

International Comparative Legal Guides

Renewable Energy 2027

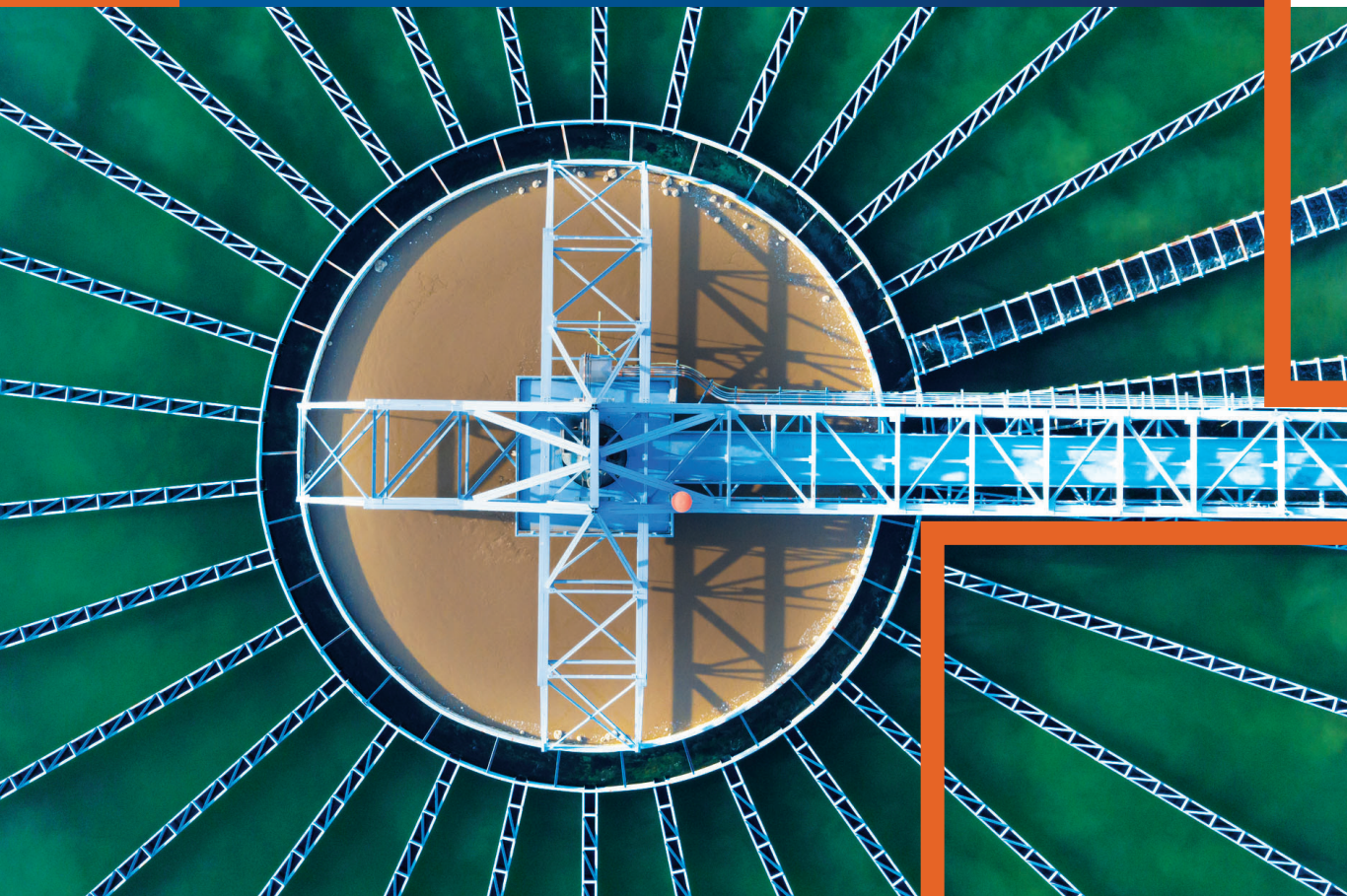
A practical cross-border resource to inform legal minds

Seventh Edition

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Renewable Energy in the Middle East: Evolving Structures and Risk Allocation

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Introduction

The Middle East is often considered synonymous with abundant fossil fuel reserves and its dominant role in the global market as a net exporter of oil and gas. As the world accelerates the transition to a renewable or “green” energy sector and reduces its reliance on fossil fuels, the region has played an outsized role in developing renewable energy technologies on a vast scale, primarily through its equally abundant renewable energy resources.

The Middle East benefits from its unique geographical location (being near the equator and benefitting from a jet stream), which provides an excellent opportunity for generating clean and sustainable renewable energy through solar and wind projects. This transition is taking place against the simultaneous challenge of ever-increasing energy consumption driven by digitisation, urbanisation and the advent of artificial intelligence (AI), which has driven a dramatic surge in electricity demand from data centres.

As project developers endeavour to maximise their returns, we continue to advise on key structuring features such as mini-perms, potential deferral of first repayments, allocation of pre-completion revenues and the treatment of working capital facility providers and VAT facility providers.

This article: (i) sets out an overview of the Middle East renewable energy market; (ii) highlights some of the challenges and opportunities that the Middle East’s unique and buoyant market offers; (iii) compares termination regimes in the region (including triggers and consequences); and (iv) explores some of the key financing structures we see in Middle East project financings, and the related considerations at the forefront of decisions made by developers and lenders in the region.

Market Overview

Historically, the Middle East’s primary revenue stream derived from the extraction and monetisation of its fossil fuel resources. The region accounts for five of the world’s top producers of oil (Saudi Arabia, Iraq, Iran, United Arab Emirates (UAE) and Kuwait) and four of the world’s top natural gas producers (Iran, Qatar, Saudi Arabia and the UAE).

Over the last two decades, the region has experienced sustained and rapid economic development and urbanisation, which has resulted in a steep increase in energy demand that has been, and continues to be, primarily met through energy generated by the region’s abundant fossil fuel reserves. During the same period, the region has been subjected to

various geo-political challenges that have led Middle East countries to seek to diversify their economies and enthusiastically embrace the energy transition. In addition, local and global initiatives to tackle climate change (such as COP28, the Kyoto Protocol, the Paris Agreement and ambitious nationally determined contributions) have driven the Middle East and its constituent states to focus on their respective energy security policies and climate goals. In recent years, the region has cemented its role as a global leader in the deployment of large utility-scale renewable power projects. The consistent support that various governmental authorities have provided for new renewable schemes in the region has undoubtedly played a key role in driving down development costs and has also acted as a catalyst for the deployment of new technologies (such as lithium-ion battery energy storage systems and green hydrogen projects).

Climate goals and regional pipeline

As fossil fuels produce greenhouse gases (GHGs), in recent years most Middle East governments have progressed highly ambitious plans to reduce or mitigate their GHG emissions in line with national targets set in accordance with the Paris Agreement, be it via utilising the region’s solar and wind resources, producing green hydrogen or utilising “green” resources as an energy source in the fossil fuel lifecycle (for example, by way of carbon capture technologies).

For example, the UAE’s Net Zero 2050 and the Kingdom of Saudi Arabia’s Vision 2030 strategies are testaments to the region’s strong commitment towards a “net zero” future. The Kingdom of Saudi Arabia set an initial target of generating 50 per cent of its power from renewable energy by 2030 and achieved a number of key milestones in 2024, including the commissioning of four new solar plants providing 3.6 GW of energy. The Kingdom’s commitment to its Vision 2030 also enabled it to achieve the lowest global price for solar (1.04 cents/kWh) and wind (1.57 cents/kWh) energy tenders. During COP28, the UAE also demonstrated its commitment to tackling climate change (and by extension promoting renewable energy production) by providing an initial commitment of USD 30 billion to create the climate-focused investment fund, ALTERRA.

The table below summarises some of the Middle East’s countries’ individual reported climate change targets and associated policies.

Country	Policies	Targets
Kingdom of Bahrain	National Development Strategy; Economic Vision 2030; National Renewable Energy Action Plan	■ Reduction in GHG emissions by 392,000 tonnes by 2025 ■ Renewable energy target of 10 per cent energy mix by 2035 ■ Net zero by 2060
Kingdom of Saudi Arabia	Vision 2030; Saudi Green Initiative	■ 50 per cent of its power generated from renewable sources by 2030 ■ Net zero by 2060
Kuwait	Kuwait New Vision 2035; Kuwait National Development Plan 2020–2025	■ 15 per cent of domestic electricity from renewable energy resources by 2030 ■ Net zero by 2050
Oman	Oman Vision 2040; Sultanate of Oman's National Strategy for an Orderly Transition to Net Zero	■ At least 30 per cent of electricity from renewable sources by 2030 ■ Net zero by 2050
Qatar	Qatar National Renewable Energy Strategy	■ Reduce GHG emissions by 25 per cent by 2030 ■ 18 per cent renewable energy power mix by 2030 ■ Net zero by 2050
UAE	Net Zero 2050 Strategy	■ Triple share of renewable energy by 2030 compared to 2022 ■ Increase installed clean energy capacity to 19.8 GW from 14.2 GW by 2030, contributing to a total energy mix of 30 per cent clean energy ■ Net zero by 2050 in the energy sector

The Middle East has long adopted a Public–Private Partnership (PPP) model as a means of developing its power generation infrastructure, leading to a competitive and robust market for projects to be developed by private developers. The following table summarises some of the recently reported significant developments and upcoming renewable energy projects in the Middle East:

Country	Projects
Kingdom of Bahrain	■ Al Askar 100 MW independent power producer (IPP) solar plant is being developed on the Askar landfill site ■ Masdar and Bapco Energies have signed an agreement to develop up to 2 GW of offshore wind projects ■ The Electricity and Water Authority is procuring its first solar IPP scheme, the 150 MW Solar IPP project near Bilaj Al Jazayer
Kingdom of Saudi Arabia	■ Through the National Renewable Energy Program, renewable energy projects with a total capacity of 19 GW have been awarded ■ SPPC is also procuring grid-scale Battery Energy Storage System (G1 BESS) Projects with a total capacity of 2 GW
Kuwait	■ Kuwait Authority for Partnership Projects' plans for the development of 1.1 GW Al Dibdibah Power and Al Shagaya Renewable Energy (Phase III) Zone 1 Solar photovoltaic (PV) IPP
Oman	■ Nama Power and Water Procurement Company (NPWPC) is procuring the development of the 500 MW Ibri III Solar IPP. This is NPWPC's fourth solar IPP following Ibri II (became operational in the summer of 2021), Manah I and Manah II (500 MW each, both under construction)
Qatar	■ TotalEnergies, Marubeni, and Siraj Energy (a joint venture between QatarEnergy and QEWEC) developed the 800 MW Al Kharsaah Solar PV IPP, which was operational in time for the 2022 FIFA World Cup ■ Currently exploring the viability of further large-scale wind and solar projects
UAE	■ Masdar and EWEC are developing an "around-the-clock" project involving the combination of 5.2 GW of solar PV with 19 GW hours of battery storage, producing a continuous baseload energy of 1 GW ■ The Dubai Electricity and Water Authority plans for the expansion under the IPP model of the Mohammed bin Rashid Al Maktoum Solar Park, adding 1.6 to 2 GW of solar PV capacity with 1400 MW BESS

Market Challenges and Opportunities

In spite of the impressive record of implemented renewable projects, as well as a multitude of planned projects to come, the region continues to confront numerous challenges to its own green revolution. For one, the increasing urbanisation of key cities, compounded by the ongoing migration of labour from Europe and Asia, means that the development of renewable energy is not just a question of replacing legacy fossil fuel assets, but also keeping pace with rising demand. Of course, it is helpful that the past decade has ushered in mass production of PV solar panels, creating a previously unimaginable degree of price compression in the development of solar farms,

resulting in cost-competitive electricity production (even more competitive than the fossil fuel equivalents).

However, the answer to increasing demand cannot, at this time, only be mass development of renewable energy. The issue is that renewable energy still suffers from what the industry calls the “intermittency problem”. This is to say that solar farms only produce electricity when the sun shines; so too, wind farms only generate power when the wind blows. Battery systems are increasingly being co-located with these renewables farms, but at considerable cost and power loss. A utility-scale battery system will at best return 70 per cent of the power that it stored.

This means that renewable energy, even with enormous cost reductions, cannot yet be considered for “base load” operations and is potentially expensive.

Compounding this issue, the proliferation of AI-focused data centres in the region is leading to a dramatic increase in power demand, far beyond what would have otherwise been the case due to population densification alone. Studies show that per-capita power consumption is set to increase manifold simply because of the increasing uptake of AI and digital tools, all of which consume exponentially more power than previous “information technology” infrastructure. As a result, regional governments are confronting the prospect of returning to base-load fossil fuel-fired power plant solutions, simply to keep pace.

That said, the primary opportunity for the region remains clear – to build a greener and more sustainable future for generations to come.

As many would agree, combatting climate change is a real challenge, requiring real action. Just from the deal summaries highlighted above, it is encouraging to see so many countries in the Middle East not only setting national carbon emissions targets, but moreover aggressively pursuing those targets with tangible renewable energy developments. Most of these developments are being implemented under the so-called “PPP programme”, leading to a sophisticated interplay between public and private interests.

Comparison of Termination Regimes in the Region

Overview

The termination regimes embedded in Middle East renewable energy power purchase agreements (PPAs), for the most part, share a common architecture – broadly comprising project company events of default, offtaker or buyer events of default, and termination rights for “natural” *force majeure* events and offtaker risk events (including for an event of loss). Consequences of termination and, in particular, termination payments are designed to, at least, keep lenders whole. The section below sets out the general position on termination triggers and consequences, and highlights specific features of certain regional markets.

Project company events of default

Across the region, project company events of default follow a broadly consistent pattern. They typically include: (i) failure to achieve the commercial operation date by the applicable long-stop date; (ii) abandonment of the project; (iii) failure to obtain or maintain required approvals; (iv) wilful or unexcused failure to operate or make the plant available (often

triggered by absence of availability for a specified number of consecutive or aggregate days); (v) failure to pay undisputed amounts when due; (vi) material breach of the PPA not remedied within a cure period (e.g. 60 days, frequently with a further extended cure period where the breach is incapable of remedy within the initial period); (vii) insolvency of the project company; (viii) termination of ancillary project agreements (such as a sub lease or usufruct agreement, or a grid connection agreement) as a result of a project company default; and (ix) a project company performance failure (measured by reference to energy production relative to a projected or guaranteed benchmark in a contract year) once the plant is operational.

PPAs usually specify a cure period (e.g. a 30-day notice period) following an event of default, during which the defaulting party must use reasonable efforts to cure, with the non-defaulting party entitled to issue a termination notice upon expiry if the default remains unremedied.

Insolvency events typically permit immediate termination without any cure period.

The offtaker has the right but not an obligation to purchase the project following its termination for a project company event of default (usually covering senior debt only).

Offtaker events of default

The treatment of offtaker defaults and the project company’s rights upon an offtaker breach represent one of the most significant areas of divergence across the region.

In the UAE (specifically Abu Dhabi and Dubai) and the Kingdom of Saudi Arabia, for example, offtaker events of default are clearly enumerated and, where applicable, are usually symmetric with project company events of default. They include: (i) failure to pay undisputed energy payments or deemed energy payments or to make other undisputed payments within a certain number of days; (ii) expropriation or nationalisation of the site, plant, or shares in the project company; and (iii) the occurrence of an insolvency event in respect of the offtaker. Upon the occurrence of an offtaker event of default, the project company has the right to initiate termination, and, following termination, the right (but not the obligation) to require the offtaker to purchase the project company’s right, title and interest in the project for the applicable termination amount set out in the PPA.

Saudi PPAs also have additional triggers specific to the Saudi context (such as an “Unenforceability Event” and an “Offtaker Credit Event”).

On termination of an offtaker event of default, the company may require the offtaker to purchase the project, typically at the highest termination compensation (usually covering debt and equity).

Force majeure and prolonged offtaker risk event

Most regional PPAs distinguish between “natural” *force majeure* (such as extreme weather or earthquakes) and “political” or “offtaker” risk events (such as change in law or war occurring in or involving the host country). The former allocates risk neutrally, while the latter typically attracts enhanced compensation for the project company upon termination.

The project company has the right to terminate following a prolonged offtaker risk event that prevents performance by the offtaker for a continuous period of 365 days. Where the offtaker elects to continue paying deemed energy payments beyond such

period, the project company will not have the right to terminate. In all other prolonged *force majeure* and offtaker risk event scenarios, only the offtaker has the right to terminate.

There is also usually a threshold financial trigger for offtaker-side termination on account of increased costs caused by an offtaker risk event.

Termination for a prolonged offtaker risk event triggers a mandatory purchase of the project.

Termination compensation

The financial architecture of termination compensation is a defining feature of bankable Middle East PPAs. Lenders require confidence that, whatever the cause of termination, the project's senior debt will be repaid. The region's PPAs generally provide for this in one of two ways: (i) a mandatory purchase obligation at a defined formula value (offtaker and *force majeure*/offtaker risk event termination events); or (ii) an optional purchase right at a lower formula value (project company-default termination).

On termination by the offtaker due to a project company event of default, the offtaker typically has the right, but not the obligation, to purchase the project company's interest at the applicable termination amount, which should be sufficient to cover senior debt.

On termination by the project company due to an offtaker event of default, or on termination by the offtaker or the project company (where applicable) following a prolonged *force majeure* event or offtaker risk event, the offtaker would be obliged to purchase the project at the applicable termination amount (i.e. the project company is entitled to require the offtaker to purchase, and the offtaker is obliged to do so).

Specific nuances

Certain markets present a number of noteworthy structural differences from the mainstream UAE and Saudi frameworks that are more frequently encountered in the region.

For example, the project company's right to terminate is removed entirely in Omani PPAs. Omani PPAs expressly provide that the project company shall not be entitled to terminate for any reason, including a "buyer" (i.e. offtaker) failure, but is instead entitled to pursue the offtaker for damages in respect of such failure.

The Qatar model also contains several distinctive features that set it apart from the UAE and Saudi Arabian frameworks – most significantly, the Qatari PPA also adopts an asymmetric termination structure. Only the offtaker has the right to terminate the PPA. The project company cannot terminate for any reason, including for a breach or default by the Offtaker. Instead, upon an offtaker breach, the company's remedies are limited to: (i) exercising its rights pursuant to a government guarantee; and (ii) pursuing the offtaker for damages.

Key Emerging Structural Features in Project Financings

Against the backdrop of developers' goal to maximise their returns, we are witnessing an increase in discussions (and related negotiations) between developers and lenders on what were previously "typical" structures and positions. In this section, we explore some of the key features we observe in project financings and the related considerations at the forefront of decisions made by developers and lenders in the region.

Long-term facilities v. short-term facilities (mini-perm)

A number of renewables programmes in the region provide (from the outset in the Invitation to Bid) that developers may submit their proposal incorporating senior debt on the basis of (i) long-term facilities, or (ii) short-term facilities:

- **Long-term facilities:** a long-term tenor is determined by the term of the underlying offtake agreement (for example, 15 or 20 years). The debt facilities will amortise on the basis of regular repayments, without any balloon repayments or equivalent structures.
- **Short-term facilities (mini-perm):** this structure anticipates the refinancing of the senior debt facilities after a period of successful commercial operation. The finance documents will prescribe a "target refinancing date", by which time the developers should refinance the initial senior debt facilities. A distinction is made between a (i) hard mini-perm, where failure to refinance the initial senior debt facilities by the target refinancing date will result in an event of default under the financing, and a (ii) soft mini-perm, where failure to refinance the initial senior debt by the target refinancing date will not result in an event of default under the financing, but will instead typically result in an increased margin and a cash sweep (to prepay the debt facilities).

A number of developers are opting for short-term facilities on the basis that this provides greater flexibility – developers anticipate being able to refinance the senior debt facilities at potentially lower interest rates and more favourable terms once the project is operational and able to demonstrate cashflows. In addition, developers may be able to refinance the senior debt facilities with bonds, which opens up another source of financing and potentially lower interest rates.

At the bid stage, where developers elect for short-term facilities, their financial model is anticipated to assume a take-out debt facility, being the debt facility that will refinance the initial senior debt facilities. This take-out debt facility is largely sized on the basis that there will not be an increase in senior debt on the target refinancing date other than to finance any costs and expenses as a result of the refinancing.

From a documentation perspective, the key consideration relates to cash sweep mechanics. Lenders would expect that, from the target refinancing date until the senior final maturity date, the project company will (on each repayment date) apply an amount equal to a percentage threshold (such minimum threshold to be agreed commercially) of the excess cash sweep amount towards prepayment of the senior debt facilities (together with hedging termination payments, as applicable). The excess cash flow is determined by cash standing to the credit of the applicable operating revenues accounts after payments of project costs, operating costs and scheduled payments of principal amounts due.

Deferral of senior first repayment

Historically, the senior first repayment date has been documented as a fixed date linked to the commercial operation of the project. To maintain greater flexibility, a topical point is whether the senior debt finance documentation should provide for an automatic deferral of the senior first repayment date if there is an adjustment to the scheduled commercial operation date in accordance with the terms of the offtake agreement (for example, following the occurrence of a *force majeure* event prior to the commercial operation date).

Whilst lenders do not necessarily accept this feature as a matter of course, it is worth noting that acceptance of such a mechanic relates to what lenders are able to accept from a commercial/credit perspective, and what conditions are built into the documentation to ensure that adequate parameters are documented. A key commercial consideration is whether the first senior repayment amount being deferred shall be (i) due in full on the second senior repayment date, or (ii) consolidated and deferred across all remaining principal amounts (in accordance with the repayment schedule).

Conditions that may be agreed include:

- no pre-completion revenues (if applicable) having been distributed;
- an updated financial model being delivered to the lenders; and
- a debt service cover ratio (DSCR) threshold being met during the deferral period.

From a documentation perspective, aside from the provisions relating to the first senior repayment date, adjustments will also have to be made to the (i) availability period, and (ii) long stop/sunset date for commercial operation, given that both of these will likely be linked to the scheduled commercial operation date as at the signing date of the facility agreement.

Pre-completion revenues

Certain projects provide for pre-completion revenues (or early generation revenues), which are revenues generated by a project prior to the commercial operation date. Such pre-completion revenues are often seen in renewable projects where there is phased delivery.

Structurally, we may see:

- a separate “pre-completion revenues account”, in which all pre-completion revenues would have to be paid directly. Such account would be designated a project account and be subject to the security package granted in favour of the lenders; and
- parameters around withdrawals from the pre-completion revenues account. For example, whilst it may be commercially agreed that pre-completion revenues can be applied towards project costs, it may be that residual amounts cannot flow into the distributions account until the completion date has occurred.

Recent discussion points on transactions where pre-completion revenues are contemplated are: (i) whether pre-completion revenues can be considered as an “equity source” (and if so, should the lenders benefit from acceptable credit support being posted); and (ii) whether pre-completion revenues can be applied towards project costs only up to a cap (as commercially agreed).

Treatment of VAT facility providers

In a project finance context, a VAT facility is customarily entered into at the outset, with the proceeds of a VAT facility being applied towards (i) the payment of VAT in relation to the procurement of goods and services for the project, and (ii) the repayment of an existing VAT facility loan (as applicable).

We see two main structures when it comes to VAT facility providers:

- **Structure 1:** the VAT facility provider is a “senior financier” but benefits from security over the VAT receivables account only, as standalone security. Such security is not shared with the other senior financiers; and

- **Structure 2:** the VAT facility provider is a “senior financier” and all senior financiers (including the VAT facility provider) collectively benefit from the full security package including over the VAT receivables account.

Whilst both structures exist in the Middle East project finance space, the preferred structure is often driven by commercial considerations by all senior financiers.

A key factor that senior financiers will consider when evaluating the treatment of the VAT facility provider concerns voting entitlement. It is not uncommon for a VAT facility provider that is a senior financier to have its voting rights limited so that (i) prior to the occurrence of enforcement action, the VAT facility provider’s voting entitlement will be zero, and (ii) following the occurrence of enforcement action, the VAT facility provider’s voting entitlement will be the amount of its VAT facility commitment.

Treatment of working capital facility providers

Whereas a VAT facility is typically entered into at the outset of a financing, a working capital facility is only required to meet general working capital requirements of the project company in relation to the project. The finance documents will therefore usually prescribe that a working capital facility agreement is entered into by the relevant commercial operation date.

In contrast to treatment of the VAT facility provider (and the two structures available), it is more common for the working capital facility provider to be designated a “senior financier” and a share in the full security package being granted.

However, similar to treatment of the VAT facility provider, it is not uncommon that where a working capital facility provider is a senior financier, its voting rights will be limited so that: (i) prior to the occurrence of enforcement action, the working capital facility provider’s voting entitlement will be zero; and (ii) following the occurrence of enforcement action, the working capital facility provider’s voting entitlement will be the amount of its working capital facility commitment.

Concluding Remarks

Due to the digital transformation (e.g. AI, cloud-based services) and the increasing urbanisation and population growth in the Middle East, energy demand in the region will almost certainly continue to increase. It is clear that the region’s ambitious programme to develop large utility-scale renewable energy projects will meet some of that demand. As technologies continue to develop and familiarity continues to grow, we expect continued investment into the renewable energy space in the Middle East.

When it comes to termination regimes in the region, there exist noteworthy structural differences between jurisdictions, which lenders and developers should be aware of.

Against this backdrop, the project finance structures underlying renewable developments in the region are continuing to evolve. As developers continue to seek to maximise margins and optimise returns, there is engagement on structural features that were once relatively settled, reflecting a dynamic market.

We expect that as the project pipeline in the Middle East grows, there will be increasing engagement between lenders, developers, procurers (and their advisers) to appropriately allocate risk and identify novel solutions within the established project finance framework to maintain competitiveness.



Oliver Irwin advises lenders and sponsors on the development and financing of cross-border energy and infrastructure projects across a broad range of industries, many of which are the first of its kind in their sector. He has significant experience advising on multi-sourced project financings involving export credit agencies, multilaterals and development finance institutions, as well as commercial banks and traders. Oliver is frequently involved in the negotiation and structuring of complex intercreditor matters. He is also a regular speaker at industry conferences. Oliver is: ranked in *Chambers Global* and *Chambers UK*; recommended for Projects, Energy and Natural Resources – Power (including Electricity, Nuclear and Renewables) in *The Legal 500 United Kingdom*; and *IFLR1000 Financial & Corporate and M&A Guide*, Highly Regarded: Project Finance.

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- Renewable Energy Market
- Sale of Renewable Energy and Financial Incentives
- Consents and Permits
- Storage
- Foreign Investment and International Obligations
- Competition and Antitrust
- Dispute Resolution
- Updates and Recent Developments