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# Seoul Arbitration Festival 2024: New and Renewable Energy Landscape in Korea and Beyond

Se Won Park · Saturday, November 30th, 2024

On the first day of Seoul Arbitration Festival 2024, law firms Yoon&Yang, 39 Essex Chambers, and Al Tamimi & Company hosted a panel discussion titled 'New and Renewable Energy Landscape in Korea and Beyond—Current Issues in Project Development and Dispute Resolution.' The discussion was divided into two sessions. The first session focused on current new and renewable energy project developments in Korea, and the second session centered around developments in the new and renewable energy sectors in Southeast Asia and the Middle East as well as dispute resolution mechanisms to deal with such disputes.

The panel featured speakers: Joon Oh Jo (Partner, Yoon&Yang), Dae Sagong (Partner, Yoon&Yang), David Lee (Senior Foreign Attorney, Yoon&Yang), Joseph Lee (Senior Foreign Attorney, Yoon&Yang), Steven Lim (Arbitrator and Barrister, 39 Essex Chambers), and Paul Taylor (Partner, Regional Head of Arbitration, Al Tamimi & Company).

To set the backdrop of the discussions, Myung-Ahn Kim (Senior Foreign Attorney, Head of International Arbitration/Litigation, Yoon&Yang) in the welcoming remarks highlighted the emergence of renewable energy around the world through regulations reflecting decarbonization trends, such as the RE100 Initiative and Carbon Border Adjustment Mechanism (CBAM), which in an ideal world, would operate in a "timely symbiosis" with industry practices, such as the use of LNG-fired electricity power that remain prevalent in certain jurisdictions. With this tension in mind, representatives from Korea, the Middle East, and Southeast Asia spoke about the latest new and renewable energy trends in their jurisdictions as well as the challenges that accompany such trends.

**Korea**

Mr. Lee began the first discussion by pointing out a unique feature of the energy market and distribution structure in Korea: the energy industry is centralized by the government. Korea Electric Power Corporation (KEPCO), Korea's largest government-invested company, serves as a primary example. Despite continuous efforts to decentralize the production of energy, KEPCO continues to dominate the energy market and remains responsible for the distribution of electricity throughout the country.

In consequence, the trends and developments of new and renewable energy in Korea are vastly contingent on the current government administration and its policies. Traditionally, Korea has relied on fossil fuel. Renewable energy developments were introduced under the previous President Moon's administration in line with the country's commitment to reduce carbon production, encouraging a wave of foreign investment in this market. However, under the new and current administration of President Yoon, nuclear energy, which was previously phased out under President Moon's administration, has been reintroduced.

Mr. Jo added to the discussion by introducing Article 43 of the Electric Utility Act, formulated by the Korea Power Exchange and subject to approval of the Minister of Trade, Industry and Energy. Aimed to promote fair and efficient operation in the electricity market, the Act provides rights and obligations of participants and sets standards and procedures for evaluating and settling generation costs ("terms and conditions"). Mr. Jo highlighted that the legal status of these terms and conditions is unclear—whether they are contractual terms to be incorporated into electricity transactions between the power exchange and electricity traders or regulatory orders, with a binding effect on transaction participants.

For these reasons, along with the mix of energy sources (renewable and carbon based) being produced in the country, there is uncertainty of the future of Korea's renewable energy market and its renewable energy targets. With the significant variety and volume of power being produced in Korea, this uncertainty leaves a lot of challenges for foreign investors and developers in navigating the renewable market in the country.

**Middle East**

In the second session, Mr. Taylor began the discussion by highlighting the geo-physical landscape in the MENA region and its historic influence on regional renewable energy trends. He specified that the Middle East comprises areas of vast desert with extreme hot weather conditions, seemingly making solar energy a leading, and perhaps obvious, source of renewable energy. Other renewable energy sources adopted in parts of the region include hydrogen, nuclear, and (onshore and offshore) wind.

While the regional governments have sought to support and enable the development of robust renewable energy projects, challenges persist. Mr. Taylor emphasized the high costs of developing accompanying infrastructures required for these projects, coupled with the region's long history of abundance and reliance on fossil fuels, which contributes to the perception that renewable energy has not been embraced as quickly as it has been in other parts of the world.

However, this is not to undermine efforts in many countries in the Middle East (for example United Arab Emirates, Saudi Arabia, Qatar, and Oman) to strive for clean energy targets and shift from dependance on oil and gas. By way of current example, one of the most prominent and highly anticipated projects is The Line in Neom, Saudi Arabia—located in the Northwest of Saudi Arabia. Advertised as "the future of urban living" and "vertical living," it is planned to accommodate 9 million people on 34 square kilometers. The Line aims to rely solely on clean and renewable energy, without roads, cars ,or emissions. However, Mr. Taylor reiterated that such ambitious renewable energy projects are not without challenges. The Line's remote location in a highly mountainous and previously undeveloped area, which require costly infrastructure developments in

order to access the project alone, has already prompted discussions of potential downsizing or rescheduling the project timeline.

It is also observed that construction and commercial disputes in this field are predominantly resolved through arbitration. In fact, that dispute method is stipulated as the forum to be adopted in such quasi-government contracts. Pre-dispute mechanisms such as mediation are not widely used as a contractual option and parties to disputes in the region are traditionally unlikely to volunteer into mediations themselves, with DAB being the most common pre-arbitral stage. Nevertheless, Mr. Taylor flagged efforts by local courts and institutions to push for mediation as a first step in the dispute resolution process. However, DAB and mediation remain purely 'contractual' and do not benefit from the same support as arbitration in terms of supporting laws for the enforcement of arbitration clauses and service provided by arbitral institutions and centers. There is also a greater cultural acceptance for mechanisms with finality such as arbitration, where an independent tribunal has assessed all matters and given an outcome. Mr. Taylor further notes that despite adjudication's ability to offer interim finality, it may be less favored compared to arbitration due to its less-thorough and lengthy process, issues around its confidential nature, the conduct of its evidentiary processes when compared to local laws, and language barriers.

**Southeast Asia**

Mr. Lim led the conversation by introducing the current renewable energy landscape in Southeast Asia, noting that presently, the primary source of renewable energy in the region is hydropower originating from Indochina. Unlike South Korea, Southeast Asia has no nuclear plants or plans for nuclear energy. Rather, there is a growing trend for solar and wind projects. Mr. Lim mentioned that there is currently more capacity for solar energy, compared to wind projects that are only operating on a small scale in Vietnam, Thailand, the Philippines, and Indonesia.

Mr. Lim predicted that solar energy is likely to be a large source of energy in the near future and transform the production and usage of energy. Solar power, already supplying 6% to 7% of the world's electricity today, is projected to be the single biggest source of electric power by 2030 and the largest source of all energy by 2040. This can be partially attributed to the continuing drop in the initial costs of solar power. Mr. Lim also pointed out the potential for solar energy to be an essentially free source of energy due to its cost-efficient nature. In contrast with the high costs associated with developing renewable projects and accompanying infrastructures in the MENA region, the low production costs for solar plants in Southeast Asia make the prospects of renewable energy particularly promising.

In the dispute resolution realm, disputes arising out of development of solar energy will potentially increase. Mr. Lim highlighted that mediation is growing and gaining acceptance in the region, especially in Singapore. He also observed that in wind power project disputes involving Chinese suppliers, demand for mediation has grown. Arbitration remains widely accepted and the favored dispute resolution mechanism.

**Conclusion**

Each region hosts an array of unique opportunities as well as challenges for the renewable energy

sector. While regional physical characteristics and/or resources may provide a foundation for renewable energy projects to flourish, financial and legal obstacles may stymie the global commitment towards clean and renewable energy production. Awareness of each region's potential for developments in the renewable energy sector along with its challenges will be crucial for arbitration lawyers in advising future investors and developers. Arbitration lawyers must also be mindful of the appropriate dispute resolution mechanism that is accepted in the region.

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