

## Q&A With Morgan Lewis' Brian Bradshaw

*Law360, New York (January 31, 2012, 2:19 PM ET)* -- Brian A. Bradshaw is a partner in Morgan Lewis & Bockius LLP's business and finance practice in the firm's Houston office. He is co-chairman of the firm's Latin America team.

Bradshaw has experience in a broad range of energy and infrastructure transactions and focuses his practice on the development of energy and infrastructure projects, acquisitions and divestitures, and domestic and international finance.

He has experience with structuring, negotiating and documenting the full range of project, mergers and acquisitions, and commercial financing documentation for domestic and international projects, including liquefied natural gas (LNG) liquefaction and regasification projects; floating production, storage and offloading vessels (FPSOs) and offshore developments; refineries; cross-border pipelines and power plants, including both fossil fuel and alternative energy.

### **Q: What is the most challenging project you have worked on and what made it challenging?**

A: My ongoing experience working on the development of an offshore upstream oil and gas project, with a related offshore pipeline and floating LNG project in the pre-salt area of Brazil, has presented a multitude of challenges.

The discovery of the Tupi field, which is the largest discovery in the last 30 years and is now referred to as the Lula field (coincidentally the last name of the former president of Brazil), has been a windfall for Brazil. However, the size and scope of this discovery also creates many of the obstacles.

Scale: The development budget for the project is in excess of \$35 billion. The development process has to account for the scale of the project. For example, the project required multiple FPSOs to be purchased. Each vessel costs several hundred million dollars. The result is the purchase of a fleet of vessels instead of merely one.

However, construction of the vessels, including timing and resourcing, has become significantly more complex than normal because of the number of vessels required. Essentially, a floating city is going to be situated approximately 250 kilometers offshore Brazil in seas that are almost two miles deep.

The large budget also places considerable strain on the developers of the project both in terms of financial exposure and timing of cash flows.

Technical: Many technical issues have also surfaced in the offshore development. Many of the proposals, such as the proposed floating LNG project, are “first of its kind,” which ultimately adds both time and expense to the development process.

Political: Finally, on the political front, the difficulty in ascertaining the trajectory of the evolution of the Brazilian oil and gas industry from more of a “free market” approach to one with significantly more governmental participation, exemplified by an obligatory role for Petrobras, the state oil and gas company, in the operation of all new pre-salt fields, has contributed to this uncertainty.

**Q: What aspects of your practice area are in need of reform and why?**

A: The alternative energy field is a prime candidate for additional reform. The Energy Policy Act of 2005, which was amended by the American Recovery and Reinvestment Act of 2009, was an attempt to combat growing energy problems by providing tax incentives and loan guarantees for energy projects.

In connection with two separate transactions involving the U.S. Department of Energy (DOE) loan guarantees, I have seen the program in action.

While the DOE staff does an admirable job implementing the program, the shortcoming of the program is the underlying premise that attempts to impose a commercial reality on projects that are still in the development stage.

The Solyndra loan has received significant public outcry following its default and bankruptcy. However, the underlying assumption may be a significant contributing factor to the problem.

Many of the most innovative technologies are still in the development stage, with additional research and development required. Forcing these companies to focus on marketing their products and repaying debt detracts from one of the main goals of the loan guarantee program, which is to foster innovation in the alternative energy industry.

I would suggest additional funding be provided in the form of grants or tax incentives to allow the developing technologies additional time to mature before being subject to the rigors of a profit-and-loss statement and the repayment of debt.

**Q: What is an important issue relevant to your practice area and why?**

A: The current lack of both breadth and depth of available project financing and tax equity has proven to be a significant challenge for development of new projects in the United States.

As a result of the global financial crisis, fewer banks are involved with financing projects or playing a role as tax equity, which has limited the number of projects that are financed without the involvement of the DOE.

**Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.**

A: Lyndon Taylor, currently the general counsel of Devon Energy Corp., is one of the top energy project lawyers. His prior position was as a partner at Skadden Arps Slate Meagher & Flom LLP in the project finance group.

His engineering background on the technical side, together with strong interpersonal skills and the ability to control a room are impressive. He thinks well on his feet to present workable solutions to difficult issues.

**Q: What is a mistake you made early in your career and what did you learn from it?**

A: Earlier in my career, I failed to realize that the practice of law is both a sprint and a marathon. While individual projects can be very time consuming and challenging for the particular week or month in which they occur (the sprint), the ability to sustain oneself over time is also critical (the marathon).

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