

PROJECT FINANCE AND DEVELOPMENT

Practice

PRIMARY CONTACTS

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Our Project Finance and Development Practice Group has successfully represented clients in hundreds of projects throughout the United States, Asia, the Middle East, Africa, Europe, Russia/CIS, Latin America and the Caribbean. Our experience spans the upswings and downswings in the economic cycles and legal regimes over the last four decades, and a wide array of technologies and industries. Our practice reflects the core values of our firm – to provide cutting-edge advice and representation to our clients based upon accumulated practical experience.

We believe in representing clients, not merely transactions. Consistent with this perspective, our Project Finance and Development Practice Group includes experience across all major disciplines that affect a client's investment in a project throughout the project's life – from early-stage development and regulatory issues through financing, mergers, acquisitions, restructurings and public offerings. Our recognition includes recognition as a **National Tier 1** (the highest available rating) Project Finance Law practice in *Best Law Firms 2018* by U.S. News Media Group and Best Lawyers®.

Areas of Focus

Project Development

We provide advice and assistance on: initial project planning and structuring (including tax planning); site acquisition; project bid proposals; structuring and documentation of special purpose project companies; drafting and negotiation of key project contracts (such as concession, off-take, supply, operating and maintenance, and engineering, procurement and construction agreements); advice on labor and employment issues; and compliance with rules and regulations of local, state and national energy, utility and environmental regulatory authorities.

Project Finance

Our work includes representation of lenders, borrowers, risk insurers, investors, sponsors and contract parties in projects utilizing a broad spectrum of financing arrangements, including commercial bank and institutional lender construction and term loan facilities; so-called "term loan B" financings, letter of credit facilities; mezzanine and high-yield financings; capital markets issuances of debt and equity; securitization and structured finance techniques; and utilization of products and services from multilateral institutions, export credit agencies and national/regional development and aid agencies.

Public-Private Partnerships (PPP)

Increasingly, PPP practice has developed as a discrete subset of the Project Finance and Development practice, requiring a different – though complementary – set of project skills.

Our PPP experience includes toll roads, specialty hospitals, municipal light rail systems, airports and airport terminals, port facilities and water systems. We advise not only investors, lenders and international agencies, but also (in select circumstances) host governments.

Mergers, Acquisitions and Privatizations

We represent independent power producers, funds, and other strategic and financial investors in bids for, and acquisitions of, power plants and related energy infrastructure in the U.S. and abroad. We also actively represent acquirors and sellers in other projects and infrastructure industries, including natural resources, telecommunications, transportation, broadband, sports facilities, and water, among others. Through our attorneys in Mexico, we have played a key role in the privatization of natural gas transportation, distribution and storage systems, railroads, and shipping ports.

Project Restructuring

We represent governments, debtors, sponsors, operators, lenders and acquirors in connection with the restructuring of distressed projects – whether the source of the problem stems from difficulties with contracting parties or other changes in economic, operating or financing assumptions. Our work involves all aspects of projects in difficulty, including enforcement or restructuring of key operating agreements (e.g., supply and off-take contracts) and financing documentation. Our Project Finance and Development Practice Group works hand-in-hand with our firm’s nationally renowned Bankruptcy and Business Restructuring Practice Group.

Our Approach

The experience of our Project Finance and Development Practice Group attorneys reflects our firm’s core commitment to practice breadth, practice depth and service excellence:

Pursuing a Project “Vision”

Successful implementation of a project can be demanding, since it requires that clients, attorneys and advisors have a vision early on of how each business and legal decision will affect the outcome of the project. Thus, a “wrong” decision regarding matters such as siting risks, interconnection or supply sources, permitting schedules or capital structuring can doom even the most promising project to endless and costly re-negotiations; while a “right” decision can expedite permitting, financing and completion while maximizing project profitability and growth opportunities. From a lender’s or investor’s perspective, a “wrong” decision can result in an incorrectly priced or unmarketable loan asset, or an unwieldy array of rights and remedies, while a “right” decision can facilitate healthy syndication and a dynamic framework for consensual resolution of unanticipated difficulties. We are committed to work with our clients to develop a shared vision that will guide each project – and each client – to the most favorable possible outcome. To accomplish this, we rely not only upon our extensive project-specific experience, but also on our wide-ranging full-service legal practice across all major legal disciplines and all major industries.

Dynamic Balance of Project Contracts

However complicated it may be to draft and negotiate necessary project contracts, the greatest challenge is to maintain a dynamic balance within and among those contracts. Without such a balance, the most well-considered fixed-term supply contract can become nothing more than a lawsuit or bankruptcy; and the most carefully constructed meshing of related contracts can become a collision of breaches and defaults. We believe that clients are best served not merely by craftsmanship in drafting and tenacity in

negotiation of contracts, but even more importantly by our proven ability to develop an equilibrium among different project contracts that reflects both legal and practical issues that may arise in the course of a project's life.

Perspective

Many other firms believe that the best result is achieved for their clients through increased practice specialization. While we share a belief in the importance of building experience depth, we believe that an attorney's value to his or her client also requires experience breadth. All too often, the client that suffers the most is the one that reflexively follows the precedent of a prior transaction, when the better solution is to look to the experiences of other industries or other products. Attorneys in our Project Finance and Development Practice Group have both depth and breadth of experience across national boundaries, cultures, industries and investors. The benefit to our clients is getting the right advice – not merely the advice that has been followed in the past.

Pioneering

Our clients look to us for our thorough knowledge of market practices and trends as they currently exist and where they are leading. Many of our projects have been first-of-a-kind in terms of contract techniques, challenging legal regimes, novel intercreditor arrangements and new technologies.

Teamwork-Oriented Interdisciplinary Approach

Our attorneys have an interdisciplinary focus and routinely draw on the considerable experience in the firm's other areas of practice, such as energy/power regulation, tax, institutional lending, capital markets, leasing, real estate, environmental, regulatory, mergers and acquisitions, technology, reorganization, labor and ERISA, and international trade. The firm's commitment to teamwork ensures that the most relevant experience – no matter how specialized – is always available to assist our clients.

Efficient Staffing

It is an illusion in the legal marketplace that large teams produce the quickest and best results; or that small teams produce the least expensive results. In reality, the challenge of providing timely, cost-effective, quality service requires that attorneys staff each transaction based upon a sophisticated appraisal of the client's desires and the transaction's needs. Our commitment to teamwork, our commitment to depth and breadth of experience, and our commitment to service excellence enable us to work with our clients to implement effective staffing strategies for each transaction.

Hands-On Approach

Integrating all facets of a complex project can be challenging – particularly when multiple jurisdictions and specialized disciplines are necessary. We do not draw lines between our work and the responsibility of others involved in the same transaction. Instead, we open channels of communication to ensure that each person's contribution is heard and incorporated into the overall product. We have transactional experience in both common law and civil law jurisdictions and have traditionally assumed responsibility for coordinating and supervising the work of local counsel in foreign jurisdictions. And our familiarity with the industries we service enables us to communicate and coordinate directly with specialized industry advisors who may be retained. Many of the attorneys in our group are bicultural and bilingual (and some are multicultural and multilingual), capable of conducting negotiations in a variety of foreign languages and working effectively in a variety of cultures.

Areas of Experience

Industry Sectors

- **Power:** Power transmission projects, power generation projects based on fossil fuels (coal, oil and gas), renewable energy, and nuclear power and fuel trusts.
- **Renewables:** Power (including geothermal, wind, solar, hydro and biomass), bio-fuels (ethanol, and both cellulosic and algae-based advanced fuels), re-refined fuels and lubricants and efficiency-based projects, in addition to ongoing consultation with emerging technology companies.
- **Energy:** Energy projects involving exploration, development, transportation (including pipelines), refinement, and storage of natural fuels (including oil, natural gas, LPG, LNG, coal, waste coal and petroleum coke) and synthetic fuels (including ethanol, cellulosic bio-fuels and algae-based bio-fuels).
- **Natural Resources:** Mining and natural resource projects involving the development, extraction, transportation and processing of coal, alumina, timber and precious metals, among others.
- **Communications:** Telecommunications and technology projects, including wireless and wireline telephony, media and content providers, satellite-based communications networks, broadband networks, data services operations and semiconductor manufacturing.
- **PPP and Infrastructure:** Infrastructure projects, including toll roads, municipal light rail, airports and airport terminals, port facilities, sports arenas, hospitals, hotels and other tourism facilities, and water and wastewater treatment facilities.
- **Industry:** Industrial applications, including specialty chemicals, hydrocarbon processing (petrochemicals and synthetic lubricants), pharmaceuticals, agriculture and food processing, aviation and aerospace, paper-processing, industrial simulators and marine terminal and storage facilities.

Regulatory

We represent electric, natural gas, and oil industry clients in diverse regulatory matters before the Federal Energy Regulatory Commission (FERC), the Securities and Exchange Commission (as administrator of the Public Utility Holding Company Act), the Texas Public Utilities Commission and more than 10 other state public utility commissions around the country.

International

We have successfully represented clients in projects transactions in more than 85 different countries throughout the world, including Asia, the Middle East, Africa, Europe, Russia/CIS, Latin America and the Caribbean. Through our Mexico office and our highly-integrated network or relationship firms throughout Latin America, we can provide sophisticated international and local-law advice; in other jurisdictions outside of the Americas we have regularly worked with leading law firms throughout the world.

Government and International Agencies

We have significant experience representing and working with official agencies active in project finance and emerging market investment, such as the:

- U.S. Department of Energy,
- U.S. Department of Agriculture,
- U.S. Export-Import Bank,

- Overseas Private Investment Corporation,
- International Finance Corporation,
- Inter-American Development Bank,
- Andean Development Corporation,
- European Bank for Reconstruction and Development,
- Japan Bank for International Cooperation,
- UK Export Credits Guarantee Department,
- Export Development Corporation of Canada,
- French COFACE and
- German KfW and Hermes.

We are also experienced at mitigating political, currency conversion, and other risks associated with international investment through both public sector and private sector insurers.