

# Morocco – Gas to Power Project

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In order to meet the growing demand for electricity and address certain issues arising from the significant expansion of renewable energy, the Kingdom of Morocco has decided to diversify its generation mix by increasing the use of liquefied natural gas (“LNG”) with an ambitious gas to power project together with the construction of a maritime jetty for the reception of the LNG tankers, an LNG regasification unit, two combined cycle gas turbine power plants (“CCGT”) with a combined capacity of 2400 MW and a 400 km gas pipeline (the “Gas to Power Project”). The Gas to Power Project is estimated to be in the region of a USD 4.6 billion investment.

## Natural gas in Morocco

- Existing gas generation facilities:
  - 2005: Tahaddart CCGT (385 MW); and
  - 2010: Aïn Beni Mathar integrated solar combined cycle power plant (“ISCC”) (470 MW).
- Supplied by Algerian gas, provided with:
  - quantities of gas allocated to Morocco as part of the compensation/royalty arrangements of the Maghreb-Europe gas pipeline; and
  - a long-term gas supply agreement between *Office National de l'Electricité et de l'Eau Potable*, a Moroccan public body (*établissement public*) (“ONEE”), and *Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures*, an Algerian state-owned company (“SONATRACH”).

- Both agreements will expire by 2021 with no obvious alternative supply.
- The Moroccan Ministry of Energy forecasts an increase of the annual gas consumption for power generation, from 0.9 BCM in 2014 to 3.5 BCM in 2025.
- Purpose of the development of LNG:
  - to meet medium and long term gas-fired electricity generation needs;
  - to secure a future gas supply for the existing Tahaddart and Ain Beni Mathar facilities; and
  - to develop a downstream gas market.

## Two-stage LNG development plan

- A national plan for developing the use of LNG was adopted by the Ministry of Energy, in cooperation with ONEE and major national energy operators (the “LNG Development Plan”).
- A roadmap for the implementation of the LNG Development Plan for the period 2015-2025 comprises two stages.

### First stage: “Gas to Power”:

- aims to satisfy the need for additional electricity generation capacity;
- provides for the construction of key gas and electricity infrastructures; and
- is to be implemented by ONEE.

### Second stage: “Gas to Industry”:

- plans to develop the use of natural gas in the industrial sector; and
- will be linked to the adoption of a Gas Code by the Kingdom of Morocco.

## Gas and Power Infrastructure

The Gas to Power Project will be developed as a “single package” project with four sub-components:

### Sub-component 1 – LNG terminal:

- **A maritime jetty<sup>1</sup>**
  - located north of the port of Jorf Lasfar;
  - reception and unloading of LNG tankers;
  - estimated cost: USD 600 million; and
  - estimated construction duration: 36 months.
- **An onshore LNG regasification unit**
  - located north of the port of Jorf Lasfar;
  - total capacity of 5 billion Nm<sup>3</sup>;
  - estimated cost: USD 800 million; and
  - estimated construction duration: 48 months.
- **LNG storage tanks**
  - estimated cost: USD 400 million.
- **Sub-component 2 - gas pipelines:**
  - 400 km high pressure transportation pipelines;
  - will connect the LNG terminal to the Maghreb-Europe pipeline;
  - will deliver natural gas to proposed CCGTs (as detailed in sub-components 3 and 4 below);
  - estimated cost: USD 600 million; and
  - estimated construction duration: 36 months.
- **Sub-components 3 and 4 - new CCGTs:**
  - CCGT of Jorf Lasfar (1200 MW);
  - CCGT of Dhar Doum (1200 MW) located 120 km south of Tanger;
  - estimated cost: USD 2.2 billion; and
  - estimated construction duration: 36 months.
- **Ancillary Infrastructures**
  - The construction of distribution lines for the evacuation of the produced electricity are not in the scope of the development of the Gas to Power Project.
  - ONEE will carry out the construction of distribution lines, but no further details or

<sup>1</sup> Please see below for further details on the Moroccan regulation of ports.

timeline have been disclosed by ONEE yet.

- No other ancillary infrastructure or incentive has been disclosed by ONEE at this stage.

## Gas to Power Project Process

### Calls for expressions of interest and tenders

- **Selection of ONEE's technical consultant for the Gas to Power Project**
  - international call for tender No.SP 488 646;
  - SOFREGAZ (France) / RAMBOLL (Denmark) were officially selected by ONEE to act as its technical consultant on 17 June 2016; and
  - allocated amount of EUR 9,036,000 (EUR 8,100,220 and MAD 10,026,826) excluding VAT.
- **Selection of ONEE's financial adviser**
  - call for tender No.SP 488 849;
  - HSBC Bank Middle East Limited (United Arab Emirates) was officially selected by ONEE to act as its financial adviser on 25 November 2016; and
  - allocated amount of USD 7.2 million.
- **Selection of ONEE's legal adviser**
  - call for tender No.SP 489 498;
  - Ashurst LLP (France) was officially selected by ONEE to act as its legal adviser as of 16 December 2016; and
  - allocated amount of USD 1.9 million.
- **Selection of the developer of the Gas to Power Project:**

A three steps selection process will be followed:

- **Step 1: call for expressions of interest**
  - Call for expressions of interest No.SP 489 699 issued on 28 December 2015;
  - ONEE invited companies operating in the LNG field to express their interest and confirm their intention and capability to develop the Gas to Power Project;

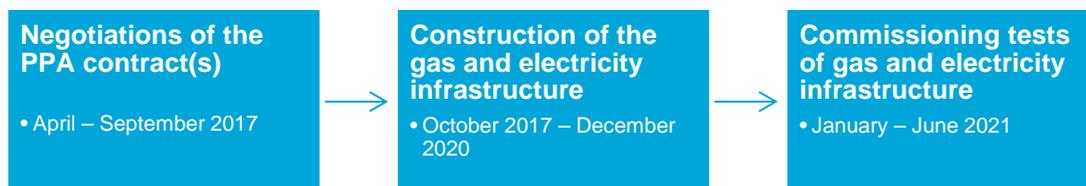
- 93 interest files were received by ONEE; and
- An "information and exchange meeting" with the selected technical advisor and the companies interested in the development of the Gas to Power Project will be organised by ONEE, in order to answer the companies' questions and concerns.

- **Step 2: pre-qualification tender**
  - Aims to select a shortlist of pre-qualified companies and consortia that have the necessary technical and financial expertise and capacity;
  - The Gas to Power Project will be developed as a "single package", therefore companies whose activities cover only part of the activities required will have to join with other partners to respond to the pre-qualification call for tender for the development of the entire project; and
  - As at the date of this alert, the terms and conditions of the pre-qualification tender, which were reportedly due in November 2016, have not been disclosed by ONEE.
- **Step 3: tender to pre-qualified candidates**
  - Aims to select the developer of the Gas to Power Project among the bidders shortlisted in Step 2; and
  - As at the date of this alert, the terms and conditions of the tender to pre-qualified candidates have not been disclosed by ONEE.

## Summary of the Three Main Tender Steps



## Initially Planned Timetable



As at the date of this alert, the roadmap initially adopted in the LNG Development Plan for the implementation of the Gas to Power Project is delayed by several months.

## Gas to Power Structure

At this stage, limited details have been made available by ONEE.

### Project Company(ies)

- Depending on the scheme *in fine* retained by ONEE, the successful bidder will establish one or several company(ies) incorporated under Moroccan law (the “Project Company(ies)”).
- The Project Company(ies) will be responsible for the development, financing, construction and operation of the Gas to Power Project.

### Finance

- Project finance structure
- Global investment of USD 4.6 billion

### PPP and BOOT schemes

- The Gas to Power Project will be developed under a “public private partnership” scheme, implemented by ONEE in accordance with the current legislation and in particular the Dahir No. 1-11-160 dated 29 September 2011 which promulgated law No. 40-09 creating the ONEE; and

- Build, Own, Operate and Transfer (“BOOT”) scheme.

### Project’s Contracts

- As at the date of this alert, the contractual framework has not been disclosed by ONEE.
- Contracts to be signed by the Project Company(ies) and/or ONEE are likely to include:
  - supply agreement;
  - regasification agreement;
  - gas transportation agreement; and
  - power purchase agreement(s) (“PPA”).

### PPA Contract(s)

- The electricity produced will be sold to ONEE under PPA contract(s) to be entered into with the Project Company(ies).
- The long term nature of the Gas to Power Project will require a long term PPA.
- PPA contract(s) negotiations shall take place from April to September 2017 according to the LNG Development Plan road map.

## LNG Supply Arrangement Possibilities

- Negotiations on 3 to 5 BCM of LNG.
- Two alternatives under consideration:
  - inter-governmental agreement(s), between the Kingdom of Morocco and “friendly countries and partners”, on the basis of which, one (or several) commercial contract(s) of LNG supply could be concluded between one (or several) Moroccan Party(ies); and/or
  - a commercial contract with one (or several) LNG supplier(s), selected by a tender process.
- The Moroccan Ministry of Energy has met its counterparts in the USA, Qatar and the Russian Federation.
- A memorandum of understanding on energy cooperation has been signed between the Kingdom of Morocco and the Russian Federation.

## Morocco’s Legal Framework

To attract foreign investment, the Kingdom of Morocco has adopted a modern legal framework, conducive to the development of infrastructure projects.

### Moroccan PPP Law

- New Moroccan public-private partnerships law No.86-12 published on 5 February 2015, as supplemented by the application decree No.2-15-45 dated 13 May 2015 (the “PPP Law”)<sup>2</sup>.
- The PPP Law is a major step forward as it completes the panorama of available tools for PPP in Morocco.
- In order to take advantage of the best international practices, the PPP Law was drafted after analysing different legal frameworks of PPP contracts in various countries (such as France, Spain and Egypt) to avoid the main pitfalls observed in these countries.

<sup>2</sup> For further details on the PPP Law, please see the client alert dated 29 April 2015, “New Moroccan PPP law”, written by Paule Biensan and François-Guilhem Vaissier, published on [White & Case’s](#) website.

- The PPP Law introduces in the Moroccan legal framework the partnership contract (*contrat de partenariat*), where the private partner is remunerated by the public authority to the already existing delegated management (*gestion déléguée*) and concession (*concession*).
- Tender procedures:
  - among the three existing tender procedures (call for tender, competitive dialogue and negotiated procedure), the selection of the Gas to Power Project’s developer will follow a “call for tender” process with pre-selection (as detailed above);
  - once the offers have been received, it will be possible for the public authority (namely ONEE in the Gas to Power Project’s tender) to ask for clarifications of the offers and/or confirmation of financial commitments made by the bidders;
  - possible to submit a simultaneous offer to the public authority; and
  - the rejected bidder must be informed within 60 days after the public authority’s decision.
- The PPP Law takes into consideration standard market practices which are implemented in international project finance:
  - financial clauses:
    - the private partner will be paid by the public authority, if not it may be remunerated by the users and by the cash flow generated by the project;
    - the remuneration is linked to performance objectives, thus ensuring compliance with the PPP contract;
    - possibility for the private partner to create a large number of security interests over the assets acquired or constructed under the PPP contract for the benefit of financial institutions; and
    - possibility for the private partner to assign products and receivables by way of security without limits: the amount of claims which would be accepted by the public party, as assigned debtor, is unlimited.

- performance clauses:
  - maximum duration: up to 50 years;
  - mandatory risk allocation clause modelled on the contractual practice of optimal risk sharing;
  - substitution rights: the public authority can replace the private partner with a substituted entity, notably in the event of a serious breach of its obligations; and
  - it should be noted that the PPP Law also enables the lenders to ask the public authority to substitute the private partner with a new entity, in the event of serious breach of its obligations.

## Sector-specific laws

### □ Regulation of the Moroccan electricity sector

- On 24 May 2016, law No.48-15 established a new independent administrative authority to regulate the electricity market in Morocco: the National Authority for the Regulation of the Electricity Sector (*Autorité Nationale de Régulation du secteur de l'Electricité*) ("ANRE")<sup>3</sup>.
- ANRE has several regulatory objectives and powers, primarily:
  - the fixing of transmission tariffs for the transmission and distribution networks; and
  - to ensure fair competition, continuity of service and compliance by the electricity industry participants with regulatory requirements.
- The creation of the ANRE is part of the continuation of the liberalisation of the Moroccan energy sector which started with the adoption of the law No.13-09 adopted on 11 February 2010, as completed by the law No.58-13 on 12 January 2016, that opened to private operators the possibility to develop renewable energy projects and to commercialise the electricity produced with a granted right to access to the very

high, high and medium voltage power grids.

### □ The new institutional architecture of the energy sector in Morocco:

- **Ministry of Energy, Mines, Water and Environment ("MEMEE"):** develops and supervises the implementation of the national energy policy, through the actions of MASEN (defined below) and ONEE.
- **ANRE** (detailed above).
- **Moroccan Agency for Sustainable Energy ("MASEN"):**
  - established by law No.57-09 on 18 March 2010 and recently supplemented by the law No.38-16 dated 6 October 2016; and
  - responsible for the development of renewable generation in Morocco (with a national target of 52 percent of energy from renewable sources by 2030) and aims to enhance Morocco's position as major player in the renewable energy sector.
- **ONEE:**
  - public body established by the law No. 40-09 published on 29 September 2011;
  - responsible for the development of electricity generation projects from non-renewable sources in Morocco;
  - manages the national grid (responsible for transmission and a vast majority of electricity distribution); and
  - the first purchaser of electricity produced from the national sites developed by MASEN and one of its key partners for the development of projects in tandem.

MEMEE

ANRE

MASEN

ONEE

<sup>3</sup> For further details on the ANRE, please see the client alert dated October 2016, "Update on the regulation of the Moroccan electricity sector", written by François-Guilhem Vaissier, published on [White & Case's website](#).

- **Regulation of ports in Morocco**
  - Part of the Gas to Power Project's infrastructure will be located in the port of Jorf Lasfar.
  - Law No.15-02 dated 23 November 2005 on the regulation of ports has established:
    - a National Ports Agency (*Agence Nationale des Ports*) (the "ANP"), a port authority which supervises and organises the 33 ports of the Kingdom of Morocco; and
    - a port terminals management company (*Société d'Exploitation des Ports*) (Marsa Maroc) responsible for, *inter alia*, the operation of the port of Jorf Lasfar.
  - On 9 July 2012, the ANP adopted operating regulations (*Règlement d'exploitation*) for the port of Jorf Lasfar.

## The Maturity of Morocco's Energy Market

Today, the Moroccan electricity market is a mature market in which many national and international operators are active, whether in production or distribution.

The creation of the ANRE was therefore necessary to supplement this scheme with a regulator capable of ensuring fair competition, continuity of service and control of all the operators of the liberalised electricity market in the Kingdom of Morocco.

By taking into consideration standard market practices implemented in international project finance, the PPP Law should permit to avoid the main pitfalls observed in countries with similar frameworks.

Therefore, with the above mentioned sector specific laws and its new institutional infrastructure, the Kingdom of Morocco is a mature enough market to absorb the Gas to Power Project.

## Major Challenges and Points of Attention

The Gas to Power Project is the first of its kind in Morocco, and therefore raises major challenges.

As at the date of this alert, the Gas to Power Project structure has not been disclosed by ONEE. Nevertheless there is no doubt the below

mentioned elements will need to be closely analysed.

## LNG Sourcing

The LNG capacity is required to be 5 BCM, with 3.5 BCM for the CCGTs' consumption (with a progressive commissioning until 2025) and 1.5 BCM for the Moroccan industrial sector. At this stage, it has not been made clear:

- which entity will be responsible for sourcing the LNG; and
- what the commercial arrangement will be for the 1.5 BCM and how the developer will receive due comfort from ONEE that this amount of gas will be solely allocated to the Gas to Power Project.

It should also be noted that sufficient volume of LNG shall be committed on a reliable long term basis in order to (i) secure debt arrangements and (ii) meet the PPA's requirements. Hence, spot supply agreement(s) may be required as back-up supply since no dual fuel option is considered at this stage for the energy generation.

## Tariff Structure

All energy generated by the CCGTs will be purchased by ONEE. Further details on the tariff structure still need to be disclosed by ONEE, especially:

- **LNG terminal tariff:** the Gas to Power Project provides for a PPA between the Project Company(ies) and ONEE, but ONEE still needs to clarify if the LNG terminal tariff will be bundled as part of power purchase tariff or not; and
- **Foreign exchange risk:** the currency retained by ONEE will be of great importance to assess the tariff structure. The cash flow generated by the revenue under the PPA will be used by the Project Company(ies) to, *inter alia*, (i) service the debt and (ii) make payment for the LNG purchases. As imported LNG is most likely to be priced in US dollars, there is a potential currency risk if the PPA revenues are denominated in MAD.

## Contractual Framework

The broad range of stakeholders involved with the Gas to Power Project will likely necessitate adapting the usual forms of contract used in the Kingdom of Morocco, especially:

- **Treatment of Unforeseeable Event / Unforeseeable Conduct:** These concepts and related relief may need to be extended to cover the entire LNG to power value chain (to cover import, regasification and supply) and take into account the specificities of the Gas to Power Project as well.
- **Change in Law:** Whether relief offered in respect of additional capital expenditure or operational expenditure or in relation to consents will apply only in relation to the power plant, or the entire value chain, including LNG procurement, regasification, transportation and even distribution/third party access related matters.
- **System Events:** bidders will want to know in case of system events affecting the project, relief will extend beyond the Grid, potentially to port and gas transmission-related events as well.

### Force Majeure

Should the Gas to Power Project be developed as a fully bundled project, specific attention should be paid to the definitions of circumstances and conditions under which parties are excluded from performing their obligations if a Force Majeure event occurs.

### Government Support

Both the nature and extent of the Kingdom of Morocco's involvement will be of major importance in the Gas to Power Project's success.

The Government should provide support if ONEE is unable to fulfil its payment obligations under the PPA.

In Morocco this is traditionally achieved through a letter of support issued by the Government (*lettre de soutien du gouvernement*). This is usually a short document addressed to the sole project company covering specific instances (mainly the payment of termination indemnities).

We already anticipate that the lenders will require a much more developed contract with the State on the basis of the direct agreements developed by the international practice.

The PPA will indeed be the only revenue stream for the Gas to Power Project. Therefore the support of the State will be of great importance in the analysis of the risk allocation. This will certainly be one of the major points of attention from the lenders in order to assess the bankability of the Gas to Power Project.

### Financing Framework

The financing of the Gas to Power Project will involve the usual suite of finance agreements. Depending on the final corporate structure and financing terms agreed, on-loan agreements and cross-guarantees by each of the Project Companies (if several) may be required.

### White & Case LLP

For more than three decades, White & Case has been representing Moroccan clients and international banks and investors acting in Morocco, across a range of industry sectors, providing strategic and commercial solutions to their complex legal issues.

### In-depth knowledge of the Moroccan energy market

White & Case has in-depth knowledge of the Moroccan energy market and familiarity with clients' needs in the country having advised lenders and sponsors on a wide range of transactions in Morocco.

Highlights of our most recent energy project deals in Morocco:

- **850 MW Integrated Wind Energy Programme:** representation of the consortium of Nareva and ENEL with respect to the 850 MW Integrated Wind Energy Programme in Morocco launched by ONEE.
- **Khalladi Wind:** representation of an investment fund in Morocco for its equity stake in the Khalladi Wind project under law No.13-09. This matter was awarded best MENA Wind Deal of 2015 by IJ Global and Best Project Finance Deal for 2015 in Africa by *EMEAFinance*.
- **Ouarzazate Solar project:** representation of a financial institution in its equity investment in the project company formed by the winning consortium (led by ACWA).
- **Safi coal fired electric generation station:** representation of two Moroccan lenders supporting a bidding consortium during the bidders process in connection with the development, design, financing, construction, operation and maintenance of (i) an approximately 1320 MW coal fired electric generation station, (ii) coal wharf equipments and (iii) an ash disposal site as well as operation and maintenance of a coal wharf at Safi, Morocco.

- **Jorf Lasfar coal fired electric power plants:** representation of a developer consortium consisting of CoGen Technologies and AES in connection with its bid for the development, financing and operation of two coal-fired power plants and the operation of two pre-existing plants at Jorf Lasfar, Morocco. We also represented a Moroccan bank consortium as part of the project financing of this facility.
- **Moroccan Electricity Authority:** representation of the Moroccan Electricity Authority in connection with a concession to operate two existing power plants and to build two new power plants to provide electricity to the Moroccan Electricity Authority in connection with the privatization of the Moroccan power sector.

### In-depth familiarity with infrastructure and telecom projects in Morocco

Our longstanding reputation for excellence with regard to advising on headline mandates in Morocco led our team to be called to contribute to LexisNexis' first Moroccan legal database. Since its inauguration, our team is constantly working with LexisNexis to write articles on Moroccan law, such as the PPP Law enactment in Morocco included in the April 2015 edition, and on the recent modification of the law No.13-09 related to renewable energies included in the April 2016 edition.

Highlights of our most recent infrastructure and telecom projects in Morocco:

- **Agadir desalination project:** our work in Morocco includes advising BMCE Bank as the sole lender supporting a consortium composed of Abengoa Water and InfraMaroc on the Financing of a desalination plant in Agadir under an innovative PPP scheme. This USD 27 billion large-scale project is the first delegated management contract of this importance in Morocco under law No.54-05.
- **Méditel:** representation of France Telecom, the principal French national telecoms carrier and one of the world's largest corporations, on its acquisition of a 40 percent share of Méditelecom's capital and voting rights from the groups Caisse de Dépôts et de Gestion (CDG) and FinanceCom.
- **Maroc Telecom:** acquisition and extensive due diligence of 35 percent shareholding in Maroc Telecom.

- **SNAREMA:** representation of a Moroccan mining company in respect of restructuring, equity subscription, long term copper concentrates offtake agreement and pre-payment facility.

### Leading firm in the power sector

- Major role in some of the most significant power project developments, financings and transactions in the world.
- Dedicated team of over 120 lawyers in 33 offices.
- Over USD 35 billion in closed power deals since 2010.

### Strength in LNG

- Liquefaction and regasification.
- Extensive experience at each stage of the LNG chain:
  - Upstream development;
  - LNG plant construction;
  - Transportation;
  - Offtake, tolling; and
  - Terminal and storage arrangements.
- Our clients include sponsors, lenders, developers, producers, contractors and offtakers in LNG, natural gas and associated liquids projects around the world.

### Previous LNG regasification experience

- **Pakistan LNG:** representation of the lenders, including IFC, ADB and a syndicate of local banks, in connection with the project financing of a 4.5 MTPS LNG regasification facility at Port Qasim, near Karachi, Pakistan.
- **South Hook Terminal:** representation of the sponsors in connection with the construction of the South Hook LNG receiving terminal in the UK as part of the USD 11 billion Qatargas 2 LNG project.

### Previous LNG experience

- **Mozambique LNG:** current representation as common legal counsel to the lenders including ECAs, multilaterals and development financial institutions in connection with a US dollar multi-billion LNG facility on southern Africa.

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- **Nigeria LNG Plus:** representation of BNP Paribas, Credit Lyonnais, Citibank NA, MCC S.p.A. and WestLB as lead arrangers in the USD 1.1 billion financing of the fourth and fifth trains of the Nigeria LNG plant (NLNG). This financing also involved U.S. Ex-Im Bank, UKEF, SACE, NCM and the African Development Bank.
  - **Sedko:** representation of JBIC, NEXI and the commercial bank lenders in the development, construction and financing of an 800MW CCGT project on a pure merchant basis in Turkey – gas supply and electricity sale. This project is the first true limited recourse merchant power project financing in the Turkish market.

### Previous CCGTs experience

- **CIPREL IV:** representation of CIPREL, an Ivorian independent electricity producer, controlled by Eranove, itself a subsidiary of a pan-African investment fund, Emerging Capital Partners, in relation to the financing of the expansion of its power unit (222MW CCGT).
- **Takoradi Power Project:** representation of IFC and several European development finance institutions (FMO, Emerging Africa Infrastructure Fund, DEG and Proparco) in the proposed USD 210 million financing of the combined cycle expansion of the Takoradi power project in Ghana, which will receive gas from the Western African Gas Pipeline between Nigeria and Ghana.
- **Kalaat Landalous:** representation of JBIC and the commercial lenders as lenders to a bidding consortium in connection with the financing of the new 350 MW – 500 MW Kalaat Landalous IPP Project, a new gas fired combined cycle gas turbine power plant being sponsored by Société Tunisienne de l'Electricité et du Gaz (the Tunisian Electricity and Gas Company), in Bizerte, Republic of Tunisia.
- **Dairut:** representation of a bidding consortium in connection with the development, construction and financing of a 2 x 750 MW or a 3 x 750 MW Combined Cycle Power Project in Dairut, Egypt.
- **Alat:** representation of the Export-Import Bank of Korea (KEXIM) and the commercial mandated lead arrangers and other finance parties, as lenders, in connection with the limited recourse financing for the Alat 750 MW gas-fired combined cycle power plant sponsored by Korea Electric Power Corporation in the Republic of Azerbaijan.
- **Zakho IPP:** representation of IFC and other lenders in connection with the proposed USD 355 million financing to develop and construct a 550 MW open cycle gas fired power plant, a 400 kV substation and a 400 kV overhead line located in Zakho, Northern Iraq. This is the first IPP in Iraq.

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