GLOBAL OVERVIEW

The resurgence of Project Finance

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When this guide was last published two years ago, the world was a bleak place. The financial markets were in post-Lehman financial turmoil and global demand for natural resources and other commodities, as well as for goods and services, was in a downward cycle. None of this boded well for project finance lawyers or the deals on which we were working.

Perhaps somewhat unexpectedly, however, transaction levels have rebounded nicely, with deal flows in some regions and industries close to replicating the peaks of 2007. In large part, this resurgence, underpinned as it is by investment demand across a wide range of basic industries, has come about though a combination of the overall shift in economic activity from developed countries to emerging markets and the significantly increased role that has been assumed by public sector (both national and multilateral) lenders in funding projects. The drivers behind this resurgence have also had a notable impact on the role and identity of the lawyers named in this guide.

Project finance provides funding for investment across a broad spectrum of industries, including natural resources, telecommunications, transportation, social services and power generation and transmission. Massive levels of investment are needed in each of these sectors to meet the demands of growing populations and economies around the world. Whilst perhaps not alchemy, the "magic" of project finance is that it helps meet these demands by turning a collection of permits, contracts and other promises into vibrant economic undertakings that are capable of bearing substantial levels of debt. Transformations of this nature are very much the purview of lawyers, and our contribution to the success of an investment project can thus be significant.

Although the levels of investment in the developed economies of Europe and North America have remained significant in many sectors, the pace of investment has been stronger elsewhere. Economic growth has been particularly rapid in Brazil, India, China and Russia. The domestic project finance markets in these countries have been sufficiently liquid to minimise the extent to which they have sought funding from international sources. One consequence of this, at least for now, is that their project financings are being documented under domestic law, often by leading local lawyers rather than by international firms. Should the capacity of domestic financial institutions in these countries become stretched (as may already be the case in India), we can expect an increase in the involvement of international lenders (and lawyers).

Although some Middle Eastern and North African countries have seen activity affected by the "Arab Spring", investment continues unrestrained in much of the region (particularly in the GCC), funded in large part by the liquidity available to regional banks. Significant investment is also taking place in Columbia, Indonesia, Vietnam, Egypt, Turkey and South Africa (commonly referred to as the CIVETS group) and a number of comparable countries.

What sectors are attracting project finance activity? Concerns over climate change are leading to investment in both low carbon power and energy efficiency, while urbanisation is driving the development of utilities, roads and rail. Steadily rising oil and other commodity prices have been an important contributor to the number and scale of natural resource projects. As exploration for new resource discoveries is driven to ever more remote locations, the cost of extracting those resources (often well in excess of $5 billion per project) rises, resulting in ever larger financings and a corresponding need to mobilise diverse sources of capital.

Not only have the location and nature of projects evolved, so too have the participants, and especially the lenders. In years past, they were generally based near London, New York or Tokyo. Constraints on credit providers in these financial centres have led to a reduction of this northern concentration, a process that will continue as the constraints become tighter through

GLOBAL OVERVIEW

the implementation of the Basel III accords. The resultant liquidity gap has been filled by lenders from across Asia, the Middle East and Latin America, coupled with an increased involvement of export credit agencies, multilateral development organisations and, for stronger projects, the capital markets. Likewise, a wide range of sponsors from these regions are now driving the development of projects across the globe, in part to ensure that their home markets have access to natural resources and in part because they are able to supply equipment and skilled labour at competitive prices.

Naturally, not all trends are positive. Investment levels, as with all economic activity, are cyclical, and down cycles cannot be wished away. However, in a diverse world, cycles occur at different times in different places. Moreover, governments have come to recognise that both domestic infrastructure and access to resources are needed to maintain economic competitiveness and adequate levels of job creation. These sectors thus often benefit from public sector lending, tax credits and other stimulous measures. As a result, project finance has become somewhat less prone to cyclicality than other financial sectors.

What do these developments mean for the lawyers named in this guide? Fortunately, there appears to be no limit on the types and locations of projects under development. Moreover, the growing diversity of lenders and sponsors means that the issues that these projects face are becoming ever more complex. The challenge for project finance lawyers is thus to provide the broad range of legal, language and cross cultural skills that is required to address these issues. Our practice has become truly global, and those who thrive on change and diversity are at the forefront.