

Market  
Intelligence

# PROJECT FINANCE 2022

Global interview panel led by Milbank

LEXOLOGY

Getting the Deal Through





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## Getting the Deal Through

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### Published by

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Cover photo: [shutterstock.com/g/chombosan](https://www.shutterstock.com/g/chombosan)

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ISBN: 978-1-83862-949-6

Printed and distributed  
by Encompass Print  
Solutions

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# Middle East Overview

Tina Blazquez-Lopez is head of energy and infrastructure for the Middle East and Africa, and is based in Simmons & Simmons' Dubai office. She has spent over 15 years advising governments, lenders, sponsors, borrowers and equity investors on the acquisition, development and financing of complex projects throughout the world with a focus on emerging markets. Many of her transactions have been 'first in kind' or have been named 'Deal of the Year' by leading industry journals. Tina is also a fluent Spanish speaker.

Leonie Sellers is a dual-qualified senior associate in Simmons & Simmons' Dubai office. With a particular focus on energy and infrastructure, Leonie has advised clients both domestically and internationally in various industries, including developers, contractors and employers.

James Coleman is a partner in the corporate and commercial team based in Dubai. He specialises in public and private M&A, joint ventures, corporate reorganisations, investment fund establishment and financial regulation. James has been based in the Middle East and North Africa (MENA) region for over 10 years. He is fluent in English and German.

Tiksha Keylock is a UK-qualified corporate associate who has worked in the MENA region for three years, focusing primarily on transactional mandates. She has a particular focus on projects M&A, in the natural resources, renewable energy and infrastructure sectors and advises international consortiums, private equity sponsors and governments on their development, acquisitions and disposals of energy and infrastructure assets.

## 1 | What have been the trends over the past year or so in terms of deal activity in the project finance sector in your jurisdiction?

**TBL:** Project spending in the MENA region in 2021 was sluggish and only marginally up from spending in 2020. Covid-19 is still having an impact on project spending and the hope is that 2022 will bring us closer to 2019 spending levels. The Kingdom of Saudi Arabia's (KSA) is the leading market in the region followed by Qatar and Egypt. Towards the end of 2021 Saudi Aramco awarded subsurface and engineering, procurement and construction (EPC) contracts worth US\$10 billion in connection with the Jafurah unconventional gas field, which spurred the market. Jafurah is significant to Saudi Arabia's goal of producing half of its electricity from gas and half from renewables as the Kingdom works towards a 2060 net-zero target.

Both renewable and clean energy development remain key trends in the Middle East. Through the KSA Vision 2030, the KSA continues to work towards an initial target of 9.5GW of renewable energy by 2030, with the UAE targeting a 50 per cent increase of clean energy contribution by 2050 and an overall reduction of its carbon footprint of power generation by 70 per cent through its Energy Strategy 2050. We have also seen other countries following suit with the implementation of ambitious and progressive clean energy focused strategies. Notable in Qatar was the rebranding in late 2021 of its state-owned oil and gas company from Qatar Petroleum to Qatar Energy. The move was intended to signal a broader strategy including a focus on energy efficiency and environmentally friendly technology, such as capturing and storing carbon dioxide.

**JC:** Despite an increase in oil prices and, hence, oil revenues in 2021, we have seen governments in the MENA region continue to remain committed to diversifying their energy sources, including to use new technologies and to lower the cost of renewables. The completion of the Dhofar wind farm in Oman, the first utility-scale wind farm in the Gulf Cooperation Council (GCC), has increased confidence among developers, governments and financiers. It was the first industrial-scale wind farm in the Middle East, and therefore an important milestone in the use and development of this technology. The Abu Dhabi-based Al Dhafra Solar PV IPP, which reached financial close in June 2021, is currently said to be the world's largest single-site solar power plant, using approximately 3.5 million solar panels. The plant will also mitigate 2.4 million tonnes of carbon dioxide annually and recorded the world's lowest tariff of US\$0.0135/kWh.

In line with the UAE's support of the UN Sustainable Development Goals, there has been a further commitment announced by it, to help provide sub-Saharan Africa with clean and affordable energy, and in January 2022, the Etihad 7 initiative



Tina Blazquez-Lopez



Leonie Sellers



James Coleman



Tikesha Keylock

was announced at the Abu Dhabi Sustainability Week 2022, through which the UAE will fund the supply of clean electricity to 100 million people by 2035.

**TK:** Further, and in line with the megacity developments announced in 2019, we have seen the KSA continue to take steps to attract foreign interest in the region. The relaxation of guardianship rules and visa regulation will arguably make the KSA a more attractive proposition for international investors, with major development projects such as the Amaala project, for which the Saudi Arabian Investment Fund is reported as intending to raise up to 10 billion riyals in green financing, in 2022. There has also been increased appetite by regional developers in North Africa, with countries such as Morocco continuing to announce large-scale sustainable energy projects, presenting continued opportunities for Middle East-based investors and developers that share an approach to innovation and technology progression.

**LS:** The US\$50 million UAE-Caribbean Renewable Energy Fund, fully financed by Abu Dhabi Fund for Development established in 2017 under the UAE's Foreign Aid Policy to assist small island developing states to achieve their national priorities was also active throughout 2021, with the award of the EPC for its pilot hurricane-resistant clean energy project in Dominica. Masdar is leading the design and implementation of the project to build a 5MW/2.5 MWh battery energy storage system. The fund is fully financed by Abu Dhabi Fund for Development.

2 | In terms of project finance transactions, which industry sectors have been the most active and what have been the most significant deals to close in your jurisdiction?

**TBL:** While sectors such as aviation and tourism remain deeply impacted by covid-19, other key areas in the UAE such as Dubai's real estate and Abu Dhabi's oil and gas projects sectors are steadily returning to growth. The construction, transport and power sectors continue to remain the most active in the Middle East, with the UAE and Saudi Arabia taking great strides in this sector.

With a reported US\$860 billion worth of active projects ongoing in 2021, Dubai continues to drive growth in the construction and infrastructure sectors with projects such as Emirates Water and Electricity Company's Water Treatment & Transmission Facility project in Mirfa (which is expected to commence commercial operation in 2024) and Abu Dhabi-based Emirates Water & Electricity Company, in partnership with Abu Dhabi Waste Management Centre's 150MW Waste to Energy Plant in Al Dhafra, releasing requests for expressions of interest in 2021. The

**“Key areas in the UAE such as Dubai’s real estate and Abu Dhabi’s oil and gas projects sectors are steadily returning to growth.”**

multibillion-dollar Hail & Ghasha sour gas programme in Abu Dhabi will also be a significant regional project.

**JC:** While traditional construction sectors continue to be the most active, the breadth of sectors in which projects requiring financing are being developed is widening to encompass nuclear projects, desalination plants, aerospace developments and social infrastructure such as hospitals and schools.

The Shuqaiq 3 desalination plant in Saudi Arabia, with a value of over US\$600 million, will be one of the largest reverse osmosis desalination plants in the world. The project is being developed under a 25-year build-own-operate contract model and at the end of 2021 entered the final testing and commissioning stages. Lenders include MUFG, SMBC, Samba Financial Group, Credit Agricole Corporate and Investment Bank, the National Commercial Bank and the Norinchukin Bank.

**LS:** The UAE government has also, in consultation with the International Atomic Energy Agency, developed a civil nuclear power programme. The UAE’s first nuclear project, Barakah, which is projected to produce up to 25 per cent of the UAE’s



electricity requirements while preventing the release of up to 21 million tonnes of carbon emissions every year, reportedly commenced commercial operations in July 2021. By 2030, 12 per cent of Dubai's electricity supply capacity is forecast to be nuclear.

**TK:** On the renewables side, notable was the signing of a cooperation agreement between ACWA Power and Natixis Corporate and Investment Banking (Natixis CIB) in December 2021 to finance new projects, explore opportunities and develop new projects in the region, including in renewable and clean energy. The objective is that Natixis CIB will finance up to approximately US\$2 billion over two years for ACWA Power's future project pipeline.

3 | Which project sponsors have been most active in driving activity? Which banks have been most active in providing debt finance?

**TBL:** Projects in the region are typically financed by syndicates of regional and international financiers, using a combination of sophisticated instruments including

bonds, Islamic bonds, loans, syndicated loans, Islamic loans and initial public offerings.

Global political instability has prompted a more risk-averse approach to the region by international lenders and sponsors. However, regional financiers continue to actively support project development throughout the jurisdiction. Standard Chartered Bank is a key player in the market and was part of a consortium that raised approximately US\$275 million to finance the construction and maintenance of the MWac Ibri-2 I PP in Oman. The mandated lead banks included Asian Infrastructure Investment Bank (AIIB), Bank Muscat, Riyad Bank, Siemens Bank and Warba Bank. This deal was the first renewable energy financing in the GCC region by AIIB, the Beijing-headquartered international multilateral development bank.

**JC:** The recent collapse of Arabtec, which was contracted to work of Dubai's Expo 2020, will no doubt place additional strain on the real estate sector and local banks operating in that space. Dubai's Mashreqbank is the most exposed bank, with an approximately US\$96.11 million loan. Banks have been generally reluctant to extend fresh credit to contractors considering the global downturn. Large UAE developers will likely also be impacted.

Government-backed infrastructure funds remain the most prevalent source of financing. For example, Masdar delivered the Dhofar wind project in Oman, and funding for the project was provided by the Abu Dhabi Fund for Development, the UAE's leading national entity for development aid. The Oman Infrastructure Fund has also announced the establishment of its Rakiza Fund, which has a focus on core infrastructure and brownfield developments in Oman. The KSA's Public Investment Fund is also reported as having budgeted up to 1 trillion riyals (US\$266.57 billion) to invest in the domestic economy by 2025.

**LS:** Sponsors such as ACWA Power, Mubadala and Masdar remain active, with many of the government-related entities, such as the Abu Dhabi National Oil Company, the Abu Dhabi Water and Electricity Authority, and the Dubai Electricity and Water Authority, continuing to dominate the local sponsors or UAE-headquartered joint ventures list.

The post-flotation valuation of Saudi Aramco at US\$2 trillion is also noteworthy as the plans for the deployment of fresh capital in the KSA in 2020 are unveiled by Saudi Aramco. The listing in 2019 has spurred more initial public offerings in KSA, which has plans to deepen its capital markets under several reforms aimed at reducing its reliance on oil.

**“The legal and regulatory framework in general continues to develop in the region, promoting foreign investment and local small and medium-sized enterprises.”**

4 | What are the biggest challenges that your clients face when implementing projects in your jurisdiction?

**TBL:** The legal and regulatory framework in general continues to develop in the region, promoting foreign investment and local small and medium-sized enterprises, with many government authorities continuing to build on the progress of 2021 in respect of online and digital services and cross-government coordination in an effort that will continue to streamline the permitting and approval process to help support businesses. However, economic commentators continue to report the need for more robust investor protection schemes and a transparency rule, as well as stricter information disclosure requirements.

From a practical standpoint, construction risks remain a key concern in the region, which, in some instances, lead to high-value disputes and negatively impact project timelines. Late amendments to the scope of work (ie, contract variations) of ongoing projects lead to cost overrun and project delays, and the relevant national and municipal bodies often offer different approaches to, and standards of, procurement procedures, which can further lead to cost overrun and contract variations.

Continued payment delays as faced by contractors, as well as diminished access to funding, have also placed extreme pressure on margins and, in some cases, led to financial distress.

**JC:** In a recovering market, slow decision-making is also impacting project awards and the rate at which projects are coming to market. The uncertainty caused by covid-19 means that the decision-making process can be much longer than usual. The year 2021 has also seen a rise in the cost of raw materials caused by the pandemic. This is impacting project timetables. Increased market competition, localisation rules and an increased focus on where companies have their headquarters and procure key equipment and staff can also create challenges.

**LS:** On the renewables side, regulatory reform is required to merge renewable energy, primarily PV solar power, into power grids. Policy adjustments and new regulations will also be required to integrate new technologies, such as battery storage for electric vehicles, to ensure the stability of the grid.

**TK:** Political tensions also remain a reality. Further to the withdrawal of the United States from the Joint Comprehensive Plan of Action (JCPOA) and the reimposition of US sanctions in 2019, tensions rose in 2020 as Iran reportedly exceeded the stipulated limitations on its nuclear programme. President Biden has pledged to return the United States to the JCPOA if Iran resumes compliance. While negotiations are reported as at early 2022 to indicate convergence between the US and Iran, it remains to be seen whether ongoing projects in Iran, including Kermanshah-Khosravi railway in western Iran, Shiraz-Bushehr railway, Tehran-Qom-Isfahan railway and the Tehran-Hamedan-Sanandaj railway, which are awaiting international financing, will be negatively affected. The UAE capital of Abu Dhabi was also struck by two blasts that left three people dead and six injured on 17 January 2022.

5 | Are there any proposed legal or regulatory changes that may give rise to new opportunities in project development and finance? Do you believe these changes will open the market up to a broader range of participants?

**TBL:** Traditionally, a foremost barrier to market entry in the UAE has been the restrictions on foreign direct investment. As previously prescribed by the UAE Commercial Companies Law (Federal Law No. 2 of 2015), restrictions were historically applicable to limit a foreign shareholder to holding a maximum of 49 per cent of the shares in a company incorporated onshore (that is, not within one of the many free zones in the UAE) (the FDI Restriction).

However, Federal Decree promulgating Law No. 26 of 2020 was passed in December 2020 (the Decree), repealing the FDI Restriction. Moving forward, the threshold required for local ownership will be determined by the Cabinet, as advised by a committee to be formed pursuant to the Decree, comprising members of various governmental departments (the Committee). The Committee will have the discretion to determine the activities that are considered to have a 'strategic impact' and thus are not permissible for foreign investors to be entitled to hold up to 100 per cent of the legal interest in such companies.

**JC:** In 2021, the UAE government issued a list of activities that are deemed as having a 'strategic impact' on the UAE economy under Cabinet Decision No. 55 of 2021 on the Determination of the List of Strategic Impact Activities. The strategic impact activities include security and defence, banks, exchange houses and finance companies, insurance, currency printing, communications, Haj and Omra services, Quran centres and services related to fish traps. Generally, therefore, project-related activities are not, as a starting point, considered as strategic impact activities.

The Committees in each Emirate have been tasked with issuing a list of business activities of non-strategic importance applicable to their respective Emirate (the Positive List).

The Abu Dhabi and Dubai Department of Economic Development published its Positive List in May and June 2021 respectively, which include, among others, the following project-related activities: onshore and offshore oil and gas fields and facilities services, oil and gas field facilities building contracting, civil works of energy generation construction stations and civil works of energy generation construction stations.

This development is likely to open the gateway for full foreign ownership in construction companies in the UAE.

**LS:** There are some key changes under way in the landscape of foreign investment and public-private partnerships (PPP), with a broad trend of reforms across the region, in both the oil exporting and importing countries, to modernise legislation and enhance the business environment. Increased scope for participation and improved protections make it more likely that foreign investors might participate in PPP projects, which are also being facilitated by several dedicated laws. Egypt, Jordan and Kuwait started the trend, followed by Abu Dhabi, Dubai and Lebanon. A new PPP Law No. 12 of 2020 was published on 31 May 2020 in Qatar and, in August 2021, Saudi Arabia adopted the Private Sector Participation Law, creating a better framework for both foreign and domestic investors in privatisation programmes and PPPs in the Kingdom. Although Oman introduced its long-awaited PPP laws in



2019, the Public Authority for Privatisation and Partnership (PAPP) was effectively dissolved in August 2020 as part of a wider government restructuring. This has caused some uncertainty in the market as bidders and investors consider the future of planned projects and ongoing tenders. PAPP was understood to have a healthy pipeline of projects in the education, healthcare, logistics and utilities sectors, and it will be important to ensure that confidence in the Oman PPP market is not undermined.

**TK:** In March 2021, the Saudi Arabian Council of Ministers, by way of the Council of Ministers Resolution 436, dated 3 August 1441, AH approved a new private sector participation law (PSP Law) that introduces changes to the regulatory framework governing PPPs and projects can be undertaken in Saudi Arabia to encourage further participation of the private sector in public sector contracts. The law provides for a comprehensive framework governing the relationship between governmental authorities in Saudi Arabia and the private sector collaborating to undertake infrastructure and other public services projects. The PSP Law creates an even playing field between foreign investors and Saudi investors by setting the same standards,

rules and procedures with respect to the tendering process. It was announced on 7 January 2022, the National Centre for Privatisation and PPP introduced a new set of rules that will govern how such PPP agreements are agreed and concluded. It is expected that the PSP Implementing Regulations to be issued by the National Centre for Privatisation will include provisions with the aim of generating further competition in the tendering process for ensuring protection of public interests.

- 6 | What trends have you been seeing in terms of range of project participants? What factors have influenced negotiations on commercial terms and risk allocation? Are there any particularly innovative features?

**TBL:** The structuring of projects in the region generally means that the procuring government entity will also take the majority share of the project company. Liquidated damages, decennial liability and a robust security package comprising either a parent company guarantee or bond as performance security is typical and, due to the manner in which projects are competitively tendered in the region, it is usual to see bidders accept maximum risk transfer to submit competitive bids.

The procurer will typically pass off all construction risk, including interface, force majeure, site contamination risk and permitting requirements, to the developer. At the operational level, the backing-off of risk by developers through the use of subcontracting is also common.

**JC:** The use of sovereign guarantees often assists lenders with getting comfortable with the risk profile. However, as major infrastructure projects in the region are procured based on well-tested precedent legal documentation, project risk allocation does not often negatively impact the bankability of projects, such that no multinational lenders will participate. This means that we are likely to see less use of the sovereign guarantee as a way of allocating risk in PPPs, for example. The use of other instruments, such as insurance, may in some cases offer a more efficient way to manage project risk. The sovereign guarantee is no longer a 'one size-fits-all' solution.

- 7 | What are the major changes in activity levels or new trends you anticipate over the next year or so?

**TBL:** Despite potentially bearish sentiment from foreign investors as a result of forecasted economic downturn following the twin impacts of fluctuating oil prices and covid-19 on the regional economies, there are still some very promising signs. The UAE led the way with its vaccination programme and as a travel hub with ambitious

plans to diversify the economy with strategically important projects to align with the national vision, project spending is expected to return in 2022 and beyond.

On 31 January 2022, the UAE Ministry of Finance announced that a federal-level corporate tax of 9 per cent on taxable income above 375,000 dirhams will be introduced starting on or from 1 June 2023. The tax will apply to all businesses and commercial activities in the UAE, other than businesses in the free zones, provided that they comply with all regulatory requirements, businesses relating to the extraction of natural resources and salaries, among other limited exemptions. The implications are likely to be felt for relevant companies that have been operating in a relative no tax environment.

Furthermore, as governments are now more cautious about the over-reliance on oil revenues to develop their economies, the use of PPPs to deliver public services will grow and the market will see more private-sector involvement in infrastructure projects. This will spur innovation and the need to reduce waste.

**JC:** Innovation is key to the region's success, and this is being promoted right through the economies in almost all sectors and services. New technologies are being developed to undertake a number of tasks from payment services and crypto to healthcare services. For example, as part of the Expo 2020 Dubai's Global Best Practice Programme, the UAE announced in July 2021 projects for safe hand-washing in rural Ghana and delivery essential healthcare via offline mobile phone apps across remote communities.

Expo 2020 has been a success for the UAE as it took place during the 50th anniversary of the country's formation. More importantly, it boasts to be one of the most sustainable world expos ever. Sustainability will continue to be of increased importance to the UAE and in the region as a whole as countries move towards ambitious renewable energy targets and more sustainable development practices.

**LS:** Gas will play a key role in the region's energy transition as well as hydrogen. The development of new hydrogen projects in the region such as the electrolysis facility to produce green hydrogen for the transport industry by a consortium consisting of Masdar, Siemens Energy, the Abu Dhabi Department of Energy, Etihad Airways, Lufthansa, Marubeni Corporation and the Abu Dhabi-based Khalifa University is exciting. Siemens Energy and DEWA are also developing the first solar-driven electrolysis hydrogen facility in the Middle East. As the world looks for more sustainable solutions, there will also be investments made in the exportation of hydrogen, which is currently challenging.

With the UAE to host COP 28 in 2023, all eyes will be on the sustainability endeavours of the region in the forthcoming year. H Sheikh Abdullah bin Zayed Al Nahyan,

Minister of Foreign Affairs and International Cooperation, publicly announced in late 2021 that the UAE will 'commit as a nation to supporting the entire international community in accelerating our combined efforts to overcome the very real threat of climate change'.

**TK:** The Al-Ula Accord was also signed on 5 January 2021, ending the three-year rift between Qatar, the UAE, Saudi Arabia, Bahrain and Egypt. The end of the Qatar blockade will be good for both the jobs market and the wider business climate in the region. We anticipate increased investment between the UAE and Qatar, particularly the UAE construction industry, which has recently put many projects on hold. The UAE has also opened its doors to Israel, promoting further trade opportunities, which were solidified by a visit by the Israeli president to the UAE in January 2022. During the visit, Isaac Herzog called for other countries to join the Abraham Accords. Furthermore, in parallel with the opening of Expo 2020 (in October 2021), the UAE has moved to relax a number of Islamic laws for personal freedom. These relaxations are designed to attract foreigners as well as to make the environment more conducive for business.

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# The Inside Track

What three things should a client consider when choosing counsel for a complex project financing?

An in-depth knowledge and experience of PPPs and project finance, local regional knowledge and strong negotiation skills.

What are the most important factors for a client to consider and address to successfully implement a project in your country?

An understanding of local law and an appreciation of local culture is really important when structuring and executing projects in the UAE, so it is important to choose counsel on this basis. Given Simmons & Simmons has over 20 years' experience in the UAE, Qatar and Saudi Arabia, in addition to multi-language capabilities, we are well placed to assist our clients in this regard.

What was the most noteworthy deal that you have worked on recently and what features were of key interest?

- Advising a Southern African mining company on its hive-out and disposal of 50 per cent stake of its precious metals smelting and refinery business. Acquisition financed by off-take prepay.
- Advising a US-based, oil, gas and utilities company on its disposal of a minority interest in a UAE power plant, to UAE based energy company.
- Advised Qatar-based Umm Al Houl Power QPSC (UHP) on the US\$389 million expansion of one of the largest and most eco-friendly power and desalination plants in the Middle East.
- Advising on the financing work for Mitsubishi Corporation (Diamond Generating) on their bid for a solar photovoltaic project in Qatar.
- Advising an infrastructure fund on its proposed investment in a submarine cable.

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

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