



Planning considerations and techniques for companies expanding into cross-border wind markets

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Wind energy experienced a record year of international growth in 2007. As a result, it is clear that the development of wind power is now a global opportunity, and for many companies, establishing operations in new international markets may be a sound and profitable part of their strategic growth, particularly markets in which sponsors can achieve greater cost efficiencies and profitability.

In order to expand into cross-border markets sensibly and effectively, new or existing wind energy companies can be well-served by designing and implementing a set of project development principles that help them manage their financial and operating risks.

This article provides an introduction to some of those principles and the key techniques that can be employed to achieve this, and it focuses on companies undertaking projects in new markets, in particular, emerging markets such as China and India. The planning considerations and techniques set forth below are for illustrative purposes only, and none are offered or should be taken as legal advice for your specific project without further legal consultation and analysis.

Risk sharing through consortia

The initial planning of project sponsors should centre on developing a team of companies that will allow them to control all aspects of development, implementation and operation of the venture, to effectively achieve vertical and horizontal integration of all project functions and participants.

Such a team can be brought together by sponsors through a combination of co-ownership, through a new special purpose entity, contractual joint ventures, teaming arrangements and service contracts, in accordance with team members' relationship to the sponsors and role in the project. While it will be necessary to retain local professionals in the new market country, it is important for the sponsors to have their own team work with local counterparts to ensure an understanding of all aspects of the project, and to ensure timely, accurate, vetted and cost effective project plans, designs and work performance.

Organizational structuring

Each project has its own technical, financial and operating variables. For this reason, it is advisable to develop a separate corporate structure for each project that will protect the sponsors and their other operations from the obligations and liabilities that arise from the new project, and to facilitate obtaining equity and project financing for the specific venture.

U.S. sponsors should start by forming a new U.S. company that will be the U.S. parent holding company for the project. This may be a wholly-owned first tier subsidiary of an existing company, or a new special pur-

pose entity co-owned by multiple companies comprising the sponsoring group. That company should then form directly, or through a second tier offshore company offering management or tax advantages, a wholly-owned company in the market country to serve as the project company, or to enter into a joint venture or other co-ownership entity with local partners to form the project company. Whether wholly or jointly owned, a local project company will be required to obtain permits and approvals, and to build-out the project.

Local partner

Unless the project sponsors have existing operations in the project country, it is important that sponsors associate with local partners with appropriate industry experience before commencing any project development or implementation. This can be achieved by acquiring a company established in the market and the industry, or by establishing joint venture, teaming or agency arrangements with local individuals or companies.

Due diligence

In addition to industry, market and environmental studies, sponsors should analyze in detail the legal and regulatory framework for working in the new market, as follows:

- Foreign Investment Laws, including the ability of foreign investors to own wholly or in part local corporations, the need for national or local government approvals for the investment and project and currency exchange controls.
- Bilateral or Multilateral Treaties and Accords, including double tax treaties; regional accords eliminating or reducing tariffs on imports or exports of goods or services and bilateral agreements affording foreign investors equal treatment to local companies under local laws.
- Local Tax Regime, including corporate income taxes; sales, excise and value added taxes; stamp taxes on the transfer of property; capital gains on the sale or transfer of real property and withholding taxes on distributions ranging from interest payments to dividends, both locally and abroad.
- Local Corporation Codes, including the forms of companies through which operations may be carried out and the options in each for ownership and management control.
- Special Incentives, including the availability of tax exemptions and holidays; waivers of duties or other tariffs on imports or exports and other incentives designed to facilitate the growth of an industry sector. Renewable energy is increasingly targeted for growth in national markets, and sponsors will often find that their projects qualify for incentives that will enhance their economic performance.

Project phasing

In order to manage cost and other risks, new projects should be planned and implanted in severable phases, with defined scopes of work and budgets for each. An illustration of how this phasing can be structured is as follows:

- Market Analysis and Due Diligence, under contract, have the sponsors and key team members contribute to the cost of a technical, legal and commercial market analyses in the new market, deferring further action until the results of the study indicate a viable project.
- Company and Teaming Structure, upon determining that the project is viable, negotiate sponsor relationships, including new company formation, capitalization and governance rules. Upon the formation of the new project entity, have that entity contract with other service providers and team members that will not be sponsors, but whose services are needed, establishing how, when and for what compensation they will participate in the project.
- Local Partners, upon the successful formation of the sponsoring group, identify and develop local partners, including negotiating the relationship with them either as co-owners, team members or agents.
- New Project Company, upon the successful negotiation of local partnership arrangements, establish a new project company in-country that will undertake the project alone or as part of a new joint venture company with local partners.
- Project Design, following the completion of the project structure, begin further engineering and design studies in preparation for final project design, an EPIC contract, obtaining permits and project financing.
- Project Financing, if seeking project financing, involve target financing institutions at the preliminary design stage, asking them to begin technical due diligence, to follow project development and to consult on issues of project bankability.
- Project Implementations, upon the finalization of project design, permits and the EPC contract, project financing may be closed and project construction commenced.

Each of the above can be undertaken as separate steps with separate budgets. If the project fails at any stage, the sponsors will avoid unwanted forward costs, expenses and other obligations.

The key to successful project design and implementation is to perform detailed front-end analyses and implement the project in a series of pre-planned steps that allow the sponsor to control and manage the pace and timing of its commitments.