Insights Conversations: International Renewable Energy Projects

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Paul S. Kraske
Washington, D.C.
202.371.7234
paul.kraske@skadden.com

Jorge H. Kamine
Washington, D.C.
202.371.7263
jorge.kamine@skadden.com

Aryan Moniri
Washington, D.C.
202.371.7356
aryan.moniri@skadden.com

Leah B. Chacon
Washington, D.C.
202.371.7552
leah.chacon@skadden.com

1440 New York Avenue, NW
Washington, D.C. 20005
202.371.7000

Four Times Square
New York, NY 10036
212.735.3000

skadden.com

The renewable energy sector, particularly wind and solar, has seen rapid expansion globally among both developed and developing countries. Skadden attorneys Paul Kraske, Jorge Kamine, Aryan Moniri and Leah Chacon discuss current trends and issues in international renewable projects, which promise to become an increasingly important part of worldwide efforts to address energy needs.

The rapid expansion of wind and solar projects seemed to be a phenomenon limited to the U.S. and Europe at the start of the decade. What changed?

Paul: We were extremely active in the years following the financial crisis representing clients who were developing, financing and investing in new solar and wind projects in the U.S. The Obama administration and state officials offered a range of tax and other government incentives and subsidized financing intended to encourage the rapid deployment of renewable energy projects. This was done both to address energy security and carbon emission concerns and to promote industrial growth. In addition, regulated utilities and distribution companies in the U.S. were encouraged by the same government actors and various stakeholders to increase the portion of their energy supply that came from renewable energy sources. These factors, and similar conditions in certain European countries, combined to make renewable energy projects bankable, attracting developers, financiers and investors.

Jorge: Latin America and other developing countries were initially reluctant to consider or promote the development of renewable energy sources, at least wind and solar, because they perceived the technology as too new and untested, and more expensive relative to oil and gas-fired and hydroelectric power plants. As a result, they feared having to subsidize these projects at a time when financial resources were limited and they needed to rapidly expand electricity supply. The swift increase in demand for these renewables in the U.S. and Europe helped tremendously in lowering the cost of equipment, proving the viability of the projects and expanding the range of actors with experience, knowledge and expertise in these projects. In addition, the spike in oil prices encouraged many developing countries to reduce their reliance on imported fuels for electricity generation.

Where have you been seeing the most activity recently?

Aryan: Latin America has been hot for the past few years, particularly Chile. In the past two years, we have represented clients in developing over 500 megawatts of PV solar projects and securing around $1 billion in financing for projects in Chile alone. We also have represented clients on projects in Honduras, Mexico and Peru, and are beginning to explore opportunities with clients in other Latin American countries such as Panama.

Paul: Africa and the Middle East have also been very active in the renewable space. We have represented clients in developing projects in Jordan and South Africa, and currently have clients looking at markets in West Africa.

What are the key elements of a successful international renewable energy project?

Paul: The key elements of an international project are largely the same as those for a domestic project: land rights, permits, and financeable development, construction, power sales and operating contracts. Contracting to sell your power on a long-term basis to a creditworthy counterparty — what is often called a "power purchase agreement" or "PPA" in the industry — is critical in most countries in order to obtain financing for your project. There are exceptions — in Chile, we have closed several financings of uncontracted "merchant" projects due to the particularly strong spot sales market — but the general rule is that a solid PPA is necessary to get your project financed.

Jorge: A crucial aspect of the key elements that Paul noted is getting them right at the outset. In order to get lenders to finance your project on a nonrecourse basis, the contracts governing your project will need to be "financeable," meaning they will need to include terms that are commonly included in the project finance market. The consequence of not getting these terms at the outset is that your lenders will require that your contracts be reopened and renegotiated, which is often difficult to do.

Aryan: In addition to the largely contractual elements just noted, other factors to consider are the stability and regulatory environment of the country in which you are looking to develop your project. There are renewable energy programs in a number of countries where projects have proven difficult to finance, and knowing which programs and countries have or have not been successful is important when picking and choosing your opportunities.

Leah: Other questions to consider are: What restrictions on foreign investment exist? Can cash be taken out of the country, and if so, are there withholding taxes? How stable is the country's currency? What is the country's history of upholding the rule of law — do private contracts get upheld and enforced, particularly those involving government-owned entities; do laws and regulations get changed retroactively; is there a history of creeping or outright expropriation, particularly without compensation?

Paul: These are questions that lenders will ask, and to which a developer should have responses before moving too far in the development process.

Who is financing these projects?

Paul: In the past few years, we have worked on international financings with the International Finance Corporation (IFC), Overseas Private Investment Corporation (OPIC), Inter-American Development Bank (IDB), Export-Import Bank of the United States (Ex-Im Bank), the European Bank for Reconstruction and Development (EBRD), and other multilateral and bilateral lending institutions. In addition, we are seeing a great deal of interest among international and local commercial banks following their positive experience in the U.S. and Europe. Our experience has been that a syndicate of banks is usually required to finance international projects, and often it is helpful to have at least one local bank involved in some aspect of the deal.

What do you see as the outlook for the international development of renewables and what will drive that development?

Paul: I think the outlook is bright. The cost of developing renewable energy has dropped dramatically in the past decade, and various technologies are now widely understood and accepted.

Jorge: Clean energy also is becoming more of a policy agenda internationally, with programs providing incentives to encourage development of renewable energy and even requiring utilities to make renewable energy a significant part of their portfolios.

Aryan: Another driver of international growth is the increase in the number of publicly traded "yieldcos" in the United States. The business model of these companies is to generate distributable cash from energy projects and to grow distributable cash over time for investors, generally through acquisitions. While most yieldcos in the market today focus on projects in the United States, Canada and other countries considered to be very stable, we see the supply of such projects dwindling over time and think this will drive yieldcos to expand into other markets. We are starting to see this now, having recently worked on M&A transactions on behalf of yieldcos and their sponsors in both developed and developing markets.

Are there particular countries where growth will be stronger than others?

Jorge: Latin America will continue to show growth, although the level of interest, types of policies and technologies that are promoted will vary. Chile should continue to provide opportunities. I would expect more growth in Mexico and increasing opportunities in

Peru. Many countries in Central America are trying to promote renewables, so that will provide opportunities, but the markets are smaller and newer, which may make them less compelling than Mexico, Chile or Peru.

Leah: Despite its current challenges, Brazil should continue to provide opportunities, though that may be more in the medium to long term.

What about the Middle East and Africa?

Paul: We have been seeing increased interest in the Middle East, particularly in Qatar, the United Arab Emirates, Saudi Arabia and Jordan, where we have been working on the development and financing of a groundbreaking utility-scale solar project. The solar resources are obviously there, but there is also interest among the governments in the region to diversify their energy matrix for the long term.

Jorge: Similarly, we have been witnessing firsthand the significant growth in interest in renewables across sub-Saharan Africa, particularly in solar, from both governments and developers. Global players in the renewables industry continue to participate in successive rounds of South Africa's power purchase agreement auctions and pursue stand-alone projects under development in a range of countries in East and West Africa. We're optimistic that the U.S. government's Power Africa program and the recently announced World Bank/IFC Scaling Solar program will further support solar projects in Africa by making financing more available and providing governments on the continent with additional technical resources.