

ZEROING IN ON RENEWABLES

LEGAL CONSIDERATIONS IN MAKING RENEWABLE ENERGY
INFRASTRUCTURE FINANCE-READY



net zero
lawyers
alliance

Introduction

The first series of our podcast, *Zeroing In*, explored the legal considerations in making renewable energy infrastructure truly finance-ready with leading legal and policy experts.

This document synthesises the lessons from each episode into a useful reference for those working in the renewable energy sector.

Recurring themes include the need to:



Design in bankability

Bankability must be designed in from day one. It is a continuous discipline throughout projects, not a work stream bolted on before financial close.



Identify and manage risk

Risk should be identified, evidenced and explicitly allocated and not assumed away or defaulted on to government or lenders.



Provide certainty

Regulatory and tax certainty consistently matter more to investors than the availability of capital.



Consider the design of Power Purchase Agreements

Power Purchase Agreement (PPA) design is the spine of bankability, with the structure, tenor, price and offtaker credit quality of PPAs recurring as decisive variables across every market discussed.



Ensure flexibility

Emerging technology and market structures require deliberately flexible contracts. Rigid, 'future-proofed' documents are not surviving a rapidly changing world.



Build a social mandate

Starting genuine stakeholder, community and funder engagement early reduces both legal and reputational risk.

Regulatory frameworks in emerging markets

Ernst Müller highlights the regulatory realities shaping renewable energy projects across emerging markets, from community engagement to the legal frameworks that influence the long-term success of projects.

[Listen to Episode 1 here](#)



Key lessons

- Regulatory frameworks operate in layers (national, provincial, municipal) and across parallel tracks (pre-construction, construction, operational). Treat this as a mapping exercise, not a single checklist.
- Permits frequently attach to the specific legal entity that holds them; group restructurings or contractor arrangements can inadvertently cause severe delays to projects and need to be addressed from the outset.
- Environmental Impact Assessments and permitting timelines can run to two years or more in some jurisdictions. Start early or risk stalling the entire project.
- A social licence to operate does not, on its own, make a project bankable, but its absence can present an existential threat to a project, regardless of whether the project complies on paper.
- Mixed legal traditions (common law, civil law, Roman-Dutch, Francophone, Lusophone) across a single region mean templates cannot simply be copy-pasted between countries. Understand your region and what it means to operate there.



Ernst Müller
Director (Environment, Social & Governance)
Herbert Smith Freehills Kramer

Practical takeaways

- Identify your counterparty first. Bear in mind that public and private counterparties trigger entirely different fiscal and financial-framework rules.
- Build a "regulatory universe": map every material topic to the specific laws and regulators (energy, environment, water, land) that govern it, country by country.
- Before relying on a permit, confirm who legally holds it and whether it will survive the corporate structure you intend to finance.
- Start environmental and permitting processes as early as possible. Long-lead consents are often the true critical path.
- Run genuine, early, meaningful community engagement and treat local knowledge (flood plains, cultural sites) as a risk-mitigation resource, not a box to tick.

Contracts for Difference financing technology

As the race to net zero intensifies, one mechanism has quietly become the backbone of low carbon project deployment: Contracts for Difference (CFDs). Far from obscure financial instruments, CFDs are proving to be one of the most effective tools we have for unlocking bankable, large-scale, low-carbon infrastructure.

James Wyatt explains how CFDs actually work and why they have become indispensable to financing the energy transition.

[Listen to Episode 2 here](#)



Key lessons

- A CfD is the stabiliser bar, not the whole vehicle. It can stabilise revenues and reduce financing costs, but it does not cure construction, permitting, grid, supply-chain or demand risk.
- The principal financing value of a CfD is not simply the top-up payment. Revenue certainty reduces the cost of capital, lowers the required strike price and can unlock investment at scale.
- CfDs work best for capital-intensive, long-lived technologies with mature demand and credible reference pricing. They are less effective where volatile operating costs, uncertain demand or construction risk dominate.
- Design details determine the protection actually delivered. Reference-price methodology, indexation, negative pricing, volume exposure, milestones, change in law and termination compensation can materially alter the economic bargain.
- There is no universal CfD model. Nuclear requires bespoke construction protection and reopener architecture; hydrogen must address demand, offtake and input-cost volatility, not merely stabilise the output price.



James Wyatt

Partner (Energy & Infrastructure)

Baker McKenzie

Practical takeaways

- Identify the risks preventing financeability before setting the strike price. Allocate those risks to the parties best able to manage them rather than using price to compensate for poor design.
- Match indexation to the project's real cost base, using appropriate labour, materials, shipping and component-level measures rather than relying solely on a headline inflation index.
- Analyse change-in-law protection, strike-price adjustments, reference pricing, negative-price rules and termination compensation together. Their interaction matters as much as the individual provisions.
- Price residual risk honestly while preserving delivery incentives. A well-designed CfD should support investment without insulating the developer from controllable performance, dispatch or construction risk.

Common disputes and how to avoid them

As renewable energy continues its rapid growth, so do the risks. Richard Power emphasises what developers, lenders and investors should really be watching, from regulatory volatility to contractual blind spots that can undermine project certainty.

Listen to Episode 3 here



Key lessons

- Disputes cluster at predictable lifecycle stages, such as planning consent, grid access, construction defects, PPA pricing / KPIs, and certificate payments. Risk review should be structured around this lifecycle, not treated generically.
- Standardised, 'off-the-shelf' contracts are a common source of disputes because they fail to reflect genuinely project-specific risk allocation.
- Regulatory withdrawal of subsidies or incentives, and rising energy nationalism/treaty withdrawal, are emerging threats to bankability in both developed and developing markets.
- A well-drafted dispute escalation clause should function as a genuine resolution mechanism, not merely a procedural hurdle to clear before litigation.
- Investor confidence is less about the existence of legal protections than about the host state's actual track record of complying with them.



Richard Power
Partner (Energy Disputes)
Fieldfisher

Practical takeaways

- Insist on project-specific construction, operation and maintenance (O&M) and offtake agreements rather than reused templates.
- Where counterparties are government bodies, insert stabilisation clauses addressing change in law and regulation.
- For cross-border investment, assess investor-protection treaty coverage and consider neutral-seat arbitration over local courts.
- Do not cut corners on due diligence, legal spend or contractor/consultant quality. Investing in these at the outset is materially cheaper than dealing a later dispute.
- Understand what your counterparties – be they government, regulator or offtaker – actually want from the project, not just what you want. Misalignment is where disputes begin.

The impact of policy on green energy projects

Reg Plummer takes us behind the curtain of policy making, where competing priorities, economic pressures and shifting political realities shape the future of future renewable energy projects.

In this episode, Plummer explains the role of government departments in advising decision-makers and implementing those decisions.

[Listen to Episode 4 here](#)



Key lessons

- Government is not a single, coherent actor, but a set of competing departments and interests. Effective advocacy requires finding the right internal allies.
- Policy support typically comes in layers (e.g. tax incentives, direct loans/grants, and regulation). Successful projects often combine support across multiple programmes and levels of government (federal, provincial, industry-specific).
- Affordability, cost-of-living and energy-security pressures routinely push environmental priorities down the political agenda. It is important to plan advocacy accordingly.
- 'Can't-fail' project narratives actively damage credibility with government economists and financiers. Transparently naming and quantifying risk builds trust.
- The 'level playing field' argument in asking for parity with existing support given to competing (often fossil fuel) industries has proven consistently effective across many policy contexts.



Reg Plummer

Former Economist

Finance and Natural Resources Canada

Practical takeaways

- Map the government landscape and identify which department or agency is naturally aligned with your project before approaching anyone.
- Build your economic case around an objective account of risk, not an optimistic sales pitch. Decision-makers actively discount unrealistic narratives.
- Look for support across multiple layers simultaneously: national programmes, sector-specific funds and provincial/regional incentives.
- Use fairness and parity arguments ("give us what other sectors already get") to build political momentum for policy change.
- Build broad coalitions from local politicians, industry allies and affected communities before entering formal negotiations with key government ministries, such as finance.

Off-grid, hybrid systems and the new 'negative space' in emerging markets

As renewable energy markets evolve at record pace, particularly in Africa, developers are no longer waiting for regulation to catch up. They're moving fast, seizing opportunities and reshaping what's possible.

Brigette Baillie and Martin Kavanagh unveil the legal shifts redefining renewable project development.

[Listen to Episode 5 here](#)



Key lessons

- The market is shifting from single-buyer, centrally-procured models to captive, hybrid and multi-buyer structures that reshapes fundamental risk allocation assumptions.
- In several emerging markets, the private sector is moving into unregulated 'negative space' faster than legislators, creating both opportunity and legal clashes.
- Multi-technology co-located projects (solar, wind and battery energy storage systems (BESS)) concentrate risk in the technical/engineering, procurement and construction (EPC) layer far more than in finance documents or PPAs.
- Cross-border power trading (e.g. via regional power pools) raises complex, often untested questions about transmission responsibility and liability across multiple jurisdictions.
- Rigid, 'future-proofed' contract structures fail in a world of fast-changing technology and reference rates. Flexibility must be designed in deliberately.



Brigette Baillie

*Partner, Head of Energy Africa
Herbert Smith Freehills Kramer*



Martin Kavanagh

*Partner and Regional Head of Projects
(UK, USA, Middle East & Africa)
Herbert Smith Freehills Kramer*

Practical takeaways

- Do not consider any question too basic. Many first-of-a-kind structuring points genuinely have no established answer yet.
- Build flexibility into financing and technical documents rather than attempting to lock in a 30-year answer on day one.
- Do not assume government will absorb every risk that cannot be pinned on the developer or equipment supplier. Reassess this assumption project by project.
- Design projects so that every stakeholder along the value chain has a genuine economic stake in the project succeeding, not just in shifting risk away from themselves.
- Seek advisers with real first-of-a-kind deal experience, as recutting a precedent from a conventional deal will not solve genuinely novel structuring problems.

PPAs : The spine of bankability

As the global push towards net zero accelerates, PPAs have become fundamental to turning renewable energy projects into financeable infrastructure.

Far more than simple energy supply contracts, PPAs are the legal and financial backbone that allows renewable projects to move from concept to reality by providing revenue certainty, allocating risk and unlocking the capital needed to build large-scale clean energy.

Andreas Zettergren explains how PPAs work in practice and why they are essential to today's energy markets.



Andreas Zettergren

Partner (Banking and Finance)

Mannheimer Swartling

[Listen to Episode 6 here](#)



Key lessons

- A PPA's core bankability function is to convert price volatility into a fixed, predictable cash flow and to shift credit risk onto a creditworthy offtaker.
- PPA structure (baseload vs pay-as-produced) is a foundational bankability choice with pay-as-produced is typically preferred for renewables, shifting volume risk to the buyer.
- PPAs cannot be assessed in isolation. They must be back-to-back consistent with construction, O&M and other project contracts, or the project company absorbs uncovered risk.
- Large, portfolio-scale cross-border PPAs introduce basis risk (different power markets) and production/consumption timing mismatches that a single-site PPA may not face.

- Carbon accounting is moving from annual to increasingly granular (even hourly) matching, adding new structuring pressure to PPA drafting.

Practical takeaways

- Start PPA negotiations early. They routinely take longer than expected and require input from many stakeholders.
- Never negotiate a PPA in isolation from the rest of the project document suite. Check back-to-back consistency throughout.
- Build in sufficient buffer before any long-stop termination date to absorb realistic construction delay.
- For portfolio or cross-border PPAs, consider utility-wrapped/sleeved solutions to manage basis and timing risk.
- Given a 10–15 year (or longer) contract life, pay close attention to detail on the specific parameters that matter most to your business and protect them explicitly.

Construction and technology frameworks: Driving lender confidence

As renewable energy projects scale globally, the challenge is no longer just innovating – it's making projects bankable in an unpredictable environment.

Jesper Silow dives into the legal and commercial realities shaping project finance today.

[Listen to Episode 7 here](#)



Key lessons

- Bankability in construction contracts is fundamentally about certainty of start date, budget and risk level – not the absence of risk.
- No party in the contracting chain will accept open-ended exposure to commodity, energy or labour-cost inflation. That risk must be explicitly allocated, capped or insured.
- Emerging technology markets typically lack adapted EPC contract form practice, requiring bespoke, carefully balanced drafting between contractor-acceptability and lender risk tolerance.
- The market has shifted toward much longer, deeper early design and technical maturity work before financial close, compared with practice five to six years ago.
- Foreign direct investment and information/national-security restrictions are adding a new layer of structuring complexity to projects in some sectors.



Jesper Silow

*Partner (Construction and Real Estate, Energy)
Mannheimer Swartling*

Practical takeaways

- Do not rush to financial investment decision. Wait until the business case is genuinely stable, even if this means missing 'first mover' timing.
- Invest early in design and technical maturity, so that the scope is well understood before construction risk is priced.
- Build a detailed interface matrix across EPC, O&M and other work streams to expose hidden project-on-project risk.
- Explicitly identify and price residual risks, allocate them to a specific risk owner or place them deliberately in a contingency bucket.
- Use staged decision gateways rather than full upfront commitment, preserving flexibility as market conditions evolve.

The realities of renewable energy projects in Aotearoa New Zealand

Aotearoa New Zealand's renewables story is one of the world's most advanced. But the legal and financial frontier it now faces has lessons for every market.

Nicola Swan and Lauren Curtayne explain the legal and financial realities shaping renewable project development in Aotearoa New Zealand.

[Listen to Episode 8 here](#)



Key lessons

- Having a high share of renewables in place does not make the remaining transition easier to finance. Instead, firming risk (e.g. dry-year hydro shortfall) is becoming the dominant bankability issue.
- Nature-related risk (biodiversity, land, ecosystem dependency) is increasingly relevant to lender due diligence.
- Small markets with few creditworthy corporate offtakers require innovative structures, such as retailer sleeving to make PPAs bankable.
- Some lenders will now finance ahead of a signed PPA for a defined period, helping resolve the historic 'chicken and egg' timing conflict between offtakers and financiers.
- Climate litigation risk should be treated as a core business risk rather than a purely reputational one, with media coverage, not final judgment, already highlighted as having increased financial impact.



Nicola Swan

*Partner (Litigation and Dispute Resolution)
Chapman Tripp*



Lauren Curtayne

*Partner (Corporate and Commercial Energy)
Chapman Tripp*

Practical takeaways

- Design your PPA with your lender's expectations in mind from day one. Engage lenders early on standard bankability requirements even absent a standard-form PPA.
- Proactively document how climate- and nature-related risks are being governed and managed and this materially reassures funders, even where risks are not yet crystallised.
- Expect nature-related due diligence even for asset classes not traditionally seen as nature-dependent.
- In small or thin offtaker markets, explore sleeving/retailer intermediary structures to bridge developer and offtaker credit needs.
- Track sovereign policy signals (e.g. green bonds) as evidence of political durability, even where they don't directly move financing terms.

Finance-readiness in a data centre-driven Asia Pacific market

The Asia Pacific energy transition is one of the fastest moving in the world. But ambition alone doesn't make a project bankable.

Bree Miechel (Corrs Chambers Westgarth) spoke to us about the legal and financial realities shaping renewable infrastructure across the Asia Pacific (APAC) region.

[Listen to Episode 9 here](#)



Key lessons

- Bankability must be built into project design from day one. It cannot be retrofitted at financial close.
- Developers systematically underestimate the depth of lender diligence on risk allocation, particularly construction/connection delay and contractor insolvency risk.
- Data centre and AI-driven demand is a major new source of long-tenor offtake, unlocking projects that previously lacked bankable revenue certainty. However, it is also straining transmission and grid-connection capacity.



Bree Miechel
Partner (Projects & Energy)
Corrs Chambers Westgarth

Practical takeaways

- Engage lender and investor requirements from the earliest stage of project design, not once commercial terms are already agreed.
- Replace assumptions with evidence (resource assessments, grid studies, permitting pathways and revenue forecasts) before approaching the market.
- Track data-centre and digital-infrastructure offtake demand as a genuine financing catalyst, and plan for the grid-connection pressure it creates.
- Advocate for and price in regulatory and tax certainty, which matters more to long-horizon investors than the availability of capital itself.

First-of-a-kind technology: From experimental to bankable asset classes

The UK is becoming a world leader in financing "first-of-a-kind" clean energy technology. Making the shift from experimental projects to fundable ones takes more than good tech.

Maria Connolly explains about what it actually takes to make first-of-a-kind renewable projects bankable.

[Listen to Episode 10 here](#)



Key lessons

- Lender hesitation on first-of-a-kind technology (FOAK) centres on: technical feasibility, policy certainty, and the ability of revenue to service debt over the project's life.
- Even without a template deal due diligence for FOAK projects follows a consistent core structure: long-term land rights, correct planning consent route, secured construction documentation, and grid connection certainty.
- A single regulatory shift (e.g. removing a de facto ban on a technology) can move an entire sector from experimental to a genuinely investable asset class.
- Multi-technology co-located sites (e.g. solar plus battery storage) introduce additional legal complexity around grid-sharing and land rights if the technologies are ever separated.
- 'Funder-readiness' must start at the very first land negotiation stage (often eight to ten years before financing is actually needed), not once a deal is being structured.



Maria Connolly

Partner, Head of Future Energy & Real Estate

TLT

Practical takeaways

- Start pre-bankability checks (e.g. land, planning, grid) at the earliest possible stage of the project – well before approaching lenders.
- Build early, transparent relationships with funders to understand both formal due-diligence checklists and informal, unwritten expectations.
- Be upfront about constraints and gaps rather than presenting an artificially polished picture. Surprises damage funder confidence more than known issues.
- Treat 'ready to build' as a genuine standard: confirm easements and grid routes are actually finalised (do not merely assume).
- Watch for regulatory and policy shifts in your jurisdiction that could reclassify a technology from experimental to mainstream. Ensure you can move quickly when they occur.

Tips for bankability

Our ten conversations looked across different markets and renewable technologies, converging on a consistent message: **bankability is not a financial event that happens at the end of a project's life, but a legal discipline practised from inception**. The following tips have been distilled from these conversations and provide a practical guide for practitioners preparing a renewable energy project in any market.



Start early – not at financial close

Engage lenders, funders and legal advisers on bankability requirements from the earliest land, planning and permitting decisions. This is often required years before financing is actually needed (Episodes 9, 10).



Build your evidence base and allocate risk explicitly

Replace assumptions with evidence, such as resource assessments, grid studies, permitting pathways, construction schedules and name a specific owner for every material risk (Episodes 1, 2, 7, 9).



Do not rely on government as a default risk absorber

Question inherited assumptions about who bears residual risk, particularly as project structures move away from single-buyer, government-backed models (Episodes 2, 5).



Treat the PPA as the spine of the transaction

Structure, tenor, pricing and offtaker credit quality drive bankability more than almost any other single document and it must never be negotiated in isolation from the rest of the project document suite (Episodes 6, 8).



Build flexibility into long-term contracts

Rigid, fully 'future-proofed' drafting fails against fast-moving technology. Reference-rate and regulatory change mechanisms should be designed into the contract, instead of trying to prevent it (Episodes 5, 7, 8).



Advocate for regulatory and tax certainty

Across every market discussed, predictable long-term policy settings were identified as the single biggest lever to unlock investment – not the availability of capital (Episodes 4, 9, 10).



Invest in genuine stakeholder and funder relationships

Early, transparent engagement with communities, regulators and funders consistently reduced legal, reputational and financing risk more effectively than any contractual clause alone (Episodes 1, 3, 8, 10).

Taken together, these lessons point to a single underlying discipline: bankability is built, not bought. It is the product of early, well-evidenced, transparently allocated risk management that is sustained from the first day of a project through to financial close and beyond.

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