CLIFFORD CHANCE

ENERGY TRANSITION PERSPECTIVES - EQUITY INVESTMENTS

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Equity investment structures are evolving to adapt to market dynamics, political and regulatory uncertainty and investor preferences. Against a shifting global landscape, it is more important than ever for investors and developers to ensure that their investment strategies enable them to protect downside risk and maximise value. In this extract from a recent global webinar held in April 2025, we look at how equity investment structures are evolving across different markets and jurisdictions.

"Equity investment into energy transition has delivered a reliable stream of returns and has served as a major source of funding for the energy generation and transmission on which our global communities and economies depend," says Alexandra Wilde, an M&A partner in Clifford Chance's Houston office. "In the past ten years, private infrastructure assets, including energy transition assets under management, have more than quadrupled to US$1.3 trillion. However, while assets under management continue to grow, overall deal volume declined in 2024 compared with the previous year, and fundraising is still, unfortunately, down from the 2022 peak. The overall geopolitical situation remains unstable even as interest rates are stabilised, especially following the recent US elections. Against this backdrop, the way in which equity investors are looking at the infrastructure asset class is evolving across jurisdictions."

The state of the market in Asia- Pacific

"Asia-Pacific is not a single homogeneous region, and there are many different factors that have been influencing the type of equity investors we're seeing, where those equity investors are deploying their capital, and the kind of assets they're investing in," says Nadia Kalic, an M&A Partner in Clifford Chance's Sydney office. M&A activity across Asia-Pacific is dominated by large private capital firms who are targeting larger businesses and higher quality, premium assets to achieve their required return hurdles. The energy majors continue to be active across the region and there has been an uptick in divestments of parts of their portfolios, including renewable energy assets, as they refocus on some of their core business lines."

"Against the backdrop of a slowdown in China, capital is being redirected by many investors into Southeast Asia and Australia as these jurisdictions are seen as stable in the current economic and geopolitical climate. Japan remains a market of interest, but is often perceived as smaller by comparison, due to its mature economic landscape and slower growth rates," says Kalic.

Private capital investors are becoming more creative about what constitutes energy transition in their pursuit of finding businesses that deliver infrastructure-like characteristics. This includes long-term stable cash flows and businesses that have high barriers to entry. Many investors still have a mandate to invest in gas, including LNG import terminals, gas pipelines and gas storage assets.

"The energy trilemma, that is, balancing energy security, energy affordability and energy sustainability, remains a key driver of M&A in the sector and this has been exacerbated by recent shifts in US energy and trade policy," says Kalic. "We expect this will continue to drive investments into energy transition across Asia-Pacific but deals will, I think, become more complex to navigate and may take longer to get across the line."

Trends in Europe and the UK

"There are a lot of competing interests that energy transition investors are seeking to navigate at the moment," says Jonathan Dillon, an M&A Partner in Clifford Chance's London office. "The growth of energy demand is driving investment, particularly demand that is driven by the massive growth in data centre buildout driven by the AI boom." Equity investment has been a bit of a roller coaster in recent years and may continue to be so for a while. There was a deal boom in 2021-2022, with lots of liquidity in the market due to the then lower interest rate environment. The cost of capital was low, and valuations were high. That peaked in 2022 and there has been a downward trend in M&A since.

For equity investors in this sector, the cost of everything, from steel to ships, went up at the same time that the cost of capital rose. As a consequence, buyer returns were squeezed and that, in turn, slowed the investment market and often led to a buyer-seller mismatch on pricing. "Recent events have contributed to further uncertainty in the market and we're seeing market participants react to that uncertainty in several ways," says Dillon. "Some investors are continuing as usual – if the fundamentals stack up then they will go ahead and transact. Others are taking a wait and see approach. A third category of investors see an opportunity to be brave and aggressively target investment opportunities in an otherwise cautious market."

What's happening in the Middle East?

"In the UAE and Saudi Arabia there is a focus on shifting the energy mix towards renewable energy sources," says Jason Mendens, an M&A Partner in Clifford Chance's office in Abu Dhabi. The UAE plans to invest US$60 billion by 2030, both to ensure energy demand is met and sustain economic growth. Clean energy production accounted for almost 28% of the market last year and the target is to achieve 30% by 2030. Abu Dhabi has outlined plans to develop 18 gigawatts of solar capacity by 2035.

Saudi Arabia has similar ambitious renewable energy targets as part of its Vision 2030, including phasing out inefficient, oil-fired power stations and moving to combined cycle gas turbine capability, alongside a strong push on renewables.

"In both the UAE and Saudi Arabia, the energy market is a collaboration between government-backed offtakers and private sector participants, and it follows a well-established public/private partnership model, which continues to promote investment in energy efficiency and renewable energy projects," says Mendens. "We're continuing to see active participation in greenfield development and interest in secondary markets as sponsors look to find liquidity paths in the years ahead."

The United States

"The Trump administration policies on energy transition have created more uncertainty in the US market," says Wilde. "We've seen a pause in investment and development activity in certain areas. Where there has been continued investment and development activity, there is often a heightened focus on due diligence, including with respect to supply chains and tax incentives." There is also a focus on the returns that projects may generate both in the short and long term. Some investors are continuing to look at projects and are willing to take on more risk in the current market, but others are looking at diverting some of their capital to markets outside of the US for a period.

Deal structures

"Projects in the UAE and Saudi largely follow the PPP model with a government-backed offtaker. A project is backed by private and public energy market participants, financial investors, and an active project finance ecosystem," says Mendens. "Given the procurer credit rating and relative risk profile, sponsors will invest in a number of ways, primarily a combination of equity-backed loans (EDLs), shareholder loans and ordinary shareholder equity. That said, we are seeing more advanced structures coming into the market to enhance returns, particularly for financial investors, in the form of convertible loan notes as well as other forms of preferred equity instruments."

In the absence of PPP or concession-based models and/or a robust government financial incentive regime (such as a feed-in tariff) to underpin the economics of a project, it can be challenging for private capital equity investors, particularly in assets that are still in their development or construction phase. "Platform or portfolio structures can help equity investors achieve their desired size and scale of investment and help them manage and mitigate downside risk, including by combining assets at different stages of development within the portfolio. These structures can also help to mitigate technology and country risk with a mix of different energy technologies and jurisdictions," says Kalic.

We are seeing private capital investors partner with energy and resources majors to facilitate their decarbonisation journey. Other deal structures we are seeing deployed across the sector include joint development platforms that are being used to manage the development and construction phases of a project and hybrid capital solutions, including the use of preferred equity structures across Asia-Pacific, some of which have a convertible aspect to them.

In the US there has also been a resurgence of the use of structured and preferred equity. "There's often a desire to lock in the expected return over a certain period of time, such as through a guaranteed minimum return or floor. In addition, over the past few years we've seen more reins around governance and other types of protection. Sometimes these are baked into the shareholders' agreement, or in a side letter," says Wilde.

"Something we're seeing a lot of in Europe is battery storage being part of integrated portfolios," says Dillon. "Investors are now a lot more comfortable about the revenue profile of utility-scale battery assets within a renewables portfolio. It's also seen as a positive for mitigating intermittency risk, when investing alongside renewable generation assets. There is also a real opportunity for grid investments across Europe, where regulatory regimes are being set up in several jurisdictions to encourage future investment in grid modernisation."

Deal terms

In a more uncertain world, it is a little harder to convince boards or investment committees to proceed with an investment and, in a buyers' market, downside protections and structured instruments can be used to help build an investment case.

Material adverse change (MAC) clauses give parties the ability to walk away from a transaction if something happens between signing and closing. However, MAC clauses are increasingly uncommon in UK and European markets for M&A and investment deals and, if walk-away rights are granted, they tend to apply in the case of expressly specified outcomes only. Other buyer-friendly provisions include deferred consideration and earnouts. "These clauses can help buyers become more comfortable in case things don't go according to plan, but in Europe it's hard to shift from the general position that buyers take on the risk when they sign a deal and pay everything when it closes" says Dillon.

"Two types of equity investment in the energy transition space are prevalent in the US," says Wilde. "The pure buyout, and minority and majority investments with a joint venture structure. The downside protections and the equity investment structures will vary depending on the type of investor involved. For a strategic investor like an oil & gas major, their end goals will be very different to a private equity investor."

"With JV structures, we are seeing stronger rights around exits and buyouts. An investor might want the ability to exit the project within a certain time period, and for their return at that point to hit a certain minimum threshold. On the flip side, some JV investors will want to restrict the ability of other JV investors to exit and will ask for a lock-up period. The US market is also quite dynamic at the moment and some parties are seeking to defer capital contributions for a period of time in the hope of seeing more certainty," says Wilde.

In Asia-Pacific, uncertainty around tariffs has been flowing through into discussions on M&A transactions. "It's important to consider what parts of the target business may be affected, and mapping the target supply chain to identify areas where tariffs and other export or import restrictions could have the most significant impact," says Kalic. "Also, undertaking a thorough review of contracts and supply relationships in order to assess whether there are any termination rights or any renegotiation levers that counterparties might have." This is relevant both to sellers preparing a business for sale and buyers undertaking due diligence on a target business.

There are still deals coming to market across Asia-Pacific, but some of the sale processes are not necessarily running to the desired timelines and some of the larger transactions are becoming more complex to navigate, including where there are valuation gaps between sellers and buyers. "The use of deferred consideration structures, such as escrows and earnouts, has been helpful for parties when trying to close valuation gaps, particularly when there is a significant portion of the target's business that is still in the development or construction phase," says Kalic.

"With GCC countries, where currencies are pegged directly or indirectly to the US dollar, we've seen some limited impact of the current tariff and trade uncertainties. As interest rates potentially fall in a number of sponsor countries, the relative risk return metrics will only enhance the attractiveness of energy projects in the region," says Mendens. "There has been an influx of people to the region since 2020 which, together with domestic population growth, the development of data centres, and potentially a lower cost of capital, will enhance the attractiveness of the projects that will be needed to meet both demand growth and renewable energy targets."

Platform investments and acquisitions are increasingly common, with a strong focus on the quality of the underlying projects and the diversity of their earning profiles. Transactions may involve carving out less attractive projects from a platform, a process that introduces additional complexities. MAC provisions are frequently incorporated, whether tailored to specific projects, regulatory approval, or a combination of both. In terms of consideration mechanisms, locked box structures are typically preferred due to the certainty they provide. Downside protection measures, such as ratchet mechanisms, are also prevalent, particularly in transactions led by financial investors seeking to enhance their exit options.

"There is a noticeable rise in investments in energy storage and waste-to-energy projects, each presenting unique considerations for deal structuring and risk management," says Mendens. Warranty and indemnity insurance products have been utilised in energy sector transactions, although their adoption often depends on cost considerations, which remain a significant factor in the decision-making process.

"Regardless of what happens in the US market, we anticipate seeing creativity around the structures of equity investments, " says Wilde. "That will continue to evolve over the coming months. The types of energy transition projects that we will see in the US might also be a little different – for example, a pause on offshore wind investments but increased interest in energy storage, data centres, renewable natural gas projects and other select projects."

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