

# Infrastructure & Energy M&A

Make your deal a success with us



Hogan  
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“Our team has more than 1,000 years of combined experience and has advised on US\$250bn of closed infrastructure deals over the past three years”

## Why we know...

We are one of the global leaders and strive to be the “go-to firm” for infrastructure and energy project M&A deals.

### Infra & Energy M&A – this is all we do

- Around the globe and on the most challenging projects and transactions
- Tailored to your industry and your needs
- Recognized by the most important awards and underlined by our unique track record.

We have been acting for key players on some of the most ground breaking projects to have come to the market, particularly requiring the development of novel structures and risk allocation mechanisms, including various **award-winning** pathfinder schemes in nascent markets.

At the same time, we have extensive M&A experience, with a proven track record of more than US\$500bn in M&A transactions worldwide, representing entities, principals, and financial advisors in almost **700 public and private transactions**.

We have achieved this through **practical and innovative** legal solutions that help our clients succeed.

Our advice is based on two critical factors: Firstly, we **understand your business** and the challenges you are facing –

the world is changing and we are well prepared to help you dealing with such changes. Secondly, we combine the **best of both worlds**:

As one of the very few law firms we have established a **dedicated project M&A practice**, bringing together in-depth M&A knowledge and long term energy and infrastructure projects expertise for your benefit. We have advised on many of the most renowned infrastructure and energy transactions – in Germany and worldwide. Recent experience includes the sale of power plant projects under PPP/PFI schemes as well as the acquisition of various project financed renewable energy assets and portfolios.

Our practice is one of the largest in the world with coverage throughout our global network of **over 45 offices** in all business centers and emerging markets.

If you are a private or public corporation, a private equity house, a pension fund, a strategic investor or a financial institution, we will provide you with **high-end advice** on your projects related acquisitions, disposals and restructurings. This applies to both, the equity and debt side.

# That's in for you

If you need to get your deal done, we are prepared to deliver. Regardless of timing, staffing and geographical challenges – we are fully committed to your success.

# What we do

How we can help

We are also fully aware of the competitive pressure operating in today's legal environment. Therefore, we work with **small integrated core teams with huge experience of the combined infrastructure/energy and M&A market**. This allows us to understand your needs rapidly and to provide you with an enhanced service at a more efficient level.

Further, we believe to be distinguished by a highly collaborative culture which values the contribution of our diverse team both within the firm and in the wider community. We are best known for our commercial, service focused, and friendly style. This commitment to client service and teamwork provides benefits to our clients and enhances effective long-term business relationships.

We provide high-end legal advice on national and cross-border project M&A transactions in the infrastructure and energy sectors at any stage of the life cycle – regardless of whether a project is in the planning, construction or operation phase.

Our team drafts and negotiates all **purchase agreements/SPAs for the acquisition or sale of infrastructure and energy related projects, project companies and loan portfolios**.

We conduct legal due diligence, draft and negotiate shareholder agreements and provide advice with regards to SPV and holding structures. In addition, our project M&A team is able to draft and negotiate all project and project financing agreements for our clients.

## Spotlight due diligence: don't go the traditional way

Our practical experience repeatedly confirms that due diligence in project M&A transactions significantly differs from due diligence in traditional M&A transactions. This aspect is frequently underestimated and often leads to risks not being identified and therefore not reflected in the SPA.

By nature, infrastructure and energy projects require a different approach to due diligence. While it may be sufficient in “traditional” M&A to summarize the key provisions of agreements (such as termination and change of control) and to examine whether the agreements are legally binding, this is not enough when dealing with projects. The traditional approach tacitly assumes that the agreements are implemented according to their provisions, without any “problems” arising. This approach is too simple for the projects world. It tends to be the rule rather than the exception that, during long-term projects, situations will arise that deviate from normal operations.

**Therefore: heads up!** We mitigate project risks, by conducting risk-based due diligence and by analyzing the project agreements as part of a stress test, by taking into account the specific characteristics of the respective project. This means our clients can be sure of correctly identifying the risks inherent in often complex project documentation and of avoiding any unpleasant surprises later on – this is a significant success factor for any project M&A transaction.

In this regard, we believe that a careful examination of the project agreements yields the best results if it is carried out by the lawyers with the appropriate drafting and negotiating experience. Only they are able to rapidly and reliably understand which scenarios will have which effect on the project agreements. Our experience of providing legal advice for projects means that **we know what can go wrong and are thus able to identify typical risks.**

As a result, our clients are aware not only of the current status of the agreements, but also of precisely what may lie ahead – and what does not.

“We believe that a careful examination of the project agreements yields the best results”

## Spotlight SPA: cash flow is key – warranties not

The approach to the sale and purchase agreement in a project M&A transaction significantly differs from “traditional” M&A.

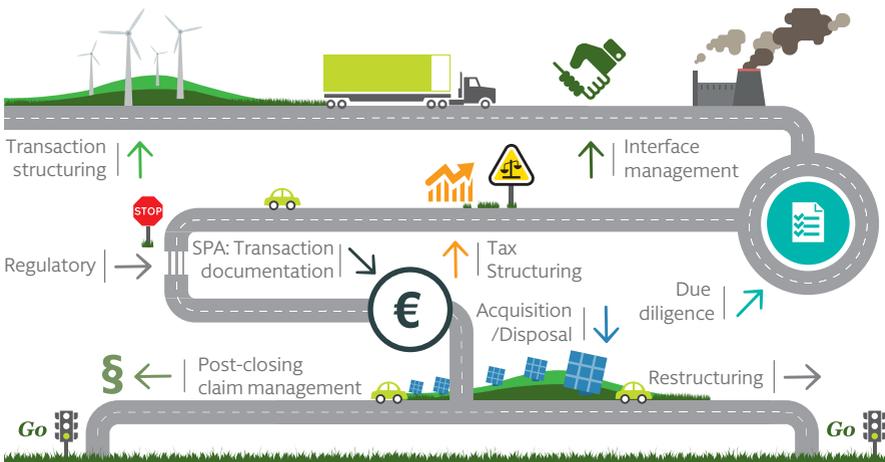
In contrast to traditional M&A transactions, cash flow and profit are often not generated via the sale of goods and services to a market but via a few key contracts – and often only one. This makes project investment attractive for long-term investors but also shows that the return is vulnerable to these contracts.

On the other hand, projects often have a simpler asset structure than “normal” transactions. A lot of representations and warranties which are market standard in traditional M&A are not required in infrastructure and energy project M&A or, even worse, give a false sense of security.

It would be fatal if a buyer of a long term project relied on an extensive set of representations and warranties and did not

take into account that such representations and warranties are usually time-barred for 12 to 18 months after closing, often leaving the major part of the project term unprotected.

As a consequence we have adopted our approach to the SPA. Instead of having lengthy and costly discussions on meaningless representations and warranties, we focus our efforts to ensure that the cash flow from the project is protected in the SPA as this is the real asset which is bought in a project M&A transaction. This only requires a limited set of representations and warranties but on the other hand needs to ensure that if those turn out to be wrong, the entire loss in cash flow is compensated.



One interviewee lauds the “smooth collaboration” on the development and implementation of strategy, adding: “They are always responsive and ready with advice and action.” Other sources value [...] their ability to offer a “business development angle,” saying: “They can be creative in terms of bringing people together.”

*Chambers Europe, 2018*

By focusing the SPA discussions on the relevant issues, we are usually able to reduce negotiation time significantly and to ensure that the SPA is structured and easier to understand.

### Range of services

- Acquisition and sale of (project) companies, shares, assets and loan portfolios, including legal due diligence
- Transaction structuring and interface management (lenders, technical advisors, financial advisors)
- Transaction documentation: SPAs, LSPAs, shareholder agreements, joint ventures
- Project documentation: PPP/PFI structures, EPC/EPCM and O&M agreements, PPAs
- Regulatory implications, antitrust and environmental law aspects
- Tax structuring of transactions
- Restructuring before, during and after the transaction
- Post-closing claim management and disputes

“The team is praised by our clients: “highly recommended”, “very well organized”, “always responsive and provides good solutions”.”

*Legal 500, 2018*



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**“Leading firm for  
Energy M&A”**

*Legal 500 Germany, 2019*

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