



IN PARTNERSHIP WITH
A&O SHEARMAN



QUARTER FINAL ROUND PROPOSITION

THE GREEN CLAUSE CONUNDRUM

THE NATIONAL LAW UNIVERSITY JODHPUR
**INTERNATIONAL DEAL
NEGOTIATION COMPETITION**
IN PARTNERSHIP WITH A&O SHEARMAN

28TH FEBRUARY - 2ND MARCH, 2025

BACKGROUND INFORMATION

CleanFuture, Inc.

CleanFuture, Inc. was founded in 2010 in San Francisco. Driven by a vision to transform the energy landscape and mitigate climate change, CleanFuture rapidly established itself as a leader in the renewable energy sector. Although CleanFuture was initially focused on traditional sectors such as solar and wind energy in the U.S., it has since expanded into hydrogen energy, battery storage and innovative green technologies, in addition to venturing into emerging markets. As of 2025, CleanFuture manages an extensive portfolio valued at nearly \$1 billion, with projects spanning across North America and Africa.

CleanFuture's current key focus is the Kalahari Project in Ganava in Southern Africa. The project is designed to generate 500 megawatts of clean hydrogen energy, which is enough to power 700,000 homes. It is a one-of-a-kind project that represents a significant step in CleanFuture's expansion into emerging markets, particularly in Africa, where renewable energy is critical to addressing energy access challenges. Construction commenced in 2023 and energy production was due to start in December 2024. However, due to regulatory issues beyond CleanFuture's control, the project was delayed and is now expected to start production at some point in 2025.

Alongside this project, CleanFuture has invested heavily in the development of a proprietary Artificial Intelligence (AI) technology named RenewLink. This cutting-edge technology uses machine learning to optimize energy production and integrate renewable sources with battery storage systems, thereby reducing operational costs by up to 25%. RenewLink also offers predictive maintenance capabilities, which has the potential to significantly extend the lifespan of energy infrastructure. CleanFuture expects to start using RenewLink for its projects in Q2 2025. It believes this technology will give it an edge over other players operating in the renewable energy sector.

The success of the Kalahari Project and CleanFuture's expansion plans depends on stable, large-scale financing from investors who share CleanFuture's sustainability mission. Under the leadership of CEO Emma Sinclair, a well-known advocate for green energy, CleanFuture has actively pursued collaborations with impact-driven investors. These investors tend to link any funding to the achievement of environmental benchmarks.

Unfortunately, due to rising compliance costs, evolving green standards, and uncertainty over political support for the renewable energy sector, CleanFuture has been struggling to obtain new investors and is increasingly cash strapped. This makes it essential for CleanFuture to retain its existing investors and manage its cash flows efficiently. One of CleanFuture's key investors is GreenFinance, with which it has a long-term funding agreement.

Green Finance Partners

GreenFinance Partners was founded in 1995 in Zurich, Switzerland with a mission to drive impactful, sustainable investments that address climate change and advance the transition to a green economy. Over the years, the firm has grown into one of Europe's most prominent impact investors and is now widely known for its rigorous focus on funding renewable energy and low-carbon infrastructure projects. GreenFinance seeks to back projects that generate measurable environmental outcomes while delivering competitive financial returns. The firm has a reputation for its strict adherence to the highest environmental, social and governance (ESG) standards and aligning its investments with global sustainability frameworks. As of 2025, GreenFinance's portfolio exceeds €5 billion and is spread across Europe, North America, Asia and Africa. GreenFinance's investments take various forms such as equity, debt or a combination of the two.

Despite its success, GreenFinance has seen pressures on its performance in recent years, primarily due to the changing landscape of sustainable investments. The firm's traditional focus on conventional renewable energy projects – such as solar and wind – has led to concerns over stagnation in growth and investor demand for more dynamic and tech-driven innovations.

GreenFinance's decision to invest in CleanFuture was prompted in part by these developments. Additionally, GreenFinance is actively exploring opportunities to diversify into next-generation technologies, particularly those related to AI and digital transformation in the energy sector. The firm is keen to integrate AI and machine learning into its investments, recognizing that these technologies hold the potential to revolutionize renewable energy production, improve energy storage solutions and optimize infrastructure management. This move aligns with the firm's broader strategy to stay ahead of market trends and tap into green tech, which is fast emerging as a vital area for future growth and long-term impact. GreenFinance has recently learned of CleanFuture's RenewLink technology and is particularly interested in partnering with CleanFuture for the right to use RenewLink for all of GreenFinance's renewable energy projects.

GENERAL INFORMATION

CleanFuture first approached GreenFinance for funding in early 2021. Given CleanFuture's pioneering projects, GreenFinance viewed the proposed partnership as a strategic opportunity to diversify its offering. For CleanFuture, the proposed collaboration was important to finance its innovative, albeit capital-intensive, ventures. CleanFuture's track record of innovation and growth thus aligned with GreenFinance's long-term strategy to be at the forefront of the green finance movement, ensuring that its clients, including major EU pension funds, can confidently align their portfolios with stringent sustainability standards.

In April 2022, CleanFuture and GreenFinance entered into a long-term Green Finance Agreement ("GFA") [Annexure I] for a \$400 million financing arrangement.

There were substantive negotiations between the Parties, including as to whether GreenFinance should have an equity stake in CleanFuture, the right to appoint one of its directors and the right to acquire or use any technological developments by CleanFuture. CleanFuture was reluctant to agree to such terms at the time and the Parties eventually agreed upon a standard financing arrangement.

The key features of the GFA are as follows:

- It provides for a phased release of funds over a five-year period.
- The release of funds is contingent upon CleanFuture achieving an Environmental Performance Ratio ("**EP Ratio**") that is compliant with the International Renewable Energy Organisation's (IREO) Directive on Environmental Performance Reporting and EP Ratios ("**IREO Directive**").
- The quantum of funds released depends on the amount of renewable energy generated in the previous contract year.
- Interest accrues at the rate of 9% per annum on the total disbursed amount starting from 1 April 2027.
- The loan is to be repaid in phased manner starting from 2035.

The first two milestones envisaged in the GFA were successfully completed in April 2023 and April 2024 respectively. This enabled CleanFuture to obtain the two initial disbursements under the GFA, which it used to finance its pipeline of renewable energy projects, including the Kalahari Project.

In October 2024, two regulatory changes occurred, which had an impact on the disbursement of additional funds under the GFA.

First, the IREO amended the IREO Directive and increased the EP Ratio from 0.7 to 0.8 with effect from 28 February 2025. This meant that CleanFuture had to attain an EP Ratio of 0.8 instead of 0.7 in order to receive the 3rd Tranche of funding on 1 April 2025 under the GFA.

Second, the Government of Ganava introduced a new law requiring all renewable energy projects to be subject to an environmental impact assessment by the Ganava Environment Authority before they commence energy production. This is expected to result in the operationalisation of the Kalahari Project being postponed to mid or late 2025, meaning that CleanFuture will be unable to rely on the project to meet the renewable energy production target for 1 March 2025 under the GFA.

On 31 October 2024, CleanFuture wrote to GreenFinance requesting a waiver of the EP Ratio requirement and disbursement of the entire quantum of Tranche 3 without any deductions (**Annexure II, Email Correspondence A**).

On 10 November 2024, GreenFinance sent an initial response to CleanFuture, noting that it considered the waiver request to be reasonable in principle, and it would provide a further update in a few days once it obtains the necessary internal approvals. GreenFinance also requested more information on the shortfall of the energy production targets (**Annexure II, Email Correspondence B**).

On 18 November 2024, CleanFuture provided the relevant information (**Annexure II, Email Correspondence C**).

On 11 December 2024, GreenFinance wrote to CleanFuture, noting that after consultation with its stakeholders, it was no longer able to grant the waiver or disburse any further funds unless the revised EP Ratio is met and the relevant energy production targets are achieved as contemplated in the GFA (**Annexure II, Email Correspondence D**).

This was followed by several calls between Clean Future's finance team and Green Finance's projects team, culminating in a virtual meeting in January 2025. Unfortunately, no resolution was found at the virtual meeting. CleanFuture's position was that GreenFinance had already granted Clean Future's waiver request on 10 November 2024 and was now estopped from taking a contrary stand. GreenFinance's position was that it is not obligated to, and will not, grant the waiver or disburse Tranche 3 without the relevant targets being met. The virtual meeting ended with GreenFinance threatening to terminate the GFA under Clause 11.

The dispute was then escalated to the upper management of the Parties, with Emma Sinclair (CleanFuture's CEO) and Charles Grover (Green Finance's CFO) agreeing to an in person meeting in March to resolve the dispute amicably.

ANNEXURE I

This Green Financing Agreement (“**GFA**”) is entered into on April 1, 2022 (“**Effective Date**”) by and between:

- **CleanFuture, Inc.**, a corporation organized and existing under the laws of the United States, with its principal office located at 123 Greenway Drive, California, USA (“**CleanFuture**”), and;
- **GreenFinance Partners**, a corporation organized and existing under the laws of Switzerland, with its principal office located at 456 Sustainable Blvd, Zurich, Switzerland (“**GreenFinance**”).

WHEREAS, CleanFuture, Inc. is a renewable energy development company specializing in hydrogen, solar, wind and AI-driven energy & storage solutions, committed to advancing sustainable energy projects, including the Kalahari Project in Ganava;

WHEREAS, GreenFinance Partners is a leading impact investment firm focused on funding renewable energy projects that align with stringent Environmental, Social and Governance standards, and seeks to partner with CleanFuture to support its innovative green technologies and expansion initiatives.

THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

(...)

2. Financing Terms

2.1 Disbursements

GreenFinance agrees to provide up to \$400 million in funding to CleanFuture for utilisation towards its renewable energy projects. The funding shall be disbursed in the following tranches:

Tranche	Release Date	Amount (\$)
Tranche 1	1 April 2023	\$60 million
Tranche 2	1 April 2024	\$80 million

Tranche 3	1 April 2025	\$120 million
Tranche 4	1 April 2026	\$80 million
Tranche 5	1 April 2027	\$60 million

2.2 Condition precedent to disbursements

Any disbursement pursuant to Clause 2.1 is conditional upon CleanFuture having achieved an EP Ratio equal to or greater than the EP Ratio set out by the IREO in the IREO Directive as applicable on the 1st of March in each year in which the disbursement of a tranche is sought (**EP Ratio CP**).

2.3 Energy Production Targets

CleanFuture shall achieve the following renewable energy production targets by the 1st of March in each year in which the disbursement of a tranche is sought:

Tranche	Target Year	Renewable Energy Production Target (GWh)
Tranche 1	2023	400 GWh
Tranche 2	2024	400 GWh
Tranche 3	2025	700 GWh
Tranche 4	2026	1,000 GWh
Tranche 5	2027	1,300 GWh

In the event that CleanFuture fails to meet the energy production targets set out above, the corresponding disbursement amount will be reduced by the same percentage as the shortfall in the energy production target. For example, if by 1 March 2023, CleanFuture has generated 300 GWh of energy, the disbursement amount of \$60 million will be reduced by 25%.

(...)

8. Change in law

In case of a Change in Law that adversely affects either Party's ability to meet its obligations under the GFA, the affected Party may serve a Change in Law notice to the other party. The notice must identify the Change in Law and explain its impact on the affected Party's performance of the GFA.

Upon receipt of the notice by the other Party, the Parties shall meet and discuss in good faith to agree upon suitable amendments to the GFA to account for the Change in Law. If the Parties are unable to agree to suitable amendments to the GFA within 60 days of receipt of the Change in Law notice, either Party may serve a notice on the other to terminate the GFA.

If CleanFuture is unable to meet the EP Ratio or the energy production target for a particular year due to a Change in Law, it may request a waiver of the EP Ratio CP and/or the deduction applicable to the disbursement for that year (**Waiver Request**). GreenFinance must within 21 days accept or deny the Waiver Request at its discretion, such discretion to be exercised reasonably. If GreenFinance accepts the Waiver Request, it shall disburse at least 50% of the relevant tranche.

Change in Law means any change to any statute, law (including environmental laws), regulation, judgment or directive in any of the jurisdictions in which either Party operates and any change in any international regulations and environmental standards that affects a Party's ability to perform its obligations under the GFA.

9. Governing Law and dispute resolution

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

Any dispute arising out of this Agreement shall be referred to and finally resolved by the courts of England and Wales.

11. Termination

11.1 Termination for Cause

Either Party may terminate this Agreement if the other Party materially breaches any term of this Agreement and fails to remedy such breach within 60 days following written notice from the non-breaching Party.

In case CleanFuture terminates this Agreement, the consequences of termination as set out in Clause 11.2 shall apply.

In case GreenFinance terminates this Agreement, the consequences of termination as set out in Clause 11.3 shall apply.

11.2 CleanFuture's Termination Right

CleanFuture shall have the right to terminate this Agreement if GreenFinance fails to make a disbursement in accordance with Clause 2.1 and fails to rectify such default within 30 days of receiving a written notice of non-payment from CleanFuture, provided that CleanFuture had either met or obtained a waiver of the EP Ratio CP and energy production target for the unpaid disbursement.

In case of termination in accordance with this clause 11.2, CleanFuture shall have three years from the date that CleanFuture serves the termination notice to repay any disbursed funds and no interest shall apply on such disbursed funds.

11.3 GreenFinance's Termination Right

GreenFinance shall have the right to serve a notice terminating this Agreement if CleanFuture fails to meet:

- the EP Ratio and 66% of the renewable energy target set out in Clause 2.2 and Clause 2.3, respectively, in a particular year;
- the EP Ratio and/or the renewable energy target set out in Clause 2.2 and Clause 2.3, respectively, in two or more consecutive years; or
- the EP Ratio and/or the renewable energy target set out in Clause 2.2 and Clause 2.3, respectively, in a particular year and it becomes clear to GreenFinance that CleanFuture will be unable to meet one of these metrics in the subsequent year as well.

In case of termination in accordance with this clause 11.3, CleanFuture must repay any disbursed funds within one year and pay interest at the rate of 1% per month from the date that GreenFinance serves the termination notice until repayment.

11.4 Termination pursuant to Clause 8

In case either Party serves a termination notice pursuant to Clause 8, the following provisions shall apply:

- GreenFinance will cease to be liable to disburse any additional funds pursuant to Clause 2.1.
- CleanFuture shall repay any disbursed funds within two years from the date of the termination notice with interest at 4.5% per annum.

[Other clauses of the GFA omitted]

ANNEXURE II

EMAIL CORRESPONDENCE A

Date: 31 October 2024

Subject: Change in Law notice and Waiver Request

Dear Charles,

I hope this email finds you well. I am reaching out to discuss the significant regulatory challenges CleanFuture is facing, which have placed us in a difficult position in relation to the GFA.

As you are aware, the IREO has amended the IREO Directive to increase the EP Ratio from 0.7 to 0.8. The amendment was notified in October 2024 and comes into effect shortly thereafter, in February 2025, giving us insufficient time to prepare for and comply with the new ratio. While CleanFuture remains committed to meeting the highest environmental benchmarks, the limited transition period renders this unachievable.

Exacerbating our difficulties, the new Ganava law mandates an environmental impact assessment that is reviewed by the Ganavan Environmental Authority before a renewable project can become operational. This will inevitably delay production timelines for the Kalahari Project and directly affect our energy output forecasts. If not for this unanticipated change, we would have been able to operationalise the Kalahari Project and meet the relevant energy production target.

Given these developments, which we consider to be a Change in Law, we kindly request a waiver for the increased EP Ratio and release of the Tranche 3 disbursement in full pursuant to Clause 8 of the GFA. The funds are critical to operationalizing the Kalahari Project, particularly due to an increase in the costs for procuring renewable energy equipment, which are expected to rise further in light of the global geopolitical climate.

I have set out the Change in Law notice and Waiver Request below and am happy to provide any additional details to support this request. I look forward to hearing from you.

Kind Regards
Finance Team, CleanFuture

Change in Law notice and Waiver Request

- Pursuant to the IREO's amendment of the IREO Directive in October 2024, the EP Ratio has increased from 0.7 to 0.8 with effect from 1 February 2025. As a result, CleanFuture is unable to satisfy the EP Ratio CP for Tranche 3, as set out in Clause 2.2 of the GFA, and requests a waiver of the same.
- The Ganava Government introduced a new environmental regulation on 10 October 2024 requiring all renewable energy projects to be subject to an environmental impact assessment by the Ganavan Environmental Authority before commencing energy production. As a result, CleanFuture is unable to meet the energy production capacity target under Clause 2.3 of the GFA for the year 2025. Given that this is due to circumstances outside CleanFuture's control, we request that the funds for Tranche 3 are released without any deduction.

EMAIL CORRESPONDENCE B

Date: 10 November 2024

Subject: Re: Change in Law notice and Waiver Request

Dear Emma,

Thank you for your email outlining the challenges CleanFuture is facing.

We recognize the validity and reasonableness of your position in relation to the sudden change in the EP Ratio under the IREO Directive. We do not anticipate any difficulties in granting the Waiver Request and disbursing the Tranche 3 funds in principle, and will provide a further update following further discussions with our internal stakeholders.

However, the quantum of funds to be disbursed will depend on our review of the specific energy production shortfall and the projected timeline for the operationalisation of the Kalahari Project. We need to get comfort that any shortfall in the targets is a one-off and due to circumstances outside CleanFuture's control (rather than a symptom of wider difficulties in CleanFuture's operations).

We value CleanFuture's dedication to sustainability and look forward to continuing our partnership and working through these challenges together.

Best Regards,
Projects Team, GreenFinance

EMAIL CORRESPONDENCE C

Date: 18 November 2024

Subject: Re: Change in Law notice and Waiver Request

Dear Charles,

Thank you for your response. We are grateful to hear that you consider our waiver request reasonable and that the Tranche 3 funds will be disbursed at least in part.

As requested, we have compiled additional details regarding the anticipated shortfall in energy production. Please see below:

Target capacity: 700 GWh

Predicted actual capacity: 420-480 GWh

Reasons for shortfall:

- The Kalahari Project was expected to begin operations in December 2024 and add at least 300 GWh of energy production capacity. This by itself would have driven CleanFuture's energy production capacity to over 700 GWh. Unfortunately, due to introduction of a new and unexpected environmental regulation in Ganava, the operational date for the project has been postponed to mid or late 2025, thereby missing the 1st March 2025 date under the GFA. We are doing our best to secure compliance with the Granavan environmental regulations and are in discussions with the relevant authorities to speed up the process. In any event, the full 500 GWh capacity of the Kalahari Project will become operational this year.

- Due to supply chain management issues, there has been a delay in operationalisation of two small scale projects in the US. Together, these were expected to add 120 GWh capacity by 1st March 2025, but we now expect these to become operational by 1st May 2025 subject to payment of a premium fee for certain materials and services.

In light of the above, we would be grateful if Tranche 3 is paid in full. This will enable us to not only meet but exceed the energy production targets under the GFA going forward.

We remain committed to meeting the targets moving forward and appreciate your support.

Kind Regards,

Finance Team, CleanFuture

EMAIL CORRESPONDENCE D

Date: 11 December 2024

Subject: Re:Change in Law notice and Waiver Request

Dear Emma,

Thank you for your email outlining the challenges faced due to the recent change in law. After consultation with our stakeholders, we regret to inform you that GreenFinance is unable to waive the EP Ratio CP and release the Tranche 3 funds. The release of funds remains contingent upon compliance with both the EP Ratio and energy production targets specified in the Green Finance Agreement.

While we understand that there may have been a Change in Law, we do not consider that these changes should preclude CleanFuture from complying with its obligations under the GFA.

Best Regards,

Projects Team, GreenFinance