due diligence and risk assessment, a contractual commitment to fund the Project may be given to the Client. Prior to release of funding (the last step before closing), Client's deposit is put in place.

The Investment Agreement details the rights and obligations of both parties. The definitive Investment Agreement will be arranged with the Client and worked out by respective legal counsel in order to proceed with the steps to reach financial closing and flow of proceeds.

Purpose for Security. The structure used for CAP funding does not rely on a pledge of collateral (no senior lien) nor on a loan guarantee, both of which are widely used for traditional loans. With CAP funds disbursed prior to completion of the Project's construction and commissioning, but no operational revenue to begin repaying the investor, a Cash Deposit partially offsets this vulnerability.

In other words, this investor mitigates the risk of Client fraud and gross misrepresentation of the Project that would otherwise put the investment at risk, without recourse to recapture it, prior to the start of operations. Security is held during the draw period to combat the risk of Project non-completion and team non-performance.

Even then, such Security becomes the solution of absolute last resort, and contractual rights ensure that the Security will not be used or drawn without first undergoing a lengthy cure period to address any contractual breach. In practice, there would be no reason to call or use the cash deposit. Additional and satisfactory mitigation of loss results from funding and monitoring in monthly draws.

Legal Language for the enabling Security

Each investment agreement may differ, based on the Project itself, rules or laws for that location, due diligence, or other factors, as negotiated by respective counsel, and agreed in good faith and duly executed and notarized. The following language is a sample of how Security will be treated.

Cash Security – how does it work?

The following legal language defines "Client" as the name of the Special Purpose Vehicle (SPV) or other legal entity that owns the Project's assets and is party to the Investment Agreement.

"The investor's contribution is secured, inter alia, by the Cash Deposit provided by the Client. The parties agree that such Cash Deposit is only to be drawn on by the investor in the following circumstances:

The Project receives funds from the investor, and (i) these funds are misappropriated or fraudulently applied by someone other than the investor, (ii) Such misappropriation or fraudulent application results in the Project construction not being completed and (iii) the Client has exercised all other remedies available to it, including but not limited to exercising its rights under

all architectural and construction contracts, all payment and performance bonds, and all other applicable sureties, guarantees or indemnities.

Claims against the Cash Deposit shall be limited to the actual amount of funds advanced by the investor and deposited in an account for the Client to be advanced toward completion of the Project subject to verification by the investor.”

The following provisions are based on a section of the Investment Agreement for Cash Deposits:

- a) The Initial Funding is subject to the Cash Deposit having been made into the Investor’s designated account, a segregated account at the Investor’s bank.
- b) The Cash Deposit shall be returned to Client in lump sum within ten (10) business days following the final disbursement of funding pursuant to the Draw Schedule.
- c) In the event that any draw is not funded [by the investor] in accordance with this Agreement, and such non-compliance is not remedied in accordance herewith, then the Client may send Notice to Investor to return the Cash Deposit and Investor shall return such funds within ten (10) business days of receipt of such Notice.
- d) If the Cash Deposit is returned to the Client for any reason, the obligation to continue funding the Draw Schedule shall immediately cease.

Note that the Client will have access to the segregated bank account that holds the Cash Deposit. Per provision (e), above, if the cash Security is returned to the client ahead of completion of all draws of funding, no further draws will occur.

Contractual Breach Resolution Scenarios in lieu of calling the Security

1) What if no funding has been delivered once under contract?

Solution: The parties can unwind / cancel the transaction – the callable value is limited to the funds transferred against it, in any case, so although cancellation would be irrational, the instrument or Cash Deposit remains revocable at the outset and would be returned if requested.

2) If the developer runs short of funds before reaching Commercial Operation Date (COD)?

Solution: With proper evidence of a legitimate shortfall, additional capital would be allocated to reach in a timely manner. The owner/developer would need to justify why the overrun occurred, then the most likely solution would be providing the additional required funding. However, if additional funding is provided by the Client, then there shall be no change in equity or shareholding structure of the Investor. Coming from the investor, the equity or shareholding will increase per the previously determined shareholding schedule.

3) An uncured breach is caused by an insurmountable issue with the site such as the initial construction permit was not available at the proposed site.

Solution: Either the parties would work together to obtain said permit or a new site would be found so the Project could be completed.

4) Selecting a new site and/or regulatory venue proves infeasible or impractical.

Solution: The Project owners would be asked to change the Project plan so that an equitable solution could be realized without substantial delay.

5) **Project funding results in substantial procurement and/or construction with a regulatory issue preventing commissioning.**

Solution: The parties would need to work toward satisfactory resolution of the root cause with the Authority with Jurisdiction (AWJ). If that could not be accomplished, a new site (presumably with a different AWJ) would be found as necessary to complete and commission an operational Project.

6) **Technology or other aspects of the Project get in the way of completion to begin operation.**

Solution: The parties would work together, using available insurance or other risk mitigants as necessary and available to resolve the underlying issue(s).

7) **What if the Client's Project could not be completed for some other reason?**

Solution: The parties would work together to repurpose the Security for a different Project.

Is there a scenario that has at least some possibility of occurring, however remote, not addressed here? Is the solution other than “the parties work together to finish the Project”?

Please contact your In3 Affiliate with this feedback or any questions.