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Project Finance MVP: Gibson Dunn's Tomer Pinkusiewicz

By **Kelly Rizzetta**


Tomer Pinkusiewicz

Law360, New York (December 20, 2012) -- In 2012, Gibson Dunn & Crutcher LLP project bonds ace Tomer Pinkusiewicz harnessed a number of important trends — green energy, stronger Latin American economies, the capital markets' growing appetite for construction risk — to push groundbreaking project financings across the finish line, earning him a spot among Law360's Project Finance MVPs.

In the last 12 months, the energy and infrastructure partner advised a group of European banks as they underwrote the first wind project bond offerings in Mexico and steered Goldman Sachs Group Inc. and Empresas ICA SAB, Mexico's largest construction company, through an 8.6 billion-peso (US$677 million) refinancing of a portion of the senior debt on their multibillion-dollar highway joint venture, among other things.

The key to Pinkusiewicz's success seems to be an innate ability to tell which way the tides are moving in his practice area, then help his clients figure out how to catch and ride those waves.

“I am a big believer that project bonds are here to stay,” Pinkusiewicz told Law360 recently. “Many project sponsors are going to the capital markets for ... financing on a more frequent basis — even greenfield projects. ... I'm predicting that is going to be the case for some time, three to five years.”

Project bonds have been around for years, but sponsors are just now starting to appreciate and take advantage of the flexibility the markets-based financing mechanism offers. The industry, Pinkusiewicz says, is getting over a long-held assumption that bond investors won't tolerate risk as well as traditional project backers, those being the big European banks that have largely withdrawn from the market in the wake of that continent's sovereign debt crisis.

Pinkusiewicz, who left White & Case LLP in May to join Gibson Dunn's New York office, tested that crumbling assumption over the summer. He represented Banco Santander SA, Banco Bilbao Vizcaya Argentaria SA, Societe Generale SA, BNP Paribas and Credit Agricole SA as the initial purchasers of nearly $300 million worth of senior secured notes behind two wind farms near Oaxaca, Mexico, whose combined generating capacity tops 200 megawatts.

The success of the bank-backed offering proved two things to Pinkusiewicz: “One, there is a market appetite for these types of projects, and two, capital markets provide ... competition to the traditional sources of financing.”

Project bonds are great tools for project sponsors, since they usually have better luck financing longer-term paper in the capital markets, Pinkusiewicz said. They can be structured to suit projects in just about every asset class and can be used for greenfields as well as refinancings.

Also, bondholders tend to be more passive investors than banks, which approach their lender roles more as strategic project partners would. This means that sponsors who get their financing from the capital markets are less likely to have to run to their backers to get consents or waivers every time they want to adjust their model, according to Pinkusiewicz.

Flexibility was key to the senior debt refinancing of Red de Carreteras de Occidente SAPIB de CV, the special purpose vehicle Goldman and Empresas ICA used in 2007 to bid on a $4 billion concession to run four Mexican tollways.

Five years after that, Pinkusiewicz helped put together an 8.63 billion-peso refinancing package that saw the concessionaire — which manages 800 kilometers of Mexican highways — list 8.13 billion pesos' worth of certificates on the Mexican stock exchange and lock in a 500 million-peso term loan facility.

The refinancing was unique for both its size — it was one of the largest project transactions to be supported entirely by the local market — and the participation of Banco Nacional de Obras y Servicios Publicos SNC, or Banobras, Mexico's state development bank.

All sides recognized that Banobras' involvement, which came with a partial first loss guaranty on the refinancing, was a good thing, but working the government agency into the concessionaire's intercreditor agreement could have been a nightmare, according to Jorge Parra, Red de Carreteras de Occidente's CFO.

Fifteen or 16 banks backed Red de Carreteras de Occidente on the initial concession. All of those banks came to the negotiating table with both in-house and outside counsel, as did Banobras, the concessionaire and the bondholders.

“We needed someone who had that [ability to build a] rapport, to speak and negotiate with all [the various] counsel,” Parra told Law360 recently. “Tomer knows what works and what doesn't work.”

Specifically, Pinkusiewicz has a head for business that makes him extremely valuable to his corporate clients, Parra said.

“Sometimes, you have counsel who just wants to have a controlling role in the core [legal] procedure, who wants to show his client that he's protecting their interests,” Parra said. “But at some point in time, talks and negotiations stall because that counsel is not business-oriented. I can tell you, Tomer is super business-oriented. He knows [to] what point we can stretch negotiations. ... I think that is a great quality .... from our perspective, but [really] for both parties. He's always looking for a win-win.”

In the case of the highway debt refinancing, Pinkusiewicz accomplished that by building plenty of wiggle room into the intercreditor agreement on the original concession.

“So, instead of coming up with a whole intercreditor regime, we had to just take the existing framework and make specific adjustments to accommodate the Banobras financing,” Pinkusiewicz recalled.

Had Pinkusiewicz and Red de Carreteras de Occidente had to write a whole new intercreditor agreement in order to work Banobras into the mix — a hypothetical task the attorney described as “daunting” — all parties would've ended up wasting time and money that was instead saved through forethought and flexibility.

Those qualities will go a long way as Pinkusiewicz enters what looks to be a very exciting year in project finance. The Gibson Dunn partner — who also helped the likes of Cintra Developments LLC, Macquarie Infrastructure and Real Assets, and Ferrovial SA with bids for U.S.-based highway, airport and bridge projects this year — is seeing a significant uptick in projects all over the Western Hemisphere. In the next 12 to 18 months, Pinkusiewicz expects emerging players Mexico, Peru and Colombia to join more mature markets like Chile in launching major infrastructure campaigns. The clock is ticking for the U.S. to overhaul roads and bridges in desperate need of repair.

Project bonds will be the financing mechanism of choice for a growing proportion of those projects, Pinkusiewicz predicted.

But regardless which financing structure sponsors go for in the future, one rule will hold true for Pinkusiewicz: “When you're looking at a long-term asset and long-term financing needs, by far the most appropriate approach is to try to encapsulate that in the first financing. ... If you can be proactive when you put in place [an] initial financing structure that allows you to put in new tranches, you are allowing yourself to grow your business ... without having to incur significant time or significant cost to do so.

“ I think that's good for everyone, overall,” Pinkusiewicz said.

--Editing by Jeremy Barker.