



The Sheppard Mullin Six

US RENEWABLE ENERGY M&A TRANSACTIONS

Here are six key items to be aware of today in US Renewable Energy M&A Transactions:

- 1. As the demand for renewable energy increases, so does M&A activity in the industry.** The M&A renewable energy market remains very active for both development-stage and operating assets. Foreign strategic buyers and private equity funds continue to show a strong appetite for the US renewable energy operating assets market, which offers a reasonably predictable revenue stream without the risks associated with the development and construction of a project
- 2. Renewable energy tax incentives remain critical to the value, financing, and successful development of a project.** Any party involved in buying or selling a development-stage project needs to be well versed in the applicable tax rules (including as they evolve with the current infrastructure and clean energy plans of the current administration) so as to cement, to the maximum extent possible both in amount and certainty of availability, the project's qualifications for these tax incentives. A single mistake on this front can significantly reduce a project's economics, financing, and marketability.
- 3. Representations and warranty insurance (RWI) has become a key component of overall M&A transactions and the trend has continued in the renewable energy industry.** Recent deal flow, in particular for development-stage energy projects, shows RWI gaining traction in the renewable energy M&A market, even for single project deals. In that context, understanding the claims handling experience, payment history of the selected insurer, and what provisions in these policies can be negotiated becomes an important part of these transactions. Sheppard Mullin has dedicated attorneys whose practice focuses on providing legal and strategic advice to clients on the effective use of RWI.
- 4. Understanding the regulatory framework (e.g., FERC, HSR and CFIS) is critical for transaction efficiency and closing certainty.** Because these transactions involve buying or selling entities that engage in wholesale generation and transmission of electricity in regulated markets, and can be deemed critical infrastructure for national security purposes, understanding the regulatory framework of these transactions early in the process remains critical in controlling both the timing and the successful close of a transaction.
- 5. The development stage of a project spans a wide range, including from site identification to pre-construction.** When buying a development-stage project, it is critical to precisely calibrate the project's specific stage within the development cycle up front. Such early analysis will heavily impact the key terms of the M&A transaction including amounts at risk because of a milestone-based payment approach, scope of representations and warranties, and the extent of put/call rights. Similarly, properly structured development services agreements or joint venturing can reduce or reallocate buyer-side risks associated with lack of skills or relationship to assess project risks and create meaningful pathways to project and deal success.
- 6. Non-compete provisions and build-out agreements should be carefully negotiated.** With the increasing number and types of developers and sponsors of renewable energy projects, the scope and term of non-compete provisions in development-stage renewable energy M&A have become more nuanced. Similarly, build-out agreements to protect the project's revenue stream (including by protecting against wake effects) are more frequently requested and negotiated in sell-down transactions.

Key Contacts - US Renewable Energy M&A Transactions



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Elliot focuses his practice on renewable energy and storage technology. Elliot work with clients at every stage of the renewable energy project development cycle. He works extensively on corporate matters including mergers and acquisitions, debt financings, project development and finance, and joint ventures. The projects he has worked on include renewable energy (including battery storage, solar, wind, geothermal, and biomass), natural gas, cogeneration and coal-fired electric power, liquefied natural gas (LNG), and bioethanol facilities. He has handled many billions of dollars of energy project finance transactions and worked on some of the first merchant facilities to be developed and/or owned in a fully deregulated environment. He represents several wind and solar energy project developers and technology companies that bridge the energy and technology sectors, including manufacturers of equipment, lubricants, and other products and companies in the energy space.



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Christine concentrates her practice in the sale, acquisition and financing of renewable energy projects. She has extensive experience negotiating and documenting sales and acquisitions of solar and wind projects and coordinating due diligence of renewable energy projects on behalf of tax equity investors, buyers or sellers. Her experience also includes representing tax equity investors or sponsors in tax equity transactions for renewable energy projects and representing emerging companies in various industries including high-tech with respect to equity financings and mergers and acquisitions. She provides counseling on day-to-day corporate matters, including commercial contracts and corporate governance. Christine previously practiced in Paris, France and continues to assist multinational, French, and other foreign clients on a regular basis.



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Danielle counsels public and private companies through all stages of growth and in transactions that include securities offerings, mergers and acquisitions, joint ventures and debt and equity financings. She represents clients in the energy, technology, life sciences, hospitality, entertainment, utilities and manufacturing industries, among others. Danielle also represents publicly-held companies with their reporting obligations under the Securities Exchange Act of 1934 and with NASDAQ, NYSE and other exchange listing and compliance matters, including those involving FINRA. She advises clients on business goals such as business entity formation and general corporate law matters. Prior to joining the firm, Danielle served as a Deputy District Attorney at the Los Angeles District Attorney's office and a Capital Fellow at the Center for California Studies.