

Q&A With Morgan Lewis' Wayne Song

Law360, New York (February 13, 2012, 2:07 PM ET) -- Wayne W. Song is a partner in Morgan Lewis & Bockius LLP's business and finance practice in the firm's Los Angeles office. His practice focuses on project finance, corporate finance, project development, and mergers and acquisitions in the energy and infrastructure sectors. He has worked on numerous renewable energy project developments, acquisitions and financings.

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

A: One of my most challenging projects was representing the lead arranger in a project financing of a portfolio of wind energy projects where a leading investment bank made its entry into the wind energy sector. Because this was the investment bank's first foray into wind, it partnered with a strategic, industrial energy company to acquire a 50-percent stake in operating wind energy projects that were being financed.

Rather than having to deal with only one large corporate sponsor/borrower who was used to having its way, the lender was opposite the joint venture borrower that also included the investment bank — an entity not shy about telling everyone that its way was the right way! Lender-borrower negotiations sometimes took a back seat to the borrower vs. borrower negotiations.

The deal was complex given the portfolio nature of the assets and the various turbine technologies involved (some of the turbines were being financed for the first time). Due to the size of the assets in the portfolio, it was one of the largest wind project financings at the time.

One interesting feature of the financing was that the sole, lead arranger underwrote the entire financing — something that we would likely not see in today's market. The underwriting bank was probably too successful in syndicating the loans after the initial closing as 10 banks ended up being in the lender group.

Because of the complex nature of the transaction, some interesting features of the financing, and undoubtedly the participation of the investment bank, that financing was named the Renewable Energy Project Financing of the Year by Project Finance magazine.

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

A: From a commercial perspective, I think that the renewable energy finance sector could benefit from having a broader pool of professional advisers in certain areas. One area in particular involves the independent engineer. The leading lender's engineer firm for wind project financings is very well respected, but because it has such a large, dominant role, its views have certainly shaped the way wind projects are financed. Additionally, when the demand for their services peaks (such as during year-end financings), everyone is constrained by the limited engineering consultancy resources.

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

A: The most important issue has been the lack of a consistent regulatory regime with respect to renewable energy in the United States. The renewable energy industry has been hit by boom/bust cycles that were not the result of the general economic situation in the country, but rather because of short term tax policies. Tax credits for renewable power have been the primary driver for investments in renewable energy projects.

These tax programs have been allowed to lapse three times in the past and when such lapses took place, naturally investments in projects dried up. The current program is set to expire at the end of 2012, and there is no certainty the program will be extended before it lapses on Dec. 31, 2012.

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

A: Ed Feo (formerly of Milbank — he's now at an investment firm that invests in renewable energy projects). Many project finance attorneys who are practicing today cut their teeth working for Ed. He was the best business developer. He knew how to get to the heart of an issue immediately and structure a solution that worked for all parties. That's why the commercial folks loved him.

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

A: I learned to be an advocate for yourself in your organization. When I started my career, I tended to think that all one had to do was perform his or her job well and promotions would take care of themselves. If senior attorneys are not "pushing" down career guidance and mentoring associates, I tell associates not to be afraid to try to "pull" the information from partners — let partners know what your career objectives are, and ask them for guidance and business development tips.