

Smart Power



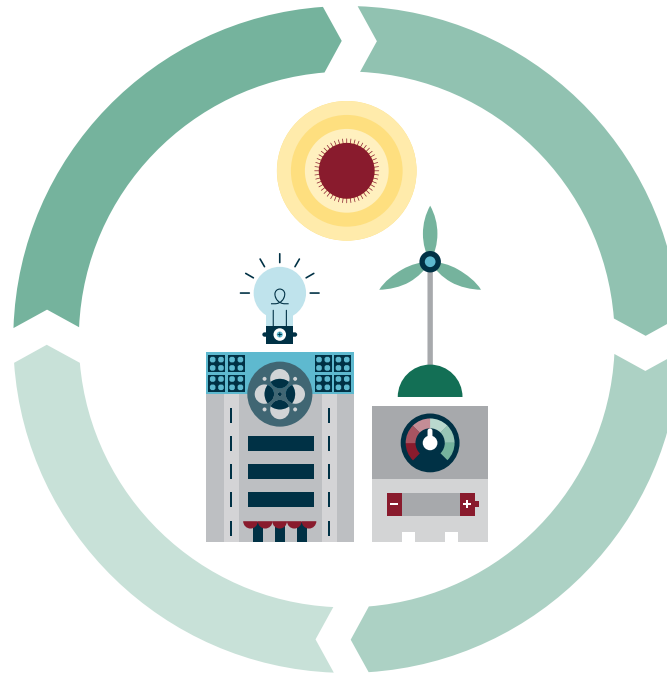
Osborne Clarke's specialist service supporting developers, investors and operators of green energy projects.

Our team provide joined up support across all legal issues at each stage of an energy project lifecycle.

Development

We help clients to successfully structure, finance, plan and deliver energy projects.

[Find out more](#)



Asset management

We advise clients on all aspects of managing operational energy projects, to help minimise risk and maximise asset profitability.

[Find out more](#)

Development

Development

Asset management

Investment and development finance

- Types of issues:
- Development platforms
 - Deal structure
 - Joint ventures

Land

- Types of issues:
- Development site acquisition
 - Securing options to lease developments sites
 - Negotiating access and cable rights
 - Resolving and mitigating property related development risks

Planning

- Types of issues:
- Strategic planning policy and legal support for NSIPs
 - Legal project management for DCOs
 - Compulsory purchase support
 - Planning appeals, project management and advocacy
 - Judicial review
 - Environmental Impact Assessment
 - Planning enforcement support

Procurement

- Types of issues:
- Regulatory
 - Strategic
 - Global supply chain
 - Individual project vs portfolio
 - FEED/Detailed Design

Grid and route to market

- Types of issues:
- Grid connection
 - Shared infrastructure
 - CfD
 - PPAs
 - Regulatory

Project finance

- Types of issues:
- Equity vs debt
 - DevEx
 - CapEx
 - FID/FC

Construction and delivery

- Types of issues:
- Project management:**
- Discharge of planning conditions/compliance with consent
 - Stakeholder management
- Physical delivery:**
- Operation and enforcements of contractual and legal rights and obligations
 - Project counsel services
 - Advising on risks, mitigation, claims and dispute resolution in relation to: Construction risk and claims, Land, Planning, DNO/grid, Environmental and Health and safety

Corporate and commercial disputes and risks

- Types of issues:
- Acquisition disputes and warranty and indemnity claims
 - Shareholder and joint venture disputes regarding ownership and the future of the project
 - Financing disputes
 - Grid connection delays, costs and disputes
 - Directors' duties

DEVELOPMENT

Investment and development finance



Types of issues

- Development platforms
- Deal structure
- Joint ventures

What we do

We advise investors, financiers, and developers in connection with the full lifecycle of renewables projects, from feasibility studies through to ready to build, financial close and operational M&A.

We advise on new business models and deal structures to support renewables, which extends to complex and innovative power management and smart energy infrastructure and solutions.

Our experience includes

- Advising a global commodities firm, an independent global investor and a solar developer on a major European solar joint venture.
- Advising a renewable energy investor on the acquisition of new generation assets including solar, onshore wind, battery storage, biomass, EV charging and hydrogen, as well as a joint venture with a developer for UK green hydrogen offtake projects.
- Advising an investment management firm on its innovative framework and financing of a pipeline of European solar assets.
- Advising an investment manager on a number of development, acquisitions and financings of solar and storage assets across Europe.

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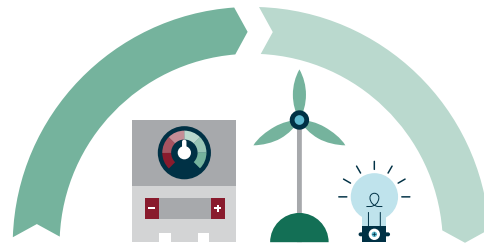
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DEVELOPMENT

Land



Types of issues

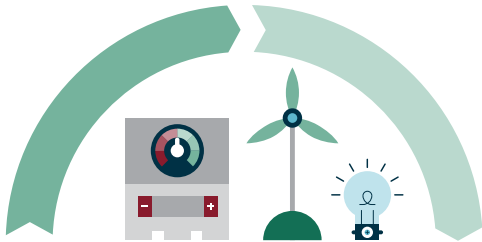
- Development site acquisition
- Securing options to lease developments sites
- Negotiating access and cable rights
- Resolving and mitigating property related development risks

What we do

We advise on all property related aspects of a green energy development, from title reviews to establish site viability; securing options to lease sites; acquiring new development sites and the necessary land rights to entering into development agreements.

Drawing on our extensive experience, we quickly identify and work with you to troubleshoot potential development risks and constraints, such as access issues, restrictive covenants, mines and mineral rights, overage obligations and challenges from neighbouring land owners.

We also regularly advise green energy developers on the correct interpretation of obligations and rights contained in options and development agreements, to ensure that developments progress smoothly and to avoid any future issues with the operational site.



Our experience includes

- Advising multiple developers on the successful exchange of over 25 option agreements ahead of the Gate 2 submission deadline.
- Advising a developer of four large scale battery projects on all real estate aspects from acquisition through to construction, financing, and subsequent sale.
- Assisting various green energy developers to resolve neighbouring land owner challenges, including objections to the use of sites for energy projects, allegations of breaches of restrictive covenants and disputes regarding the use of shared rights of way.

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DEVELOPMENT

Planning



Types of issues

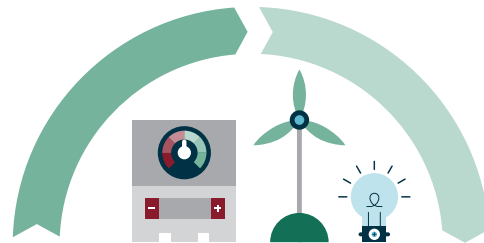
- Strategic planning policy and legal support for nationally significant projects (NSIPs)
- Legal project management for development consent orders (DCOs)
- Compulsory purchase support for major projects.
- Planning appeals, project management and advocacy
- Judicial review advice and support
- Environmental Impact Assessment review and advice
- Planning enforcement support

What we do

We support clients on navigating the complex political landscape around consenting energy developments and controls over operating assets.

Our planning team support clients promoting energy developments at all scales, including greenfield and re-powering. We also advise on development conflicts involving asset protection and compulsory acquisition.

We take a commercial approach to our advice, seeking to de-risk your project and avoid legal challenge.



Our experience includes

- Advising a green energy company on the successful promotion of a Solar Park, including environmental impact assessment, compulsory purchase and advocacy.
- Advising an energy company on connection and reinforcement projects, including the promotion of compulsory purchase orders, and advising on asset protection matters particularly interaction with NSIP projects.
- Advising a multinational energy company on a Net Zero Centre including the planning strategy, and consenting for a 100MW green hydrogen project and a 350MW BESS scheme.
- Ongoing asset support for a renewable energy developer and investor, an investment manager, an energy company, a renewable energy project developer, a solar developer, and a global investment manager.

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DEVELOPMENT

Procurement



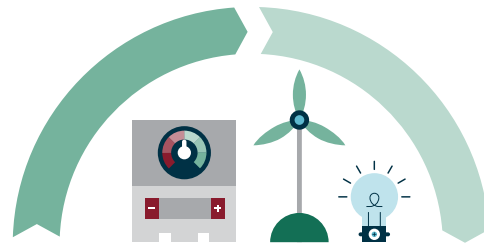
Types of issues

- Regulatory
- Strategic
- Global supply chain
- Individual project vs portfolio
- FEED/Detailed Design

What we do

We support developers and investors through all stages of the procurement process, from initial structuring advice to drafting and negotiating supply, installation and maintenance contracts.

We have extensive experience of advising on both full-wrap EPC contracting and complex multi-contract procurement structures and can help you determine the most efficient and cost-effective approach for your project, whilst ensuring contracts are bankable and remain attractive to potential purchasers.



Our experience includes

- Advising a developer of four large scale battery storage projects (50-100MWp) involving a complex multi-contract procurement structure involving 8+ separate contracts project. Our advice included initial roundtable discussions with key stakeholders to determine procurement strategy and the subsequent negotiation of the supply and installation contracts.
- Advising a developer of one of the largest co-located solar and battery storage projects currently in development in the UK (500MW solar/300-400MW BESS), including advice on the overall procurement structure and the subsequent drafting and negotiating of supply, installation and O&M contracts.
- Advising the development arm of a UK solar fund on the procurement of a range of projects from high-volume, small-scale projects on water authority sites to large scale ground mount projects.

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DEVELOPMENT

Grid and route to market



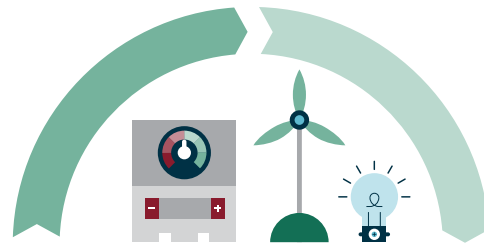
Types of issues

- Grid connection
- Shared infrastructure
- CfD
- PPAs
- Regulatory

What we do

We advise clients throughout the grid connection process and can support you in practical application planning or on longer term strategies and realistic timeframes.

Our work in this area includes supporting businesses with regulatory engagement, and on monetising energy balancing and reserves, energy efficiency and new business models for the delivery of energy services. We can help you navigate the complexities and constraints involved in securing grid capacity, including advising on routes to market.



Our experience includes

- Advising an investment company on a ten-year corporate power purchase agreement (PPA) with a telecommunications company for the physical offtake from two operational wind farms.
- Advising an investment management firm on its flagship transmission connected battery project involving complex grid connection and offtake advice.
- Advising a global energy company on infrastructure agreements and planning performance agreements (PPAs) with a county council.
- Advising an investment management company in relation to the grid connections, Contracts for Difference, power purchase agreements and revenue contracting strategies for their portfolio of British renewable assets.
- Advising a specialist in the wholesale energy market on template flexibility, marketing agreements and regulatory advice elements on development of utility-scale BESS projects in Germany.

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DEVELOPMENT

Project finance



Types of issues

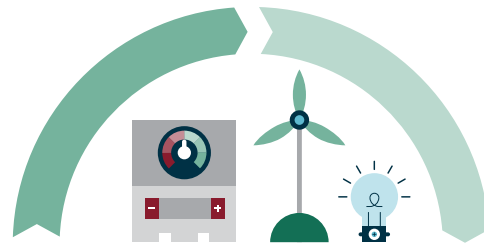
- Equity vs debt
- DevEx
- CapEx
- FID/FC

What we do

We advise borrowers (including developers, sponsors and project companies) and creditors (including banks and alternative credit providers) across the entire capital stack on UK and international energy financings, covering traditional greenfield project financing, secondary/brownfield acquisition financing and corporate financing for operational utilities, developers and energy providers.

We have significant experience across a wide variety of funding structures and the full spectrum of energy assets and revenue models, throughout their lifecycle.

Our deep industry knowledge means we can advise on specific bankability issues for each project, and that we understand where efficient market-tested solutions can be used, but also have the expertise required to structure innovative financing solutions if needed.



Our experience includes

- Advising a global energy technology business on the c.£450m refinancing of a portfolio of over 80 UK solar assets.
- Advising a flexible energy infrastructure developer on a c.£400m debt facility to fund the development of 750MW of flexible generation and battery storage assets with innovative offtake arrangements.
- Advising a leading energy company on the £200m financing of two synchronous condenser projects, supported by availability-based NGESO Pathfinder contracts.
- Advising a renewables fund with c.1GW of assets under management on the hedging across its entire UK portfolio of solar assets implementation of power price.

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DEVELOPMENT

Construction and delivery



Types of issues

Project management:

- Discharge of planning conditions/compliance with consent
- Stakeholder management

Physical delivery:

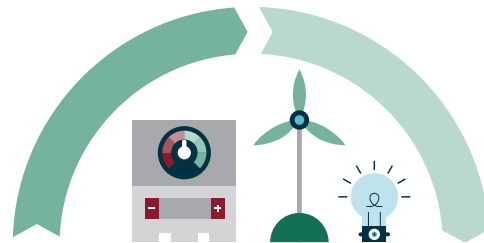
- Operation and enforcements of contractual and legal rights and obligations
- Project counsel services
- Advising on risks, mitigation, claims and dispute resolution in relation to:
 - Construction risk and claims
 - Land
 - Planning
 - DNO/grid
 - Environmental
 - Health and safety

What we do

We advise on all aspects of constructing and establishing a green energy project.

From inception stages through to development of an operational scheme, we consider all relevant concerns: from strategy for grid connection and environmental regulation; to health and safety assessment, we work with clients to evaluate how a project can be structured to limit exposure to risk.

Our specialists can guide you through each stage of the construction and delivery process.



Our experience includes

- Advising a global energy utility on the real estate and construction aspects of its Hinkley C nuclear power plant.
- Advising a leading UK based infrastructure and investment manager on the construction and maintenance arrangements for its entire UK solar park portfolio, along with a recent development joint venture with Island Green Power.
- Advising a leading international investor on the construction aspects (TSA, services agreement and MSA) for the Llynfi Afan wind farm.
- Advising an owner of a large battery energy storage system on the resolution of numerous claims submitted during construction.
- Advising an owner and developer of an onshore wind farm in relation to various claims under the BOP and TSA contracts.

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DEVELOPMENT

Corporate and commercial disputes and risks



Types of issues

- Acquisition disputes and warranty and indemnity claims
- Shareholder and joint venture disputes regarding ownership and the future of the project
- Financing disputes
- Grid connection delays, costs and disputes
- Directors' duties

What we do

We work with clients on all types of corporate and commercial disputes and risks relating to the development of assets in the UK and internationally, and the subsequent disposal of those assets. We help enforce rights under supply contracts for key generation assets to maximise the prospects of the projects becoming operational.

We also identify risks and devise solutions for clients that have purchased assets that are not performing.

Our experience includes

- Enforcing rights and subsequent settlement of disputes arising from the financial structuring of a portfolio of solar assets and a joint venture agreement with the EPC contractors.
- Settlement of shareholder disputes following the acquisition of assets by an institutional investor following allegations of breaches of directors duties.
- Arbitral proceedings resulting from failed acquisition of an international project.
- Rectifying the improper assignment of a suite of solar EPC and O&M contracts to the incorrect entities.

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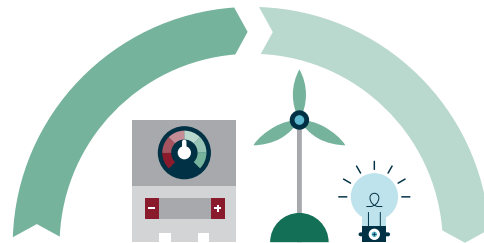
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Asset management

Development

Asset management

Plant performance

Types of issues:

- Defective equipment and remedial works
- Operation and maintenance issues
- Final acceptance, performance testing and closing out EPC defect works
- Interface issues with other assets

Property and lease

Types of issues:

- Landlord and tenant relationships
- Lease rights and obligations
- Site access and cable rights

Regulatory and statutory compliance

Types of issues:

- Ofgem audits and investigations
- Environmental matters

Health and safety compliance

Types of issues:

- Statutory obligations for organisations and individuals in the corporate framework
- Risk review and reporting
- Managing contractors
- Enforcement agency investigations

Operational contracts

Types of issues:

- Risks and problems that impact at shareholder/fund level
- Day-to-day contract management
- Duties of directors

Interface with funders

Types of issues:

- Finance/financial compliance
- Contract management
- Risk mitigation

Optimisation and enhancements

Types of issues:

- Planning
- Finance
- Technology

ASSET MANAGEMENT

Plant performance



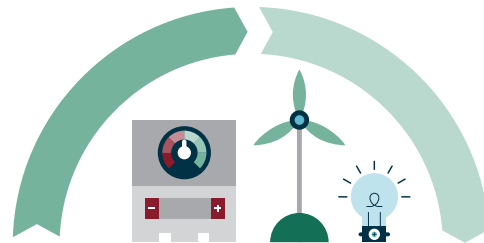
Types of issues

- Rights and recourse for defective plant/equipment – warranty claims and liability for under-performance or failures, or resulting disruption or outages.
- Post completion or partial acceptance issues – remedial works during the defect liability periods, issues with punch list works, performance testing and final acceptance, EPC final payment issues and release of security (bonds, guarantees).
- Issues on Operation and maintenance contracts – warranty claims, maintenance obligations and repairs, poor performance, health & safety obligations.
- Interface issues – advising on impact of DNO upgrade works, interface issues with battery storage, EV charging etc.

What we do

We advise on risks, entitlements and solutions in relation to the operation and performance of your plant and equipment. This includes assets not performing as they should and disruption that arises out of it.

We help on the transition from completion of physical works to Final Acceptance of the asset, including testing and handover to the O&M contractor. We also advise on compliance with the maintenance regime, ensuring better production and prolonged asset life.



Our experience includes

- Advising an owner investor on actions against its O&M contractor across a portfolio of over 120 solar farms, concerning performance and H&S issues as well as defects. Our strategic advice led to the successful ending of all contracts and to a replacement O&M contractor.
- Supporting a large UK investor on the final acceptance process and rectification of defects across its portfolio of 60+ solar projects over the course of over 5 years.
- Assisting a solar farm owner in relation to disruption caused as a result of upgrade works to purchaser's equipment under a private wire PPA.
- Advising on defective equipment (transformers, inverters, switchgear, panels) issues across a number of different portfolios, including claims against manufacturers, EPC contractor and O&M contractor.

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ASSET MANAGEMENT

Property and lease



Types of issues

- Negotiating and securing enhancements and extension to existing property rights.
- Dealing with threats to property rights – interference with property use and access rights; interference with grid connection cables; trespass.
- Issues with rent and other lease payments, including rent reviews and decommissioning security payment obligations.
- Ensuring compliance with lease obligations, such as site repair and maintenance.
- Advising on neighbouring developments and tenant consenting rights.

What we do

We advise on all and any property issues relevant to the management of a green energy asset. We help to prevent property issues from affecting an asset's generating capacity or financial performance and we deal with risk arising out of disputes with landlords and neighbouring owners. Beyond that we can assist you to maximise, enhance and extend property rights to fully optimise asset-lifespan and performance.

Our experience includes

- Assisting a solar farm operator to avoid payment of a multi-million pound site decommissioning security payment.
- Negotiating a 20 year extension to the term of a solar farm lease, doubling the asset lifespan.
- Documenting a complex variation to a lease to allow for the co-location of a battery storage facility on an existing solar site.
- Advising MonSolar in a successful victory in both the High Court and Court of Appeal regarding a “double compounding” RPI rent review dispute, which is prevalent in a number of historic solar leases.

Key contacts



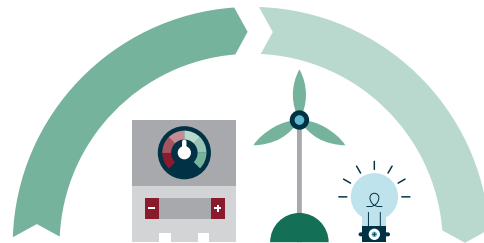
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ASSET MANAGEMENT

Regulatory and statutory compliance



Types of issues

- Ofgem issues including:
 - audits of assets under incentives schemes.
 - compliance with incentive scheme requirements on making changes to assets.
 - investigations and enforcement action on licence condition breach.
- Responding to consultations and challenging approaches taken by Ofgem in relation to scheme and code modifications.
- Requirements linked to the environmental impact of assets, such as biodiversity net gain and nutrient neutrality.
- Compliance requirements relating to the disposal of obsolete equipment.
- ESG and sustainability.

What we do

We advise on risks, obligations and opportunities in relation to all regulatory and environmental aspects of green energy assets and equipment. This includes advising on compliance with new and evolving UK and EU policy and regulation in this area as well as the new commercial opportunities these may give rise to. We also help to preserve asset accreditation and revenue streams under incentive schemes, in the face of an increasingly challenging and interventionist approach from Ofgem.

Our experience includes

- Advising a major renewables investor on its ESG compliance requirements.
- Advising on a formal investigation by the Environment Agency regarding alleged breaches of regulations in relation to an offshore wind farm asset.
- Working with renewable energy businesses to prevent revocation of accreditations following unsatisfactory Ofgem audits.
- Advising on declaring changes to portfolio assets and the impact on incentive scheme requirements.
- Supporting a major renewables investor in hastening the positive conclusion of an Ofgem investigation to allow disposal of a portfolio to proceed.

Key contacts



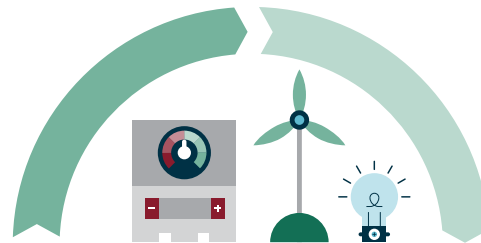
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ASSET MANAGEMENT

Health and safety compliance



Types of issues

- Ensuring contractors have requisite levels of competence.
- Assessing the level of site reporting and degree of oversight required.
- Documenting good health and safety management.
- Managing the interface between health and safety obligations and contractual rights.
- Dealing with enforcement agencies and other stakeholders.

What we do

We advise on the management of health and safety risks in relation to energy assets and equipment. This includes looking at potential areas of exposure for both organisations and individuals in the corporate structure and evaluating how any risk can be minimised.

We also advise on how health and safety performance relates to contractual obligations. In the event of a health and safety incident we are able to assist with the management of the entire process, from providing support and advice in the immediate aftermath, through to the investigation, managing stakeholders and responding to any enforcement action.

Our experience includes

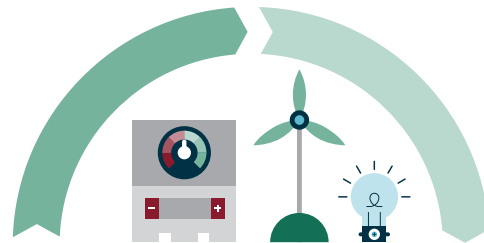
- Advising an owner in respect of health and safety breaches across an extensive portfolio of solar farms, including on how best to make sites safe, assessing the health and safety breaches as evidence for contract termination and the owner's potential regulatory liability.
- Advising the owner on of a renewable energy asset in relation to Police and Health and Safety Executive investigations following a trespasser fatality at its site.
- Advising a renewable asset owner on enforcement of contractual obligations following health and safety breaches.

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ASSET MANAGEMENT

Operational contracts



Types of issues

- Enforcing rights under PPAs and other supply contracts.
- Contract management during the life of the project.
- Termination and the negotiated exits from underperforming contracts.
- Advising on liquidated damages
- Ofgem audits.
- Retendering of O&M and asset management services, and repowering disputes/risks.

What we do

Working alongside asset managers to provide essential day-to-day management of the suite of contracts that govern how the asset is run, and any risks that could affect the financial modelling for the asset.

We help minimise disruption to the assets and revenue to preserve as much value in the asset as possible.

We also support asset managers in the wholesale retender and negotiation of O&M contracts.

Our experience includes

- Strategic advice on maximising PPA productivity and rights to terminate PPAs and other project documents in light of fluctuating prices.
- Advising clients on force majeure and business interruption claims, particularly in relation to disruptive events.
- Judicial review proceedings in relation to ROC accreditation banding
- Negotiating and resolving long term claims regarding the repowering of assets.
- Drafting and negotiating O&M contracts with new providers as part of wholesale retender exercises following final acceptance.

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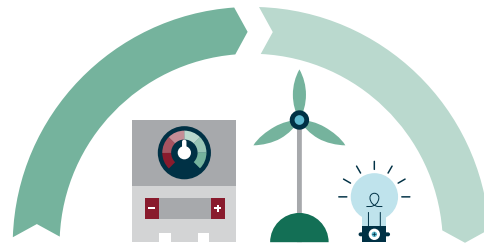
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ASSET MANAGEMENT

Interface with funders



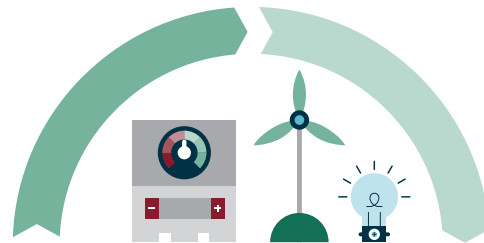
Types of issues

- Payment/covenant defaults as a result of actual financial performance not matching modelled performance.
- Finance documentation issues arising from the aggregation of portfolios.
- Issues with handover to asset management teams following Financial Close/implementation of proactive asset management strategies within the parameters of the financing terms.
- Performance or solvency issues affecting contractors leading to cross-default under finance documentation.

What we do

We advise on a full range of financing packages for construction stage and operational stage assets. These include senior and mezzanine financings, refinancings of mature, aggregated portfolios, holdco/fund-level financings, financings of minority stakes, and sustainability-linked loans.

We understand the varying requirements of different classes of lenders, and how the oversight and involvement they require will vary depending on the type of technology, maturity of the project and make-up of the portfolio. We assist borrowers with balancing these requirements with the challenges of proactively and flexibly managing large and diverse portfolios of renewable generation assets.



Our experience includes

- Advising the borrower on the amendment of an existing financing package for a wind farm to permit battery storage to be installed on site.
- Advising a fund on the group-wide implementation of power price hedging, both in respect of the consents under the existing financing and the suite of hedging documentation.
- Advising the owner of an onshore wind portfolio on insolvency proceedings affecting a major turbine supplier, the impact on its financing arrangements and associated strategy considerations.
- Advising a borrower on a spares procurement strategy across a portfolio of projects financed by multiple lenders, including on structuring issues arising under the financing arrangements.

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ASSET MANAGEMENT

Optimisation and enhancements

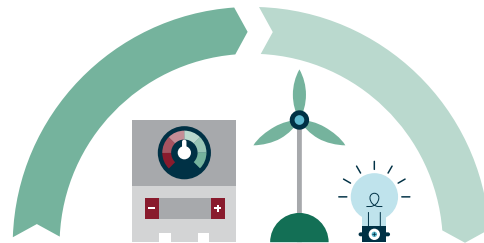


Types of issues

- Repowering and refurbishment of assets.
- Ineffective planning as part of the consenting process leading to a planning package that does not support full optimisation.
- Mitigating inflation and power price volatility.
- Challenges around integration of battery storage into existing renewable energy generation portfolios and maximising the value of existing grid connections.
- Structuring issues and restrictive financing terms hindering borrowers' ability to take advantage of potential upsides such as asset life extension and counterparty replacement.

What we do

We advise on all and any issues relevant to the optimisation and enhancement of green energy assets. We help to prevent issues from affecting an asset's generating capacity or financial performance and look at ways in which the asset's long term performance can be optimised so as to maximise efficiency and financial return. In turn, this also helps to optimise asset life-span. We look at how areas such as how digital transformation and future proofing can help asset owners prepare for market developments and respond to a maturing market which is increasingly focussed on optimisation.



Our experience includes

- Involvement in the planning pre-application and application process for a green asset to ensure optimisation and enhancements have been properly considered at this stage.
- Advising the developer of a co-located solar and battery storage portfolio on the "future-proofing" of its asset ownership arrangements, and advising developers on issues relating to the co-location of battery storage with existing solar assets. Advising on the contractual arrangements for the replacement/refurbishment works of major components.
- Advising the owner of a portfolio of ground-mounted solar projects on the "optimisation" of its financing package (including assisting with the simplifying of its covenant package and streamlining of its reporting requirements).
- Advising in connection with the streamlining and consolidation of the asset management arrangements for a large FIT wind portfolio.

Key contacts



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About Osborne Clarke



Osborne Clarke in numbers

1340+

talented lawyers

working with

350+

expert Partners

in

27

international locations*

advising across

8

core sectors

with insight into

3

transformational trends

driven by

1

client-centred approach

Our locations around the world

Europe

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Frankfurt, Hamburg, Munich

Italy: Busto Arsizio, Milan, Rome

Luxembourg

The Netherlands: Amsterdam

Poland: Warsaw

Spain: Barcelona, Madrid, Zaragoza

Sweden: Stockholm

UK: Bristol, London, Reading

USA

New York, San Francisco

Asia

China: Shanghai

India*: Bengaluru, Mumbai, New Delhi

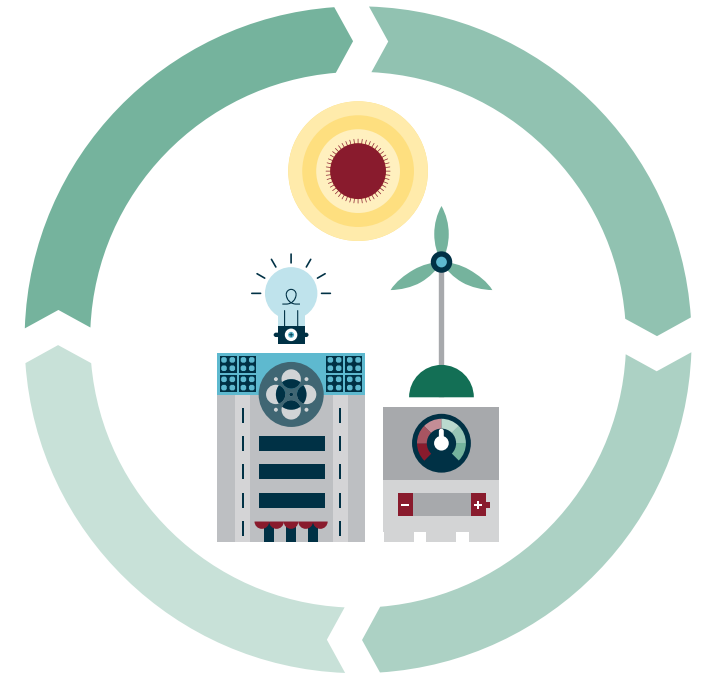
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Get our Smart Power updates direct to your inbox: Our regular updates summarise key sector trends and knowledge for Developers and Asset Managers within the green energy sector. See our last update [here](#).

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