M & A in Offshore Wind

Summary

- Mergers and acquisitions (M&A) activity is increasing in the offshore wind industry.

- The processes for M&A in offshore wind (or A&D - acquisitions and divestitures) are principally not different from M&A processes in other offshore industries, such as offshore oil and gas.

- Key components of M&A in wind are the Danish Renewable Energy Act (to ensure compliance with required consents) and identifying the unique life cycle risks of the project (for risk and valuation purposes).

Background

M&A activity in offshore wind is increasing. For a number of reasons, projects require additional financing from both institutional and trade investors, and with future projects being larger in terms of both expected output, investment, time and risk, M&A must be expected to be a key feature of the future wind markets.

This article describes an asset acquisition/divestiture. The overall themes and steps involved in M&A, based on experiences gained in both offshore wind and oil and gas, are illustrated by a specific equity share purchase/sale.

Offshore wind projects are currently characterized by the following:

- Large investments for both turbines, cables and transmission systems
- Technically complex projects, with innovative technologies and methods
- Difficult valuation principles
- Lack of technical insight on the side on non-industrial investors
- Compared to oil and gas, there is typically less technical data to be reviewed, both as regards the physical conditions for production and as regards the facilities

Each offshore wind park - or electricity producing asset/property - has a life cycle that is unique in its length, risk, cost, recovery and value. However different these characteristics may be, each asset passes through the same stages from pre-investigation to de-commissioning or renewal. The different stages are described under Valuation below.

Generally, M&A in offshore wind are not different from generic M&A in other industries. Many of the steps and documents required remain the same. These are:

- Planning the sale/purchase
- Information memorandum
- Letter of Intent
- Due diligence
- Negotiation and closing.
However as we will show, the unique characteristics of offshore wind projects in development or production are likely to affect the individual phases of the M&A process.

The case

For the purposes of this article, we will describe the typical steps and content of M&A in offshore wind by means of a case, which has the following features:

- The asset traded is a wind project in late development (fabrication/installation) or in normal production
- The purchaser is not already a part of the joint venture but an outside investor/trader/industrial player
- The equity share traded is a minority, not a majority, share
- Seller maintains the technical operating responsibility under the partnership

Planning the sale

During the planning phase steps are taken on the seller side to determine the optimal deal structure and tax and financial planning, and identify possible deal-breakers such as change-of-control clauses, existing disputes and rights of first refusal.

1. Identifying the asset

<table>
<thead>
<tr>
<th>Share of the right granted under the Renewables Energy Act (VE-loven), chapter 3</th>
<th>Individual rights/contracts:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share of any (existing or future) joint operating agreement, including the assets of the joint venture/partnership</td>
<td>- Sales/off-take agreements</td>
</tr>
<tr>
<td>Contracts entered by the partnership</td>
<td>- Infrastructure agreements</td>
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<td></td>
<td>- Transportation</td>
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</tbody>
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Generally the “one-stop-shop” principle means that in principle all necessary regulatory licenses, permits and approvals subject to disclosure and due-diligence will have been obtained from the Danish Energy Authority.

2. Information gathering

<table>
<thead>
<tr>
<th>Seller’s processes:</th>
<th>Relevant information:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Collecting information</td>
<td>- Rights/licenses under the Renewable Energy Act</td>
</tr>
<tr>
<td>- Quality control/quality assurance of the information</td>
<td>- Approvals (production, environment, etc.), permits for facilities</td>
</tr>
<tr>
<td>- Information duties of seller</td>
<td>- Joint operating agreement (if in existence – if not, must be negotiated and signed).</td>
</tr>
<tr>
<td>- Necessary consents for disclosing information</td>
<td>- Decisions made, plans and prognoses</td>
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<tr>
<td></td>
<td>- Technical data</td>
</tr>
<tr>
<td></td>
<td>- Disputes with regulatory authorities, contractors, third-parties</td>
</tr>
<tr>
<td></td>
<td>- Commercial agreements</td>
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</tbody>
</table>
3. Valuation - elements

| 1. Product (electricity) sales price budgets | 2. Future capital and operating expense budgets |

3. Unique life cycle risks

Pre-investigation phase: uncertainty great; sales are uncommon
Development phase: production and economics better understood; high multiples/good returns
Production phase - early/mature: core type of asset for M&A / A&D
Production phase – late/redevelopment: still high multiples/good returns, but cost aspects

Due diligence

There are principally two ways for the seller to disclose the relevant information to interested parties/purchasers:

1. One-step process
   a. Interested parties sign a confidentiality agreement
   b. All parties are allowed full due diligence and to submit price offers

2. Two-step process
   a. Interested parties sign a confidentiality agreement
   b. Based on limited due diligence, all parties are allowed to submit indicative price offers
   c. The party(ies) with the highest indicative price offers are allowed a full due diligence

Evaluation criteria

Evaluation criteria for determining the successful bidder are broadly three:

- Price

- Financial strength of the purchaser

- Value-add to the partnership, such as
  
  o Technical insight, industry experience
  o Financial insight, network, management
The process in summary

The following table illustrates the legal and financial processes and outcomes involved in offshore wind M&A:

From the signing of the sale & purchase agreement (effectively from the effective date) and until take-over (closing), the equity share is held in trust by seller and administered for purchaser’s account and risk.

Any profits or loss during that period are subsequently adjusted through the “pro et contra“ regulations.

In conclusion

The processes for M&A in offshore wind are principally not different from M&A processes in other offshore industries.

Key components of M&A in wind are adhering to the rules of the Danish Renewable Energy Act (to ensure compliance with required consents) and identifying the unique life cycle risks of the project (for risk and valuation purposes).

For further information regarding the above, please contact Bo Sandroos on +45 40 88 54 22.