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Following our Investing in Green Energy: Spotlight on France event on Thursday 20 April, please find an overview of what was covered below. For reference, here are the speaker details if you would like to discuss the topic further.

With thanks to Ellen Mackie, Trainee, for preparing this overview.

Market trends and key regulatory developments

Laurent Battoue

- Under the French Energy Code, the aim is to increase the share of renewable energy consumption to 33% in 2030 (from 23% in 2020)
- This is an ambitious target, particularly given that gross final energy consumption from renewable energy in 2021 fell to 19.3%
- PV is one of the key technologies which it is hoped will contribute to renewable electricity production in France – by the end of 2023, the target is for 20GW of power capacity connected to the grid (up from 15.8GW in September 2022)
    - Developments may be delayed, due to an error in the last tender specifications issued by the French government, which resulted in a number of applications for funding being rejected – Tender to be re-launched in June 2023
- Onshore wind power is another key area of development, with a target of 24.1GW of capacity by the end of 2023
    - Development in this area faced the same issue as above – a number of applications were rejected due to the same error with the tender specifications – Tender to be re-launched in May 2023
- Offshore wind is a key area for development. Although there is only one offshore wind project in operation so far, there is a significant pipeline of projects
    - The French EEZ is the second largest in the world (when overseas territories are included) meaning there is huge potential for the development of offshore wind

- In addition to the more traditional renewable energy technologies mentioned above, the energy transition is also being driven by other more innovative projects:
    - Corporate PPAs;
    - Electricity storage solutions, particularly linked to ground-based solar projects;
    - E-mobility (deployment of public charging points for electric vehicles);
    - Hydrogen; and
    - Agrivoltaism.

- Key elements to the French Regulatory Framework – law of 10 March 2023 on the acceleration of renewable energy production has introduced a number of benchmarks which seek to reduce bureaucracy around the development of renewable projects and reduce the time it takes for projects to be approved

- Under the current regulatory framework, there are unique challenges for solar PV, onshore and offshore wind, e-mobility projects, storage projects and hydrogen

- Looking forward, a draft law (the Green Energy Bill) is being prepared which has five broad themes (1) changing the tax system to encourage growth in the green industry (2) opening factories, rehabilitating brownfield sites and making land available (3) producing, ordering and buying in France (4) financing French green industry and (5) training for green industry jobs

- Separately, the Bill to Revive Nuclear Power is also under consideration by the Joint Committee, with the aim of accelerating the construction of new reactors and extending the operation of existing nuclear facilities

Trends in debt financings of renewable energy projects and new business models

Laurence Martinez Bellet

- Mature markets such as solar and onshore wind are experiencing an evolution towards HoldCo portfolio financing and/or refinancing
- This type of financing benefits from reduced costs and the mitigation of events of default with the "portfolio effect"
- The challenge with this method of financing is that the senior lenders are far from the SPV – the primary level at which security is taken
    - Lenders want to ensure they are able to benefit from security at that level, which is being achieved by a Dailly assignment of the intra-group loan receivables between the HoldCo and the SPV.
    - Another form of comfort is to allow the Security Agent to request the reimbursement of the intra-group loans by the SPV to the HoldCo.

- Warehouse financing for greenfield projects – also structured through a HoldCo portfolio financing, but allows for new SPVs which hold new projects to be brought into the HoldCo structure throughout the senior facility lifecycle
    - Achieved through the use of a Common Terms Financing Agreement and simple separate facilities agreements that enables new SPVs to enter the perimeter after financial close of the initial projects financing.
    - Committed vs uncommitted – depends on the status of project; the purpose of having an uncommitted facility provided in the financing documentation is to ensure that the new projects/SPVs under such uncommitted facility are, as much as possible, subject to the same pre-agreed terms and conditions as the committed facilities, including pre-agreed pricing conditions from the lenders for a certain period of time.

- Merchant and CPPA debt financings / revenue structuring
    - Negative tail: sale on the market after CfD; period taken into consideration by the lenders and included in the financing. Lenders try to mitigate revenue shortfalls by using reserve accounts, cash sweeps and mandatory repayments mechanisms and have a specific attention on the risk of offtaker counterparty.
    - Merchant nose period: option to sell on the market before CfD for certain projects, which, in a lenders' perspective, has additional risks compared to the tail period taking into account that the revenues during this period shall cover the beginning of the amortisation period of the senior facility. Mitigation by way of additional security (equity support, guarantees and specific EODs)
    - For projects which are fully on the market, we see in addition to the above mechanisms, forward looking ratios

Corporate structures – Joint Ventures in renewable energy projects and new business models

Thomas Rabain

Considerations on the standard corporate structure

- Acquisitions in renewable energy projects see the use of W&I policy increasingly frequently, highlighting the need on both buyer and seller side for robust DD reports
    - Time spent producing these reports at the beginning of a transaction is gained back further down the line because it reduces the negotiation time for representations and warranties

- FDI clearance – Several changes in the law in 2019 and 2020 reinforced the regulation, including a requirement that when you invest from outside the EU into France the new threshold is 25% of voting rights (for a non-listed company) for the regulation to be triggered
  - Increased monitoring by French Ministry of Economy regarding foreign investment – in particular when a new technology is involved
  - By law, the Ministry has 30 Business Days to review applications (but WFW Paris find that renewable projects are normally approved)
- Trend towards transactions being the acquisition of a platform, not just a portfolio of projects

Trend towards the setting up by a developer and a financial investor of JVs supporting the equity financing of a programme or pipeline of RE projects in accordance with the following arrangements:

- Once ready to build, projects will be presented to the JV. The JV will purchase the SPV holding the project to the extent it meets pre-agreed eligibility criteria.
- The terms and conditions of the JV will be governed by the shareholders agreement, the key transactional document providing in particular for the equity funding rules and the procedure to integrate the projects of the programme
- A key structuring point is whether the SPV contains one project or a package of small projects, which will need to reach a minimum aggregate capacity for financing purposes
- JVs may also be used in the context of offshore wind projects, if a consortium is awarded under the project tender
  - Governance clauses become particularly important to ensure the project team are delegated the correct powers

Considerations on the structuring of innovative projects and new business models

- Ad hoc structures need to be agreed at the very beginning of any new project – will necessarily involve corporate, project, finance and tax aspects to be addressed together. For this purpose, a term sheet or investment agreement needs to be agreed.
- Duration of equity funding is very important – may need different types of investors (to fund at the beginning, when the project is not yet de-risked (cash-out model), and later infra-funds that are able to fund for a longer time (yield/cash-in model)
  - There will often be an asymmetrical equity funding. The use of preference shares can help reconcile the imbalance between the equity shareholding and the agreed revenues sharing ratio. Preference shares can also be used as a warranty tool.
  - We see funding at different levels – for example subscription at the sponsor or HoldCo level and a bond financing at the AssetCo level
- WFW Paris are seeing an increase in the number of EV-charging projects being structured.
  - These projects face the challenge of 'ownership dissociation', created because the AssetCo owns the charging station and the OpCo operates them through a lease agreement with the site owners (with which the AssetCo has no relation)
  - This dissociation should be addressed by ensuring the lease contains a clause which protects the AssetCo, notwithstanding that they are not a party to the lease
- Hydrogen projects are often locally driven with local public collectives becoming a shareholder of a JV. Specific financing rules will apply to them (e.g., limited duration for their shareholder loan). They also involve a ramp-up period.

- Key takeaway for the structuring of innovative projects: it is important to have a framework agreement at the beginning of the project setting out a common understanding between the parties