

# P.R.I.M.E. Finance

## Panel of Recognized International Market Experts in Finance

### Provisional Measures in Financial Arbitration

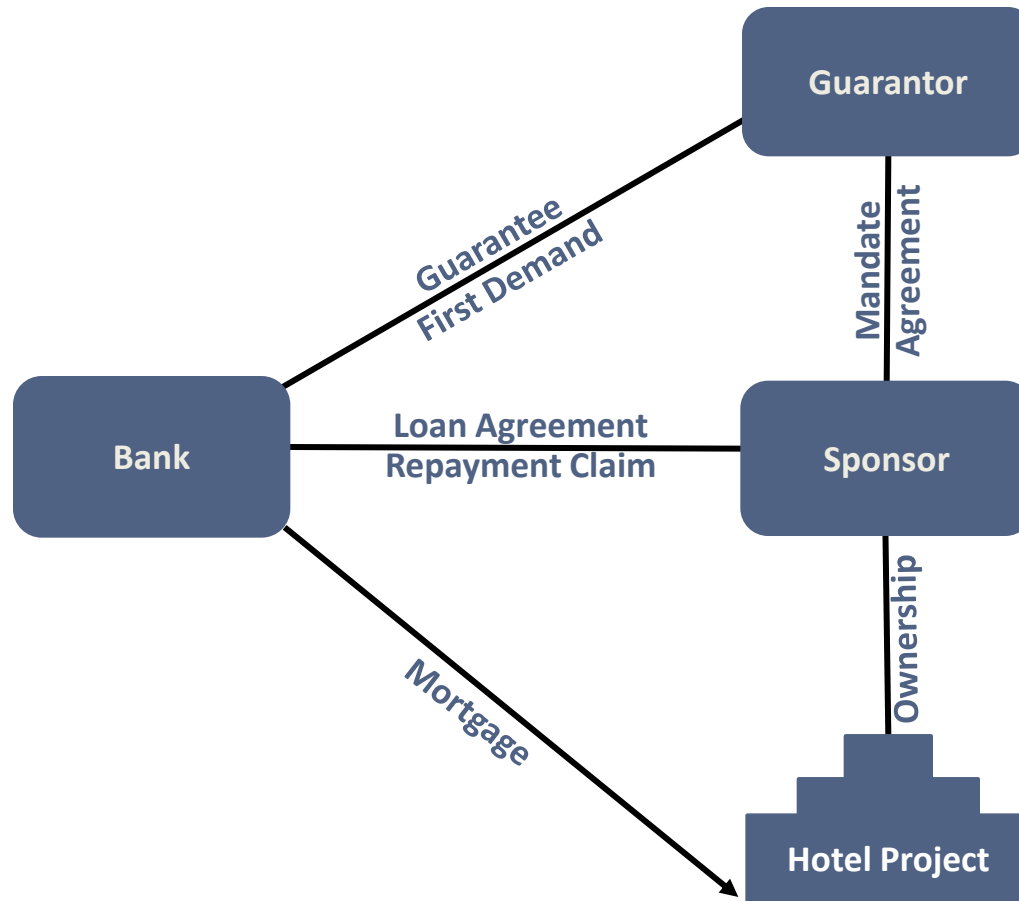


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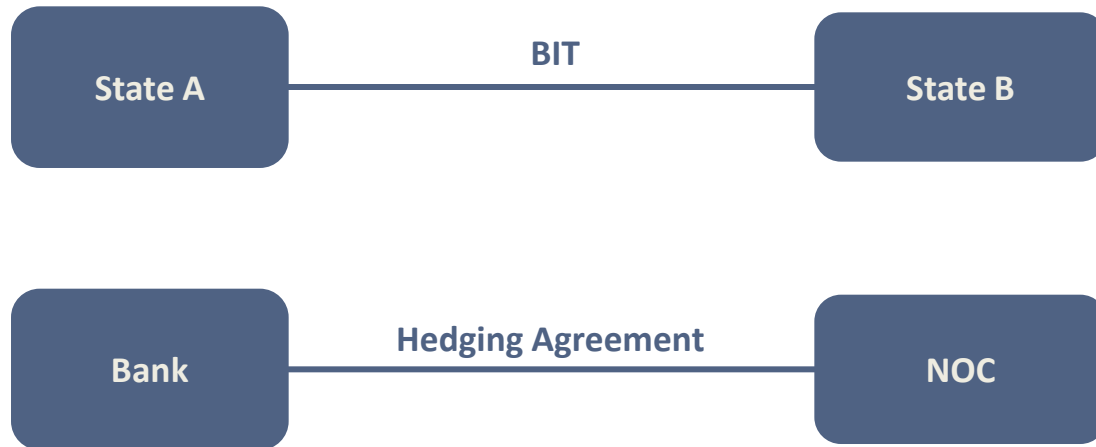


Dr. Markus Burianski  
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# A typical financing constellation



# A possible investment scenario



# Examples for Institutional Rules

## Article 28 ICC Rules

1)

Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the arbitral tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The arbitral tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an award, as the arbitral tribunal considers appropriate.

## Article 26 PRIME Rules

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:

- a. Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- b. There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

## Article 47 ICSID Convention

Article 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

## Rule 39 ICSID Rules

Rule 39  
Provisional Measures

(1) At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.



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# Factors to be considered

- Unclear definitions
  - Prima facie
  - Irreparable
  - Urgent
  - Probability
- Fact-intensive
- Ex parte order?



# Enforcement

- Intra-procedural
  - Adverse inferences
  - cost decision
  - Damages
- Extra-procedural
  - Enforcement as award?



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Thank you for your attention!