

# WORKINGCAPITAL

First Edition | 2021

Welcome to the inaugural edition of *Working Capital*, Mayer Brown's Projects & Infrastructure magazine. We hope you find this periodic magazine a source of relevant information about market developments and Mayer Brown's Projects & Infrastructure Industry Team.

We are excited to feature recent laterals Kirsti Massie and Eric Pogue in conversation discussing the growing offshore wind industry and the "energy transition." Mitch Holzrichter also joins us in conversation to share his views on the secondary market for US toll road investments. Go to "In Conversation" to read our full interviews with Kirsti, Eric and Mitch.

Other features of *Working Capital* include "The Knowledge Hub" highlighting recent publications by Mayer Brown attorneys, "The Deal List" featuring recent, notable transactions, "Projects & Infrastructure Team News" introducing new laterals and "Projects & Infrastructure Events" highlighting trainings and presentations provided by our Projects & Infrastructure lawyers.

We hope you enjoy this edition of *Working Capital*. Feel free to share your comments or suggest topics of interest by emailing us at [workingcapital@mayerbrown.com](mailto:workingcapital@mayerbrown.com) or reaching out to us directly.

[Joe Seliga](#)

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# Knowledge Hub



## [\*The Biden Infrastructure Plan: Where Do We Go From Here?\*](#)

Published 4/7/2021

On March 31, the Biden Administration released its much-anticipated American Jobs Plan (the “AJP”), which outlines \$2.3 trillion of proposed spending on not only traditional infrastructure programs, but also climate change, housing, drinking water, workforce development, manufacturing, telecommunications, and elderly care measures. It also includes a substantial increase in corporate taxes to pay for the proposal. The AJP sets the stage for what is expected to be a robust debate between the Biden Administration and Congress and within Congress on the details of the legislation to implement the AJP. [Read more >](#)



## [\*ESG in US Offshore Wind \(And Not for the Reason that You are Thinking\)\*](#)

Published 3/23/2021

Offshore wind (OSW) project development in the United States continues its rapid pace and, in addition to the significant “E” factors already present in such projects, several recent OSW solicitations undertaken and executive orders released during the COVID-19 pandemic have included specific “S” factors. This Legal Update provides further detail. [Read more >](#)



## [\*US – Storing CO2 And Lowering Emissions \(SCALE\) Act\*](#)

Published 3/18/2021

The bill is intended to help develop infrastructure buildout to transport CO2 from the capture site to be used as feedstock for the manufacture of other products, to oilfields where it is injected to enhance oil recovery, or to underground storage locations. CO2 capture projects are expensive and the EPA permitting process for storage facilities is lengthy. Thus, project financing and permitting are key drivers to determine the speed and scope at which global climate goals with respect to greenhouse gas reduction are achieved. The 45Q tax credit for carbon capture and sequestration incentivizes carbon capture but is not by itself economically sufficient to provide the necessary equipment and transportation infrastructure. [Read More >](#)



### [Energy Evolution](#)

Published 3/16/2021

The energy industry continues to evolve as sectors converge and as demand, supply and consumer preferences change. The global economy is shifting to lower-carbon sources of energy, coinciding with (or resulting from) a renewed focus on environmental, social and governance (ESG) issues. “Energy transition” is commonly used to describe the recent full-court press towards cleaner energy; however, energy evolution, energy progression, energy advancement and a host of other terms have all been used to describe achievement towards a net-zero carbon world. [Read more >](#)

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### [Mexico – Court Suspends Amendment to the Electricity Industry Law](#)

Published 3/11/2021

A federal district court suspends, with general effects, President López Obrador’s amendments to the Electricity Industry Law. [Read more >](#)

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### [MISO Interconnection Deposit Loophole Closed](#)

Published 3/8/2021

North American development-stage projects interconnecting with Midcontinent Independent System Operator (“MISO”) member utilities may no longer rely on funds deposited for network upgrades being returned if the project ultimately does not move forward. [Read more >](#)

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### [Waste Energy Recovery Property Eligible for Investment Tax Credit](#)

Published 3/3/2021

The second US stimulus bill, signed on December 27, 2020, (the “Relief Bill”) includes a number of measures relevant to the energy and power sectors, many of which have been the subject of considerable attention. (For example, we have written previously about the wind, solar and carbon capture features of the Relief Bill.) In addition, the Relief Bill included an amendment to Section 48 of the Internal Revenue Code (the “Code”) that expands the existing investment tax credit (“ITC”) program to include waste energy recovery property, allowing certain waste heat to power (“WHP”) projects to be eligible for ITCs. The US Department of Energy has estimated that there

is nearly 9 gigawatts of WHP potential in the United States, and WHP can provide significant potential emissions reductions to the extent it displaces electricity generated with carbon-based fuels. [Read more >](#)

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### [\*Déjà Vu All Over Again: US FERC Announces New Proceeding to Examine Electric Reliability in the Face of Climate Change\*](#)

Published 2/24/2021

On February 22, 2021, the United States Federal Energy Regulatory Commission (FERC) announced its intention to open a new proceeding to examine the threat that climate change and extreme weather events pose to electric reliability. The proceeding will examine how grid operators prepare for and respond to extreme weather events, including, but not limited to, droughts, extreme cold, wildfires, hurricanes, and prolonged heat waves. FERC also announced that the proceeding would include a technical conference with an opportunity for parties to submit comments in advance of that conference, with additional details to follow to the energy and power sectors, many of which have been the subject of considerable attention. (For example, we have written previously about the wind, solar and carbon capture features of the Relief Bill.) In addition, the Relief Bill included an amendment to Section 48 of the Internal Revenue Code (the “Code”) that expands the existing investment tax credit (“ITC”) program to include waste energy recovery property, allowing certain waste heat to power (“WHP”) projects to be eligible for ITCs. The US Department of Energy has estimated that there is nearly 9 gigawatts of WHP potential in the United States, and WHP can provide significant potential emissions reductions to the extent it displaces electricity generated with carbon-based fuels. [Read more >](#)

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### [\*Biden Signs Far-Reaching Executive Order Setting Forth Climate Change Priorities\*](#)

Published 2/8/2021

On January 27, 2021, President Biden signed Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (the “Order”). The Order sets forth the Biden administration’s policies to address climate change through both foreign and domestic policies and demonstrates the administration’s intent to make addressing climate change a top priority for nearly every department and agency of the federal government. The Legal Update at the link below provides an overview of the main policy priorities established by the Order and certain governmental bodies created to coordinate the development and implementation of these policies. [Read more >](#)

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### [Scaling Voluntary Carbon Markets: Taskforce Releases Core Carbon Principles and Roadmap](#)

Published 2/1/2021

Over 1,000 firms have made either indicative or concrete pledges to align their greenhouse gas emissions with the Paris Agreement—which means reducing emissions to zero by 2050. For many firms, achieving this aim will require the use of carbon offsets at some point. On January 27, 2021, the Taskforce on Scaling Voluntary Carbon Markets published its blueprint on creating a large-scale, transparent carbon credit trading market.

[Read more >](#)

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### [Biden Executive Order on Energy Regulation](#)

Published 1/23/2021

On January 20, 2021, US President Joseph Biden signed a series of executive orders, including one titled “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” This executive order contains a series of directives to federal agencies and departments that will significantly impact the energy sector and signals the high priority the Biden administration is placing on addressing climate change. [Read more >](#)

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### [US Energy Regulator Considers Financial Requirements for Hydropower Projects](#)

Published 1/21/2021

At its last formal meeting during the Trump administration, the US Federal Energy Regulatory Commission opened a Notice of Inquiry to determine whether to impose financial assurance requirements on hydropower licensees and, if so, what those financial assurance requirements should be.

[Read more >](#)

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### [Operational Technology Cyber Risk in the Energy Sector](#)

Published 1/20/2021

The energy sector faces significant and growing cyber threats. In particular, many businesses in the energy sector operate safety critical machinery that is increasingly connected—and subject to cyber attacks. Whether located on an oil rig, in the electric grid, at a refinery, or on a pipeline, these systems—often referred to as “Operational Technology” or “Industrial Control Systems”—sit at the backbone of countless critical processes in the energy sector. Cyber threats to these systems continue to grow, including from highly

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sophisticated nation-state actors. Potential attacks against these systems threaten to stop production, impair the integrity of safety-critical systems or even cause physical damage or personal injury. The corresponding legal risks facing the energy sector, whether from litigation or regulatory action, are equally significant and will continue to grow in the coming years. [Read more >](#)

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### [\*Restructuring Options For Oil Companies in 2021\*](#)

Published 1/18/2021

Whether dealing with failure of a major project, reacting to crises at counterparties or weighed down by oil price weakness, many companies in the oil sector will have to undertake financial restructuring in 2021. [Read more >](#)

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### [\*\\$900 Billion Stimulus Package Signed Into Law: Key Provisions\*](#)

Published 1/4/2021

December 27, 2020, President Trump signed into law the \$900 billion economic stimulus package, which Congress passed the prior week. This legislation (H.R. 133) aims to support the US economy by reauthorizing and providing additional funding for the fiscal support programs established by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). In particular, the legislation targets assistance to small businesses, unemployed individuals, health care providers, and schools. It also includes a much-debated limitation on the Federal Reserve's Section 13(3) emergency lending authority. This Legal Update provides an overview of the bill's economic assistance, financial services, and tax provisions. [Read more >](#)

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### [\*IRS Grants Beginning of Construction Relief for Offshore Renewable Projects and Renewable Projects on Federal Land\*](#)

Published 1/4/2021

On December 31, 2020, the US Treasury Department and the Internal Revenue Service (the "IRS") issued Notice 2021-05 (the "Notice"), which provides relief for offshore renewable energy projects and renewable projects constructed on federal land. Specifically, the Notice allows the Continuity Safe Harbor to be satisfied for projects constructed offshore or on federal land if they are placed into service no more than 10 calendar years after the calendar year during which construction began. This relief is expected to provide additional certainty for taxpayers developing projects offshore or on federal land, given the significant construction delays often associated with such projects. This Legal Update defines the Continuity Safe Harbor and provides further detail on the relief. [Read more >](#)

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### Blogs

The Knowledge Hub is a selection of recent legal alerts, articles and thought leadership published by our Projects & Infrastructure attorneys. For the most up-to-date news and publications, visit our [Projects & Infrastructure](#) page or any one of our firm blogs.



[Energy Forward](#) provides the latest updates and analysis on energy industry developments around the world. The Energy Forward blog covers a wide range of the energy industry, including oil and gas exploration and production; pipeline transportation; oil and gas refining, processing and marketing; LNG liquefaction, regasification and marketing. Energy Forward will also address the energy transition from fossil fuels to a sustainable energy system with renewable, thermal and alternative power generation. The topics will relate to energy policy, project development, technology innovation, risk management, finance, investment, dispute resolution and others.

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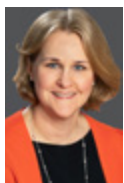


[Eye on ESG](#) is Mayer Brown's Environmental, Social and Governance (ESG) blog designed to provide practical guidance to global businesses and clients amid the important and growing impact of ESG issues on their institutions and business, as well as the latest updates on new ESG-related developments.

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[Tax Equity Times](#) is Mayer Brown's blog that addresses issues at the intersection of US tax and energy policy. Its primary focus is the US law regarding transactions to monetize the tax credits and accelerated depreciation on qualifying renewable energy projects. The Tax Equity Times also addresses certain tangential topics, such as partnership taxation, equipment leasing, the US Treasury's cash grant program and state tax incentives. Those working with tax equity investors, developers and utilities will find posts of interest to them.



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# In Conversation

Paul Astolfi speaks with project finance partners Kirsti Massie and Eric Pogue on a range of topics, including offshore wind.

*On March 1, Paul Astolfi, co-head of Mayer Brown's Projects & Infrastructure Industry Team, sat down, virtually, with Kirsti Massie and Eric Pogue to talk about their moves to Mayer Brown and their views of the market in the midst of unprecedented opportunities and challenges. Kirsti and Eric each joined Mayer Brown in 2020, with Kirsti joining in London from White & Case and Eric joining in New York from Hunton Andrews Kurth.*

**PAUL:** Thank you both for taking the time to talk today. Why don't we start with each of you briefly introducing yourselves and your practice.

**KIRSTI:** Thanks so much for inviting me to today's discussion. I am Kirsti Massie, a project finance partner based in the firm's London office. My practice focuses on power and energy projects, particularly on the commercial agreements and regulatory arrangements in Europe, the Middle East and Africa. I am fortunate to have worked for a number of years in-house in a large global energy company (now known as Engie) before returning to private practice. I also have been fortunate to have been involved in thermal generation and nuclear power projects, as well as onshore and offshore wind, solar, hydro, geothermal and biomass projects. More recently, I have undertaken work in the electric vehicle charging infrastructure space and battery and storage space—acting for sponsors, developers and government procurers, as well as lenders.

**ERIC:** Thanks Paul. I am a partner in the finance practice of the firm's New York office. I have a broad energy background, having started my career at the US Nuclear Regulatory Commission. Through the years, I have helped clients develop, buy, sell and finance almost every type of energy project—including solar, wind, hydro, biomass, fuel-cell, carbon capture, gas-fired generation,

coal and nuclear. I have experience with a variety of structures, including debt finance, structured equity, DOE loan guarantees and export-credit agency finance. In recent years, my practice has focused in large part on tax equity financings, as well as M&A deals and monetizations related to renewables projects with existing tax equity structures in place.

**PAUL:** Eric, could you say a few words about the team who accompanied you to Mayer Brown?

**ERIC:** John Tormey, who is also focused on energy transactional matters, joined the Projects & Infrastructure Team in the firm's Washington DC office. John's practice overlaps with mine in large part. In addition, John's practice includes an export credit agency finance element, as well as advising clients on complex project contract matters such as energy hedges, joint venture arrangements and EPC contracts. Associates Samantha Leavitt and Addison Perkins joined from our prior firm and associate Henry Jin joined from an in-house position he held at EDF Renewables.

**PAUL:** Kirsti, you were accompanied by Meredith Campanale—would you like to say a few words about Meredith's practice?

**KIRSTI:** It has been fantastic to have Meredith join Mayer Brown with me. Meredith's and my practice are in many



## IN CONVERSATION | Kirsti Massie and Eric Pogue on Offshore Wind and Other Renewable Matters

ways complementary in that Meredith focuses on the financing aspect of transactions whereas I focus on the commercial and regulatory arrangements. Meredith has a broad energy practice, covering both the power sector and the oil and gas sector, and she has particular experience in multi-sourced financings involving export credit agencies and development finance institutions. She has been involved in financings in Europe, the Middle East, Africa and elsewhere. Her terrific financing experience is a real asset when it comes to complex project transactions.

**KIRSTI:** The global reach and real experience of Mayer Brown is terrific—we can talk to global players because of our Asia experience...

**PAUL:** Mayer Brown has been looking to strategically grow the projects practice for some time. Kirsti, you and Eric joining the team has coincided with a quite interesting time in the market—particularly in the clean power, renewables and energy transition spaces.

**KIRSTI:** I would certainly agree, Paul. On the international side, the last few years have seen continued growth throughout EMEA—involving a wide variety of developers in the space. In addition to the traditional power and utility companies, we are seeing new entrants—for example Facebook, Google, Unilever and Nestlé. Technologies are also rapidly developing. For example, we are now seeing larger offshore wind farms, floating offshore wind platforms, battery and storage technologies, and, of course, carbon capture and storage and hydrogen are now being discussed. We are also seeing the full range of financing options involved in the space—commercial lenders, funds and private equity and also significant involvement of ECAs. And, of course, we must also mention the oil and gas majors, many of which are looking to “green” certain aspects of their business and participate in the so-called “energy transition.”

The energy policies of many governments around the world underpin the continued development of the

renewables space, but it goes beyond that—consumers and investors are also responsible for driving the change.

**ERIC:** On the domestic side, even during the pandemic, we continued to see a very high volume of transactions in the wind and solar space.

A number of factors are contributing to the US renewables market continuing to flourish into 2021. This includes some legislative assistance on the tax credit side, corporate investors’ continued interest in procuring clean power (and, in some cases, participating directly in wind and solar transactions) and, more recently, the results of the 2020 election.

I would also note that the fallout from the Texas crisis has created its own set of issues for our clients in the projects space—in traditional power, wind and even solar. In the mid- to long-term, we anticipate increased activity in Texas related to power assets being restructured, refinanced or changing ownership.

**PAUL:** Hopefully, you agree that the move to Mayer Brown has helped better position you and your clients given how active the market has been.

**KIRSTI:** Absolutely. The global reach and real experience of Mayer Brown is terrific—we can talk to global players because of our Asia experience, particularly in Taiwan and Vietnam, which both are seeing significant offshore wind activity; considerable experience in Africa, including Francophone Africa, which is so well-supported by our Paris office; and our US renewables projects and tax equity experience, which I think is unrivaled. The firm’s formidable finance reputation, including ECA experience, means we can represent lenders and borrowers alike in complex finance structures anywhere in the world. But it is not just having that knowledge; it is the willingness of Mayer Brown lawyers to work together, to share that experience, that really makes the difference.

**ERIC:** I have had the same experience with my clients, Kirsti. The transition from my prior firm was seamless in large part due to the depth of the existing finance and tax practices here at Mayer Brown. In addition to working on a number of solar and wind tax equity financings, I have been advising on a complex M&A and joint venture arrangement with the energy M&A team. And the firm’s oil and gas experience has been a great asset on a 45Q (carbon sequestration) matter I’m currently engaged in.

## IN CONVERSATION | Kirsti Massie and Eric Pogue on Offshore Wind and Other Renewable Matters

**PAUL:** Picking up on your thoughts on offshore wind, Kirsti, it is clear that our clients have had a lot of success developing offshore assets internationally. In contrast, what challenges or potential impediments do you see our clients in the US facing?

**KIRSTI:** The offshore wind space, in any jurisdiction, is not without its challenges. They are typically large capex projects with significant construction risk. They take time to develop. However, the European market now has significant experience in developing, operating and maintaining offshore wind projects, and, as a result, these experienced renewable developers (together with their associated ECAs) are keen to bring that experience and knowledge to the US market. Under the previous administration, there was less certainty regarding the support for and commitment to renewables in the US—now there appears to be a clear commitment to the space. However, challenges remain. In particular, it is worth noting that the tax equity structure is really a US animal and something that is not at all familiar to non-US developers, be they European or Asian developers. In addition, the ability of ECAs to participate in the tax equity structure is also something that requires considerable thought.

**ERIC:** A number of factors are contributing to the US renewables market continuing to flourish into 2021.

**ERIC:** To add to that, as you know, we have been speaking with a number of potential off-shore wind participants on exactly the issues that Kirsti mentioned—by way of example, we have been working on some specific structures to have foreign export credit agencies play a role even on deals with tax equity financing. These capital-intensive projects bring challenges that are not insurmountable but, that being said, require some outside-of-the-box thinking.

In addition to seeing new players in the US renewables market, I anticipate that we will see some changes to the standard onshore wind and solar partnership-flip structures to which sponsors, investors and lenders have become accustomed.

**PAUL:** In closing, what is your outlook for the rest of 2021—what do you anticipate will be keeping you and our clients busy for the rest of the year?

**KIRSTI:** I personally think there will be three main areas of focus:

- One will be offshore wind. This will be a global phenomenon, with offshore wind projects becoming larger and being developed in more challenging and deeper water environments. We are seeing large offshore wind programs in many jurisdictions—for example, Poland, Japan, Taiwan and the UK.
- Another will be energy transition—in particular, a focus on hydrogen projects and carbon capture and storage but also on the corporate PPA structures, with a focus on creating real linkages to the underlying renewable assets as opposed to a simple “green washing” approach.
- Finally, there will be increased secondary market activity. We will see portfolio consolidation within the renewables space as sponsors and developers seek to release capital to use in new developments. This will inevitably result in some M&A activity.

**ERIC:** I would also break up my response into parts. First off, I anticipate a high volume of solar and wind transactions moving forward. Continuing the busy year we had in 2020, our team has a number of large renewable projects in process—construction loans, hedges, tax equity and back-leverage transactions—as well as related M&A activity.

Second, we are seeing a significant surge in energy transition matters. This includes existing, renewable energy clients developing and financing more novel projects, such as energy storage, carbon capture and fuel-cells. It also includes a number of clients that have not historically been as active in the green space, now looking at a wide range of opportunities. By way of example, this latter category includes private equity clients focusing on ESG investments and traditional oil and gas clients looking to develop renewables and considering expanding into the carbon capture and hydrogen spaces.

# The Deal List

The Deal List is a limited selection of recent notable transactions undertaken by members of our Projects & Infrastructure Industry Team. Please visit our [Projects & Infrastructure](#) page for a more extensive list of our experience, including other recent transactions.



Acquisition of interest in Puerto Rico PR-22/PR-5 Toll Road Concession and sale of partial interest to Axium Infrastructure.

**March 2020**

## Brookfield Infrastructure

Pending sale of its district energy business, Enwave, one of the largest district energy operators in North America with operations in 11 cities, in two transactions to separate buyers.

**February 2021**



New investment facilities in Invenergy Renewables, the largest private developer, owner and operator of wind and solar projects in North America.

**December 2020**



Acquisition of equity interests in the Elizabeth River Crossings tunnel holding company that operates the Downtown and Midtown tunnels in Hampton Roads, Virginia, known as the Elizabeth River Crossings P3 project.

**December 2020**



Long-term concession arrangement with Enwave Energy to operate the University Steam Station, resulting in the delivery of reliable and sustainable energy to current and future customers, including the university's campus facilities.

**November 2020**

## ARES

Senior secured corporate level loan to Stem, Inc. including warrants.

**May 2020**



### **Project Thunder**

Acting for lenders led by Investec Bank Plc on the term loan, revolver and letter of credit facilities for 1200 MW gas fired CCGT, 500 MW gas fired plant and 140 MW diesel oil-fired peaker plant in the UK.

**February 2021**



### **Mountain Breeze, Lone Tree and Mendota Hills Wind Farms**

Construction loan and/or tax equity financing for several different projects: the Mountain Breeze Wind Farm in Colorado, the Lone Tree Wind Farm in Illinois and the Mendota Hills Wind Farm in Illinois.

**2019-2020**



Refinancing of an existing syndicated revolving facility and extension of a new syndicated senior secured bridge term facility with Endeavour Gold Corporation in connection with its acquisition of Teranga Gold Corporation.

**February 2021**



### **Projects & Energy Deal of the Year 2020, China Law & Practice Awards**

Project financings to the subsidiaries of Goldwind for the development of five wind power projects with an aggregate 374.65 MW in Argentina.



### **El Campo Wind**

Construction loan, tax equity financing and back-leverage financing as well as sale of a partial interest in and JV arrangements relating to El Campo Wind Farm in Texas.

**December 2020**



### **Prospero and Little Bear**

Sale of a partial ownership interest in and JV arrangements relating to the Prospero Solar project in Texas and the Little Bear Solar project in California.

**March 2020**

# P&I Team News

We are excited to introduce some of our recent additions to our Projects & Infrastructure Industry Team. These new partners augment the depth our Projects & Infrastructure Industry Team brings across regions, asset classes and transaction structures.



[Greg M. Matlock](#)  
Partner, Houston  
Joined January 2021



[Kirsti Massie](#)  
Partner, London  
Joined February 2020



[Larry Murphy](#)  
Partner, Houston  
Joined December 2020



[Mark C. Williams](#)  
Partner, Washington DC  
Joined February 2020



[Eric R. Pogue](#)  
Partner, New York  
Joined November 2020



[Philip K. Lau](#)  
Partner, Houston  
Joined January 2020



[John R. R. Tormey](#)  
Partner, Washington DC  
Joined November 2020



[Vera De Brito de Gyarfas](#)  
Partner, Houston  
Joined December 2019



[Carl von Merz](#)  
Partner, Houston  
Joined August 2020



[Frederick J. Lark](#)  
Partner, New York  
Joined March 2019



[Dale D. Smith](#)  
Partner, Houston  
Joined March 2020



[Elena Rubinov](#)  
Partner, New York  
Joined March 2019



[Meredith Campanale](#)  
Partner, London  
Joined February 2020



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# In Conversation

Joe Seliga speaks with infrastructure partner Mitch Holzrichter on the secondary market for US toll road investments and future deal flow.

*Joe Seliga, co-head of Mayer Brown's Projects & Infrastructure Industry Team, sat down, virtually, with Mitch Holzrichter to talk about his views on the secondary market for US toll road investments. Mitch is a partner in Mayer Brown's Projects & Infrastructure Industry Team, where he represents buyers and sellers of infrastructure concessions and equity investments, as well as sponsors and granters in greenfield projects.*

**JOE:** Mitch, thanks for joining me. 2020 was an active year in the secondary market for United States toll concessions. Can you tell us about some of the transactions in this space?

**MITCH:** Yes, it was an active year for buying and selling existing US toll concessions, but the appetite for infrastructure still seems to exceed available investment opportunities. We advised Ullico in its acquisition equity interests in the PR-22 and PR-5 toll roads in Puerto Rico, which has 40 years remaining on the concession. It was Ullico's first investment in the toll road sector—demonstrating the growing appetite for long-term transportation investments. We also advised Abertis Infraestructuras and John Hancock Life Insurance in their acquisition of a toll road and tunnel concession in Virginia, known as the Elizabeth River Crossings, which has approximately 50 years remaining. In each case, we saw robust valuations that reflect the success of the underlying projects and the strong, competitive interest in long-term infrastructure investments.

**JOE:** That is certainly a great deal of activity, particularly in the midst of a global pandemic. It seems counterintuitive that these transactions moved forward during a pandemic. What drove these transactions forward?

**MITCH:** Infrastructure is a long-term asset, and investors approach it with that lens. The pandemic's impact on

infrastructure revenues also proved more muted and short-lived than we had feared. For example, while the Elizabeth River Crossings experienced a modest impact on traffic and toll revenues, it was not severe and rebounded quickly. The asset has proved to be pretty resilient.

Infrastructure funds have amassed significant war chests over the past several years and need to put that capital to work. The supply of opportunities has not kept up with this growing demand.

We also are seeing a number of successful greenfield concessions mature and come to market. Those assets were the subject of concession transactions a decade ago, built and successfully operated for a few years. Now some of the original investors are looking to transfer their interests. There is a natural shift in investor appetite after a greenfield project successfully graduates beyond construction risk and begins operating. We have a generation of assets now reaching that stage of life.

**JOE:** That explains the impetus on the sell side of these transactions. What is the level of interest on the buy side among leading global infrastructure investors?

**MITCH:** Global investors are keenly interested in US infrastructure assets. It's funny that we think of the US as a leading capitalist economy—but when it comes to infrastructure, the rest of the world, led by Europe,

Canada and Australia, is so much farther ahead in private infrastructure investment. For a long while, non-US companies have taken the lead in developing new infrastructure facilities.

Almost every buyer we've represented in the past several years, whether on a secondary market transaction or an initial concession opportunity, has been led or co-led by a foreign investor or developer. This is an advantage of Mayer Brown's global platform, as these same investors are looking for opportunities around the world.

**MITCH:** Infrastructure funds have amassed significant war chests over the past several years and need to put that capital to work. The supply of opportunities has not kept up with this growing demand.

**JOE:** You've provided a good overview of the secondary market related to toll road concessions. How do you see the pipeline for new greenfield and brownfield toll road transactions in the near future?

**MITCH:** There have been many optimistic predictions about the US toll road market based on declining traditional funding sources (like gas taxes, especially with the move to more fuel-efficient vehicles), deteriorating roads in need of replacement or expansion, and state and local governments utilizing toll concessions as a source of infrastructure funding. Those premises are all still true—maybe more so today than ever. Yet the supply of these opportunities still has not met those expectations.

I attribute that to growing pains and politics. Investors should keep in mind that each state has its own laws and approaches. For most states, the first transaction is difficult. But once a jurisdiction clears that hurdle, it often returns to the P3 model for future projects. The list of states that have embraced P3s continues to grow. For example, Maryland recently announced its selection of the consortium of Transurban and Macquarie in the development of a multibillion-dollar tolled express lanes

project in Maryland, near Washington DC, which will be the first highway P3 in Maryland and is the largest in the nation currently.

The brownfield market is more complex. The growth I've seen lately is in the secondary market, where former greenfield projects are re-traded. The new brownfield market, where a government undertakes a concession of existing assets, remains politically fraught. The central thesis remains true: government-owned infrastructure has trapped equity, governments need that equity, and private-sector investors and operators have proven track records operating and assuming risks related to these assets.

**JOE:** Despite the challenges you point out, the case for concessions, as you state, remains strong. With the talk of an infrastructure bill possibly finally making it through Congress, do you believe that there are policies that could help bring more transactions to market?

**MITCH:** I've heard that one before! Infrastructure might be the only remaining bipartisan issue in Washington. Everyone wants to build projects, but Congress remains divided on how to fund these projects. Fortunately, infrastructure investors offer a unique solution that is less dependent on federal government subsidies.

One immediate need is to increase the authorization for tax-exempt private activity bonds (PABs). Congress long ago authorized \$15 billion in PABs for projects supported by the US Department of Transportation. That authorization is essentially depleted. Authorizing additional PABs, expanding the TIFIA (Transportation Infrastructure Finance and Innovation Act) direct loan program and permitting a larger percentage of project costs to be financed through the TIFIA program would help reduce the cost of capital.

For brownfield transactions, we should enable state and local governments to unlock their asset values. That means removing restrictions on maintaining outstanding tax-exempt debt and issuing new tax-exempt debt in connection with existing asset concessions. The federal government could also show its support by offering additional or matching funding to state and local governments that enter into concessions as a means of generating revenue that can be reinvested in other infrastructure.

# Projects & Infrastructure Events

Mayer Brown's Projects & Infrastructure team will be presenting at the upcoming events. To learn more about the event or our involvement, please contact us at [workingcapital@mayerbrown.com](mailto:workingcapital@mayerbrown.com).

MONTH	DATE	EVENT	FORMAT/ LOCATION
April	28	US Chemical Forum 2021	Webinar
May	12-13	<a href="#"><u>Financing America's Infrastructure 2021</u></a>	Virtual
June	9	Infrastructure Investor Forum: Americas	Virtual
September		<a href="#"><u>Financing America's Infrastructure 2021</u></a>	Hybrid
October		Latin America 2021: Energy & Infrastructure Finance	Hybrid
November	16-18	<a href="#"><u>US Power &amp; Renewable Finance</u></a>	Austin



# Accolades

Mayer Brown's Projects & Infrastructure Industry Team thanks our clients for trusting us with their most important transactions. Our Projects & Infrastructure Industry Team leverages our collective experience across our practice groups and global platform to deliver the highest quality legal services and commercial advice for projects and infrastructure matters across asset classes and transaction structures.



**North America Roads Deal of the Year**  
Metropistas  
Deal of the Year 2020



**2020 Infrastructure Financing of the Year**  
Caribbean:  
Trans-Jamaican Highway  
LatinFinance 2020



**TAG Pipeline (Brazil)**  
Latin America M&A  
Deal of the Year 2020

**CRC Transmission Line (Chile)**  
Latin America Transmission  
Deal of the Year 2020



**Deal of the Year**  
ProjectsLāwa'i 28MW solar power plant / 100MW energy storage facility  
IFLR1000, 2020

**Project Development**  
Power, Tier 1



**Law360 Firm of the Year, 2016-2020**

For the fifth consecutive year, Mayer Brown has been named "Firm of the Year" by Law360. No other law firm has earned this recognition for five straight years.



**Practice Group of the Year**  
Project Finance, 2017-2020

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