

Global Projects & Infrastructure

NEWS AND RECENT DEVELOPMENTS

In addition to reviewing legal news developments from the past few months, this edition of our Global Projects & Infrastructure Update provides information about some exciting developments at Mayer Brown.

We continue to strengthen our industry experience with the addition of Toshi Yoshida as a partner in our Houston office. Toshi brings us expanded capabilities in the US energy market, specifically with Japanese companies looking to invest in the US and Latin American energy sectors. At his previous firm, Toshi helped Brazil's state-owned company, Petrobras, enter Japan for the first time.

We are also pleased to announce that two of our recent deals have been recognized as leading transactions. The La Mata-La Ventosa Wind deal received the "Ex-Im Bank Deal of the Year" award. The deal is significant because the electricity generated by the wind farm will be used to power 348 Wal-mart stores in Mexico. This project will help Wal-Mart de Mexico meet its commitment to sustainability, including having 100 percent of its units operate with renewable energy sources by 2025.

The second deal, an \$823 million project financing for Baja Mining Corporation to construct and develop the Boleo copper-cobalt-zinc-manganese project in Baja California Sur, Mexico, received the Exploration and Development Funding Award for 2010 by *Mining Journal*.

We hope you find this update of interest.

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New Faces



Toshi Yoshida joins us in our Houston office as a partner in the Energy industry group. Toshi focuses on global energy projects, oil and gas upstream transactions, including shale gas and shale oil, LNG and terminal projects, refineries and pipelines. While he has particular experience with Japanese clients, Toshi has worked with clients in US, Latin America, Brazil, Africa, China, Hong Kong, Australia and other regions and countries. He also has dealt with oil and gas environmental matters regarding onshore and offshore oil and gas exploration, production and storage. In addition, Toshi has held board positions with energy companies including, Japan Australia LNG, Novus Petroleum Ltd. and IB Daiwa Corporation.

Recent Engagements

Nuevo Pemex Power Facility in Mexico

We represented Banco Santander and Banco Nacional de Obras y Servicios Públicos in connection with the \$700 million, 300 MW Nuevo Pemex cogeneration facility in Tabasco, Mexico developed by Spanish infrastructure company Abengoa in partnership with GE.

Denver FasTrack Commuter Rail

We served as designated counsel to Denver Transit Partners LLC on the FasTracks Eagle PPP commuter rail expansion project in Denver, Colorado. This is the most significant rail transit project undertaken as a PPP in the United States and the first ever use of private activity bonds (PABs) for a rail transit project. This project was named *Bond Buyer's* 2010 Southwest Regional Deal of the Year.

Luis Muñoz Marín International Airport in San Juan

We are representing the Puerto Rico Public-Private Partnerships Authority, a governmental authority of the Commonwealth of Puerto Rico, with respect to the proposed PPP transaction involving the Luis Muñoz Marín International Airport in San Juan—Puerto Rico's major airport and a gateway to the Caribbean.

La Ventosa-La Mata Wind Power Facility in Mexico

We represented International Finance Corporation, Export-Import Bank of the United States, Inter-American Development Bank and the Clean Technology Fund of IFC in the financing of the La Ventosa-La Mata wind power facility in Oaxaca, Mexico. The \$200 million, 67.5 MW project sponsored by Electric del Valle of Mexico, the Mexican subsidiary of EDI Energies Nouvelles. The project was named “Ex-Im Bank Deal of the Year.”

Legal Updates

ENERGY

US Government Forces Parties to a Completed Transaction to Submit to Review by the Committee on Foreign Investment in the United States

Legal Update—November 23, 2010

According to press reports, the Committee on Foreign Investment in the United States (CFIUS), an interagency governmental body with authority to review foreign acquisitions in the United States that may threaten to impair the national security, has asked Huawei Technologies Ltd. (Huawei), a Chinese telecommunications equipment firm, to seek approval for a May 2010 transaction involving the US firm 3Leaf Systems (3Leaf). Huawei and 3Leaf did not notify CFIUS before the transaction and did not seek CFIUS approval. CFIUS did not learn of the transaction until after its completion.

[Read more >>](#)

FERC Proposes Changes to Encourage Wind and Solar Energy

Legal Update—November 22, 2010

Through a combination of State and Federal policies, the United States has encouraged (and in some cases mandated) the development of renewable energy resources such as wind and solar generation of electricity. In 2009, 9,994 MW, or 39 percent, of all newly installed generating capacity was wind-powered; another 85 GW of wind generating capacity has been proposed for installation by the end of 2012.

[Read more >>](#)

Feed-in-Tariffs: A US and UK Perspective

Webinar—November 16, 2010

Feed-in-Tariffs (FiTs) are widely regarded as a key component of European renewables generation economics. As they appear on the radar of US states, some legal hurdles need to be cleared. On November 16, 2010 our partners reviewed some of the legal issues with FiTs in the United States and the United Kingdom and how these issues could impact the use of FiTs in renewable energy projects.

[Read more >>](#)

Decree 70 on Nuclear Power Plants

Legal Update—November 11, 2010

On 22 June 2010 the Vietnam Government issued Decree No. 70/2010/ND-CP detailing and guiding the implementation of the Law on Atomic Energy regarding nuclear power plants (Decree 70).

[Read more >>](#)

Decree 68 on Sanctions for Legal Breaches in the Electricity Domain

Legal Update—November 5, 2010

On 15 June 2010 the Vietnamese Government issued Decree No. 68/2010/ND-CP on the sanctioning of legal breaches in the electricity domain (Decree 68). Decree 68 defines acts of breach and contemplates penalties against and remedies for such breaches.

[Read more >>](#)

New Application for Section 1603 Grant in Lieu of Tax Credits for Specified Renewable Energy Property

Legal Update—October 15, 2010

The US Treasury Department (Treasury) and the National Renewable Energy Laboratory recently updated the application used to apply for grants in lieu of tax credits (Grants) under Section 1603 of the American Recovery and Reinvestment Act of 2009. Section 1603 established a program whereby an eligible person could, in lieu of claiming the production tax credit under Internal Revenue Code Section 45 or the investment tax credit under Internal Revenue Code Section 48, apply to Treasury for a Grant to reimburse the applicant for a portion of the cost of certain renewable energy projects.

[Read more >>](#)

Establishment of the Business Registration Authority in Vietnam

Legal Update—October 14, 2010

On 14 June 2010, Prime Minister Nguyen Tan Dung signed Decision No. 45/2010/QD-TTg, promulgating the regulations on nuclear control to tighten control over the using, storing, exporting and importing of nuclear materials and radiation sources by domestic and foreign organisations and individuals in the country (nuclear control activities).

[Read more >>](#)

FTC Proposes Revised Guides for “Green” Marketing

Legal Updates—October 7, 2010

On October 6, 2010, the US Federal Trade Commission released proposed revisions to its guides for avoiding misleading environmental marketing claims. Last updated in 1998, the “Green Guides” are administrative interpretations that create safe harbors for marketing claims, but are not enforceable regulations.

[Read more >>](#)

Vietnam Prepares Human Resources for Its First Nuclear Power Plant

Legal Update—September 30, 2010

On 18 August 2010 Prime Minister Nguyen Tan Dung issued Decision No. 1558/QD-TTg (Decision 1558) approving a training and human resource development project in the field of atomic energy. Decision 1558 was released in order to start training professional personnel to operate and maintain the first nuclear power plant as set out in Vietnam’s master plan for developing nuclear power (see Mayer Brown’s Legal Update of “Decision 906 Approving Vietnam’s Master Planning for Development of Nuclear Power” on 25 August 2010).

[Read more >>](#)

INFRASTRUCTURE

US P3 Bankruptcy Cases Raise Structuring Considerations

Article—November 17, 2010

Three cases filed under US bankruptcy law are testing the structures of P3 projects. The cases are proving that risks are effectively transferred under the P3 procurement model, but they also show that project counterparties should ascertain at the outset of a transaction what a concessionaire’s eligibility for relief is under the bankruptcy law. George K. Miller, a partner in Mayer Brown’s New York office, takes a look at the three cases. George is a member of the

law firm’s global projects, infrastructure and asset finance groups. He concentrates on international and domestic finance and leasing, in particular in the infrastructure, transportation and energy sectors.

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Probing Mezzanine Infrastructure Funds

Article—September 22, 2010

The current difficulties in finding available funding for infrastructure highlight the relatively narrow conditions precedent for successful infrastructure finance. In his August 25, 2010 *Infrastructure Journal* article, Paul Forrester suggested that project finance CDOs may be a means to intermediate additional capital for infrastructure finance, but by no means did he intend to suggest that this is the only way to do so.

[Read more >>](#)

President Barack Obama Announces \$50 Billion Infrastructure Spending Proposal, Highlighting Continuing Need for Private Investment in Infrastructure

Legal Update—September 8, 2010

President Obama recently announced support for several transportation infrastructure proposals. These include: a six-year funding authorization with a \$50 billion accelerated first year of funding; inclusion of high speed rail in ongoing funding; funding for the Federal Aviation Administration’s proposed “next generation” air traffic control system; and a national infrastructure bank that would leverage private investment.

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Draft PPP Regulations

Legal Update—September 3, 2010

Vietnam has an urgent need to upgrade and develop its infrastructure. However, having attained middle-income status, the nation is likely to receive less official development assistance in the coming years.

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Project Finance CDOs After the Credit Crisis

Article—August 25, 2010

It may well be distressing for the affected market participants, but an objective observer might wonder why so much concern exists for such a seemingly “fragile” financing paradigm. After all, it appears that available and successful infrastructure finance requires an extraordinarily narrow set of precedent conditions.

Perhaps it is time to reconsider the traditional long-term contract-supported bank/construction and capital markets/term financing paradigm that predominates our infrastructure finance model and, in particular, closely examine additional intermediation possibilities to “expand” the necessary conditions precedent for infrastructure finance.

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Awards

◆ Ex-Im Bank Deal of the Year Award

Mayer Brown represented International Finance Corporation, Export-Import Bank of the United States, the Inter-American Development Bank and the Clean Technology Fund, an affiliated fund of the World Bank, which together provided project financing for the 67.5 megawatt La Mata-La Ventosa wind power project near Oaxaca, Mexico.

This project is most notable for helping Wal-Mart de Mexico meet its commitment to sustainability, including having 100 percent of its units operate with renewable energy sources by 2025. As of May 2010, 348 of Wal-Mart’s self-service stores, pricing clubs and restaurants in Mexico City, Mexico, will use wind-powered energy from the La Mata-La Ventosa project

◆ Bond Buyer Deal of the Year Awards

In early November, *Bond Buyer* announced its regional Deal of the Year Awards. Mayer Brown acted as counsel in two of the award-winning transactions:

- Regional Transportation District of Denver (Denver FasTracks)
- Indianapolis Local Improvement Bond Bank

Both of these regional winners are among the six transactions that are finalists for *Bond Buyer’s* Deal of Year award. Mayer Brown is the only law firm that was involved with more than one finalist.

◆ Exploration and Development Funding Award

Mayer Brown represented lenders in the \$823 million project financing to Baja Mining Corporation for the construction and development of the Boleo copper-cobalt-zinc-manganese project in Baja California Sur, Mexico. This is one of the largest deals of this nature to come to market.

Mayer Brown is a leading global law firm with more than 1,750 lawyers worldwide, including approximately 1,000 in the Americas, 450 in Europe and 300 in Asia. We serve many of the world’s largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world’s largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

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