

DealMakers[®]

RENEWABLE ENERGY

2022



FOREWORD



MARYLOU GREIG

Over the next two weeks, global leaders will gather in Sharm el Sheikh, Egypt, to discuss climate-related topics, as countries address the struggle to cut greenhouse gas emissions amid a global energy crisis, war in Europe and rising inflation.

Africa is home to some 17% of the world's population, but contributes only 2% to 3% of its carbon emissions, and according to the Energy Democracy Initiative, there are three key drivers for a global energy transition away from fossil fuels. The first is the imperative for all governments and non-state actors to take urgent action to address climate change. The second is the need for energy security. The third is the massive advances made in the past few years, in terms of technology, innovation and affordability by the renewable energy sector. The key challenge for such a transition in South Africa is that the shift away from the dependence on coal is managed in a manner that addresses the most pressing socio-economic challenges, namely poverty and inequality.

Last year, South Africa, the continent's most industrialised economy, secured \$8.5 billion in loans and grants from a group of rich countries. However, President Ramaphosa told Parliament days before flying out to Egypt to attend COP27 that the money was not enough, with the release of a just transition investment plan suggesting that South Africa would need \$83bn over the next five years for its plans to cut carbon emissions, harness economic opportunities from the energy transition, and support affected communities. Earlier, the World

Bank indicated that South Africa would need around \$500bn by 2050 to achieve carbon neutrality.

The Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) was announced in August 2011, and has since allocated projects to over 92 Power Producers, injecting over 6,300MW of power into the power grid, mainly from solar and wind generation. These sources currently make up about 8% of South Africa's energy mix, but a target of 50% electricity from renewables is perfectly feasible and is the minimum that the country should aspire to.

In South Africa, companies are using M&A to accelerate shifts in their portfolios. Fluid M&A market dynamics will continue to provide a myriad of opportunities for resilient companies to transform their portfolios and reposition themselves for the great energy transition, which will involve both divestments of high-carbon assets and investments in the energy transition.

Articles carried in this feature give insightful information on this topical issue, and the "Meet the Specialists" section introduces some of those individuals who have made dealmaking in the energy space their passion. ♻️



CONTENTS

Foreword	1
Snippets	3
BofA Securities	4
Cliffe Dekker Hofmeyr	6
CMS	10
Fasken	12
Investec	17
Nedbank	19
<i>Tronox solar generation deal</i>	20
PKF	24
Rand Merchant Bank	25
<i>Facilitating a new generation</i>	26
<i>Energy options for Africa</i>	31
Standard Bank	37
<i>The carbon conundrum</i>	40
Verdant Capital	54
<i>Seismic shifts create new opportunities</i>	
Webber Wentzel	56
<i>Appropriate regulation needed</i>	57

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Lara Bezuidenhout FASKEN

Partner



FASKEN

Q *What are the biggest energy deals you have worked on?*

A Within the field of energy finance, I was the co-lead partner, acting as lender's legal advisor, on the project financing of the IPP Peaking Power Plants at Avon and Dedisa from the early 2000's to 2014. These two projects were ground-breaking, first of kind IPP's in South Africa and this set the path to our team advising on IPP's in the Renewable Energy industry. I have advised lenders in numerous projects on successive rounds of the South African REIPPPP (Renewable Energy Independent Power Producer Procurement Programme) and on other energy projects.

The skill and know-how brought to these energy projects was informed by the core principles of project finance in the infrastructure and PPA space that the Fasken, Johannesburg team has been building over the past 25 years. This all formed the perfect basis from which to launch the ground-breaking work our team did, acting for the Lenders on all aspects relating to the financing of two 100 MW solar PV wheeled energy projects, situated in the North West Province, developed by vertically integrated independent power producer, SOLA Group. These two projects were the first renewable energy projects to reach financial close pursuant to the regulatory change in August 2021 to raise the licensing limit for distributed generation projects from 1 MW to 100 MW. There have been and continue to be, many important and exciting legal developments in the energy space in South Africa, especially as we are seeing the market liberalise.

Q *Do you think this area of expertise requires any special attributes and if so, what would you say they are?*

A Advising on Energy Project Finance transactions requires an uncommon mix of attention to detail and an ability to appreciate and

understand the 'big picture', and to always keep in mind the many pieces of the puzzle. It requires an attentive but practical approach. Having an open mindset and believing in the impossible helps too.

Q *Do you find this area of expertise to be an exciting field and if so, why?*

A It is very exciting to be playing a part in creating solutions for future access to electricity in South Africa, often in new and creative ways.

Q *What are notable changes in your practice, the energy industry and South Africa and Africa worth highlighting?*

A Deregulation and de-carbonisation of the electricity sector.

Q *Can you share any experience of working on projects in Africa and navigating the unknown?*

A In the end it is always about our clients and assisting them with solving problems and accomplishing their goals, and that is the best part for me.

Q *What is your leadership style?*

A Respectful, intentional, collegial.

Q *What advice would you give others who are growing in their careers?*

A Set your sights on where you want to be but be realistic and be kind to yourself. Be persistent - things that are worthwhile take time and they take some flexibility. Embrace learning and read widely – from novels to journals and textbooks to the news and current affairs.

Q *Do you have any hobbies?*

A I spend as much time as I am able to with my family. I read and I garden. ♻️





Ashen Jugoo

FASKEN

Partner



FASKEN

Q *What are the biggest energy deals you have worked on?*

A A highlight is the portfolio financing of five wind farms (of 140MW each) projects developed by Enel Green Power in bid window 4 of the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP). I led the Fasken team that advised the Lenders on the structure of the financing and security, and was responsible for the negotiation and drafting of the financing agreements. This financing is considered to be one of the largest single renewable energy financings in Africa.

Another renewable energy project highlight I have been involved in is the Bokpoort refinancing for a concentrated solar power plant (CSP), the first-ever refinancing under REIPPPP in South Africa.

Q *Do you think this area of expertise requires any special attributes and if so, what would you say they are?*

A There are a few that come to mind; (1) being agile because the energy sector is constantly changing, so I have found it important to challenge traditional approaches to financing, especially in project finance; the energy sector is very dynamic. (2) Having "big match temperament" and ready to show up for match day every day. (3) A strength in handling pressure because the need for power in South Africa, as well as the need to transition to cleaner energies, are so prevalent hence it is important to get these renewable energy projects online as soon as possible.

Q *Do you find this area of expertise to be an exciting field and if so, why?*

A The energy sector is interesting, it's evolving it's about changing lives on a daily basis as well as for future generations and it is about creating a better society for everyone by having cleaner energy and access to sustainable energy.

Q *Can you share any experience of working on projects in Africa and navigating the unknown?*

A We are seeing across Africa more and more deregulation and with this there are many more private power plants coming online than we've seen before. It is also exciting to see a general shift in African jurisdictions to move to renewable energy sources.


Q *What advice would you give others who are growing in their careers?*

A I encourage others to be a sponge, absorbing information, with a willing and keen attitude to do as much as they can and learn as much as they can. Energy projects can be very complicated, from technical, financial and legal perspectives. When it comes to absorbing as much as you can, it should be in each of those spaces, irrespective of whether you're a lawyer or on the financial side or the technical side. The people that we see being most successful in this space are those who understand all aspects of a project.

Q *What is your mentorship style especially when it comes to supporting others in their growth?*

A My goal is always to empower others. I strongly believe in the upliftment of others. I support others in their career growth by encouraging them to grow in their own space, and find their feet while ensuring they know I am there to support them. I believe it is very important to mentor junior professionals in order to transform this space.

Q *Do you have any hobbies?*

A I am an avid gardener, particularly growing vegetables. 





Nathisha Maharaj

FASKEN

Partner



FASKEN

Q *What are the biggest energy deals you have worked on?*

A My banking and finance legal experience is wide and varied across multiple sectors. Recently, however, given the current state of affairs in South Africa, there is an even greater shift and focus on the energy sector. To this extent I have been fortunate to be part of the Fasken team advising the Lenders on all aspects relating to the financing of two 100 MW solar PV wheeled energy projects, situated in the North West Province, developed by vertically integrated independent power producer, SOLA Group. These two projects were the first renewable energy projects to reach financial close pursuant to the regulatory change in August 2021 to raise the licensing limit for distributed generation projects from 1 MW to 100 MW.

Q *Do you think this area of expertise requires any special attributes and if so, what would you say they are?*

A From a practising lawyer's perspective I think it is so important to not only see things with a legal hat on, but to keep abreast of everything going on around you – you also need to have sight of and understand the commercial, environmental, social and legal spheres in order to get the job done efficiently and correctly.

Q *Do you find this area of expertise to be an exciting field and if so, why?*

A Absolutely, I get to see the fruits of my work at a larger scale; for instance seeing the renewable energy projects that have been completed when traveling around South Africa is incredible. Although at times the legal aspect on a project is just one puzzle piece the impact of the commissioned renewable energy projects has a far greater and positive impact on society.

Q *What are notable changes in recent years?*

A There has been a lot of regulatory changes to streamline various aspects of a transaction, and as a result of these regulatory changes we adapt our approach as legal advisors.

The world is a lot smaller and as a result we are very comfortable doing cross-border work from South Africa given the way that technology has advanced and especially due to how techno savvy the world has become.

Q *Can you share any experience of working on projects in Africa and navigating the unknown?*

A I believe that building a strong and wide network is important particularly in the African country where the transaction is taking place. Across the different African jurisdictions there are different specialists, and ultimately I always keep in mind the best interests of clients when seeking the best local advisors on the ground.

Q *What advice would you give others who are growing in their careers?*

A Always keep abreast of current affairs. Personally I would encourage others, especially women, to have perseverance, but more importantly to keep sight of personal and professional goals, and maintain a balanced life.

Q *Do you have any hobbies?*

A Nothing unusual but I do love to cook, especially my chocolate cake! Whenever there is a function I am called upon to bake my chocolate cake! ♻️





Simone Bryson FASKEN

Partner



FASKEN

Q *What are the biggest energy deals you have worked on?*

A I was lucky enough to start my career in project finance working on the peaking power station projects. That experience set me on a path and journey of working on some exciting and interesting energy projects. This includes, thus far, working on some of the bigger renewable deals including Enel Green Power, which is the largest portfolio financing in Africa to date.

Q *Do you think this area of expertise requires any special attributes and if so, what would you say they are?*

A For me, it always comes down to finding the best solutions for all parties involved in the transaction. This includes always being adaptive as there are so many unique situations, as every renewable energy deal is unique. From a team perspective the Fasken team is dynamic, this is a strength of the team despite there being flux in the market. The team is a consistent, stable, strong and collegial team. This is true to Fasken's values and I see these values being lived daily.

Q *Do you find this area of expertise to be an exciting field and if so, why?*

A Every deal is different, and with this comes problem solving. This is why I find this field so exciting. I enjoy problem solving and navigating deal complexities for clients. I enjoy using my drafting and writing skills to help solve problems.

Q *What are notable changes in your work and the industry?*

A From an energy side what we are seeing is that across the industry there is a surge

in the private PPA/energy market. And from a workplace perspective there is less face-to-face time with clients and more engagement virtually through the use of various technology platforms.

Q *Can you share any experience of working on projects in Africa and navigating the unknown?*

A I have had the opportunity to work for The Gambia National Utility regarding the procurement of renewable energy from an IPP. I had the opportunity to visit The Gambia, and I gained a better understanding of the environment and got a feel from a boots-on-the-ground perspective. I got a real understanding of the challenges of a project getting off the ground and the face-time with the client was very valuable. The Gambia is an example of a country in dire need of a sustainable energy source and renewable energy is a viable solution. But to keep things in perspective it took me 27 hours to fly there and I stopped five times passing through Gabon, Nigeria, Togo, Ghana and Guinea.

Q *What advice would you give others who are growing in their careers?*

A I would encourage others to have perseverance, it is a marathon not a race, and always work with consistency.

Q *Do you have any hobbies?*

A I do enjoy dabbling in art and of course spending time in nature, especially off-roading. Although Johannesburg is not known as an outdoor city, if you travel one-hour outside of the city in any direction, there are some fantastic places to get outdoors. ♻️





Craig Whitley

FASKEN

Partner



FASKEN

Q *What are the biggest energy deals you have worked on?*

A Earlier in my career I was privileged to have advised on the 140MW Dorper Wind Farm which won African Wind Deal of the Year 2012. It was part of REIPPPP Round I and set a positive path forward for future renewable energy projects in South Africa.

I have also had the opportunity to work on a number of projects spanning a wide variety of renewable energy sources and technologies, including geothermal power in East Africa. The need for access to sustainable energy sources on the African continent is profound and of ever increasing significance.

Most recently I was part of the Fasken team and co-leader on advising the Lenders on all aspects relating to the financing of two 100 MW solar PV wheeled energy projects, situated in the North West Province, developed by vertically integrated independent power producer, SOLA Group. These two projects were the first renewable energy projects to reach financial close pursuant to the regulatory change in August 2021 to raise the licensing limit for distributed generation projects from 1 MW to 100 MW.

Q *Do you think this area of expertise requires any special attributes and if so, what would you say they are?*

A I believe the strengths that one requires are (1) the ability to understand the risks associated with each project and to try ensure a fair allocation of those risks between the parties; (2) an ability to succinctly and accurately record the commercial agreement and intention of the parties as the drafting can tend to become very technical; and (3) remaining calm under pressure.

Q *Do you find this area of expertise to be an exciting field and if so, why?*

A With my science background (I graduated with a Bachelor of Science from the

University of the Witwatersrand), a passion for new technologies and, in the case of energy, the new technological developments of harnessing power in new and different ways, I find the energy sector extremely interesting and always evolving. Combined with my specialisation in finance law, being able to at times work in this science-related industry, with my legal hat on is exciting. Added to this I grew up with a fantastic role model, my father, who was a structural and civil engineer prior to his retirement, and so from a young age I was exposed to new ideas and hearing “engineering-speak”.

Q *What are notable changes in the industry?*

A In the South African context, the raising of the licensing limit for distributed generation projects to 100 MW has enabled large corporates and energy consumers to develop or contract their own dedicated energy producers on a scale that now allows for meaningful levels of power production. The South African government’s efforts to create teams focussed on facilitating the private sector’s development of independent producers of renewable energy and the implementation of geographical ‘corridors’ aimed at reducing certain of the regulatory compliance burden of projects will be of great assistance in accelerating the development of future energy projects.

Q *Do you have any hobbies?*

A I have played the bagpipes since high school and continue to play today. I have had the opportunity to travel the world playing at international competitions and live shows/tattoos such as the Royal Edinburgh Military Tattoo, the Royal Tournament in London, the Kremlin Zoria (on the Red Square, Moscow) and the Basel Tattoo (Switzerland). It is a hobby that I’m incredibly passionate about, I find it immensely rewarding and a great way to balance out the career pressures and intensity. ♻️

