

***Developing and
Financing a
Renewable
Energy Project
in Central
America***

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Overview

- Market Opportunities
- What Does It Take to Succeed?
- Securing Funding for Projects
- Obstacles to Obtaining Financing
- Potential Solutions to Financing Obstacles
- Project Risks
- Renewable Energy Project Agreements

- Brazil/Mexico/Central America are main markets for wind in Latin America

- Latin American Market Drivers:
 - Carbon Emission Reduction Credits as an additional source of revenue

 - Developers and lenders looking for higher profit margins (competition in US is fierce and margins are being reduced)

 - Need to diversify existing energy generation pool

 - Local Latin American energy markets looking to the success of wind power in the US and Europe

- Central American Market Characteristics:
 - Diesel, Fuel Oil and Hydro Dominated Markets
 - smaller markets allow for inclusion of wind projects
 - Costa Rica has been market leader for renewables

- Gaining Market Presence
 - Securing the first project in a market
 - Establishing the model for a particular market
 - Turbine manufacturers want market bragging rights

- Selling Points for Energy Off-takers
 - Corporate Image
 - Emission reduction credits as an additional revenue source
 - Ability to stage-in contracted capacity

■ Project Team

■ Legal Advisors

- Past host country deal experience is **CRUCIAL** for success
- Need to know the process already rather than “learn as you go”
- Experience fast tracks development and financing timelines
- Require that the “Face Team” be the “Deal Team”
- Local counsel selection is KEY
- **LANGUAGE SKILLS ARE KEY (Latin American markets)**

■ Financial Team

- Utilize relationship lenders
- Financial advisor / Lender combination
- Prepackage requirements as much as possible

■ Keys to Success:

- Teamwork
- Patience
- Creativity

■ Available Funding Sources

- Equity
 - Consortium Members
 - Private Investment Funds
- Debt
 - Commercial Banks
- Government Sources
 - Export/Import Credit Agencies
 - Bilateral/Multilateral Development Agencies

■ Select financing sources familiar with Issues

- Issues are extremely similar among Projects
- Leverage the experience already gained by market participants
- Hold a beauty contest (interview candidates regarding their approach to specific issues)

- Lender pool (partial list)
 - Royal Bank of Trinidad and Tobago
 - Fortis Bank
 - Standard Chartered Bank
 - Mizuho Corporate Bank
 - US Export-Import Bank
 - CABEI
 - Japan Bank for International Cooperation (JBIC)

- Local Market Volatility
- Concerns over Devaluation
- Legal Regulatory Framework
- Incorporating Wind/Solar Energy in Existing Energy Sector Structures
 - Intermittent Nature of Wind/Solar Energy
 - Replacement Energy Requirements
 - Wheeling Charges

- Seek International Consultants Early in the Process
 - Structure Projects with the International Lending Market in mind
 - Address Lenders' Concerns Early
 - Retain Attorneys Specializing in Project Finance (region specific)
 - Retain Potential Lenders as Financial Advisors

- Seek International Partners
 - Gains project access to more lending sources (JBIC, US Eximbank, DEG)

- Revenue Stream
 - Payment Risk
 - Escrow Accounts
 - Lockbox Accounts
 - Trust Arrangements
 - Creditworthiness of Customers
 - Potential Substitute Customers

- Technology
 - Market Acceptance (Proven Track Record)
- Completion
 - Experience of EPC Contractor
 - Provide Proper Incentives for EPC Contractor
- Management
- Force Majeure
 - Crucial to Specifically List Covered Events
 - Relief Period should cover Effects of Event (rather than “day-for-day” extensions)
- Economic Conditions
 - Changed Economic Conditions (Unexpected / Drastic)
 - Price Reopeners
 - Inflation Considerations

- Political Stability (Example: Venezuela)
- Environmental
 - Evolving Environmental Consciousness of Region
- Construction Issues:
 - Turbine Ratings (Latin America has extremely high wind areas)
 - Construction Windows
 - Availability of Construction Equipment
 - Sourcing of equipment (access to ECAs)
 - Turbine Supply Agreements / BoP Contracts
- Land Rights are CRITICAL
 - Chain of Title (due diligence is key)

- Power Purchase Agreements (PPAs) / Energy Sales Agreements (ESAs)
- Engineering, Procurement and Construction Contracts (EPC Contracts)
 - Turbine Supply Agreements
 - Balance of Plant Contracts (BoP Contracts)
- Operation and Maintenance Agreements
- Warranty Agreements

- Power Purchase Agreements (PPAs) / Energy Sales Agreements (ESAs)
 - Ensure Creditworthiness of Buyer
 - Clearly define what is being purchased (type of energy being purchased (energy or renewable energy), RECs)
 - Clearly define Energy payments and ownership of Renewable Energy Credits (RECs)
 - Point of Delivery is Crucial (transmission risk and wheeling charges)
 - Negotiate with Lenders in mind
 - Default Provisions
 - Security Provisions
 - Lender Rights
 - Liquidated Damages

- Engineering, Procurement and Construction Contracts (EPC Contracts)
 - Bifurcated Contracts (Turbine Supply Agreements and BoP Contracts) require a careful allocation of responsibilities
 - Calculation of Liquidated Damages is Crucial (compensation for lost energy sales, lost RECs and coverage for debt service)
 - No “wrap” for project
 - Well defined EPC Contracts help avoid Change Orders and help preserve Project Economics
 - Given current “turbine seller’s market”, project developers are signing up to tougher terms

■ Turbine Supply Agreements

- Payment Structures
 - Notice to Proceed Payment / Up-front Payment
 - Payment at Turbine Delivery
 - Final Completion Payment (after testing)
- Retainage amount is key (10-15% of contract price)
- Trend in Market (given recent scarcity of turbines) is to increase Up-front Payment – *NOW: Market is changing (deals are dying and turbines are more available)*
- Delivery point is crucial
- Provisions to assign contract and re-assign turbines to another project (is necessary)

- Operation and Maintenance Agreement
 - Experience of Operator
 - Term
 - Budgets
 - Compensation – Cost vs. Incentive
 - Scope of Work
 - Staffing
 - Performance Standards
 - Authority of Operator
 - Termination Provisions

- Warranty Agreements
 - Term (typically 2-5 years)
 - Remedies (repair, replacement, buy-down)
 - Exclusions from coverage
 - Owner's Actions
 - Normal "wear and tear"
 - Lender's comfort level depends on manufacturer's experience and **BALANCE SHEET**

- Vendor Service Agreements
 - Tie-in with Turbine Warranties
 - Secures better terms



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Dino T. Barajas is a partner in the Corporate Practice Group of Morgan, Lewis & Bockius LLP. Resident in the Firm's New York and Los Angeles offices, Mr. Barajas has extensive experience representing lenders, investors, and developers in a wide range of domestic and international project financings in the energy, power, infrastructure and commercial sectors, as well as traditional banking, structured finance, mergers and acquisitions, corporate finance, asset finance, joint ventures and venture capital. His clients include commercial lenders, institutional investors, investment funds, project sponsors and public and private companies. Mr. Barajas has worked on transactions in Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guam, Guatemala, Honduras, Mexico, Nicaragua, Peru, Trinidad & Tobago, the United States, Yemen and elsewhere.

Mr. Barajas was recognized by *California Lawyer Magazine* as "**Attorney of the Year (Energy)**" in 2004. The Xacbal power project in Guatemala, for which Mr. Barajas was counsel to the sponsor, was recognized by *Latin Finance Magazine* as "**Latin American Energy/Power Deal of the Year 2007**". The Rio General power project in Costa Rica, for which Mr. Barajas was counsel to the sponsor, was recognized by *The Bank Magazine* and *The Financial Times Group* as "**Deal of the Year (Costa Rica) 2007**". Additionally, *Project Finance Magazine* awarded the Tuxpan V Project and the Altamira II Project in Mexico, transactions for which Mr. Barajas was lead attorney, the "**Latin American Deal of the Year (Power) 2004**" and the "**Latin American Deal of the Year (Power) 2002**", respectively. The Choloma III Project in Honduras, for which Mr. Barajas was lead attorney, was first runner-up for the "**Latin American Deal of the Year (Power) 2004**". Mr. Barajas is recognized (one of only three California lawyers) in *The International Who's Who of Project Finance Lawyers, 2005 (3rd Edition)* and 2007 (4th Edition) for his accomplishments and is recognized by *Chambers & Partners USA* as a "**Leader in the Field of Project Finance**" in 2006, 2007 and 2008. Mr. Barajas is a member of the State Bar of California. He received his J.D. from Harvard Law School and holds a Bachelor of Arts degree summa cum laude in Communication Studies and the Business Emphasis Program from the University of California, Los Angeles. Mr. Barajas is fluent in Spanish.