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McKenzie.**

「Guide to IPOs for Renewable Energy Companies」

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Introduction

Renewable energy companies provide a range of clean energy solutions including wind, solar, geothermal, landfill gas, biofuels, biomass, waste to energy and ocean energy.

The transition to a carbon-neutral economy is a seismic shift on a global scale. Today's growing renewable energy and clean technology industry is alive with possibilities. Technology developments and significant decreases in renewable power prices, the focus of recent post-Covid stimulus packages in favour of climate initiatives, renewable energy and environmental initiatives, more countries setting targets of net zero carbon emissions by 2050, as well as government policies increasingly focused on the transition to or investment in cleaner technologies, have resulted in a huge investment in renewable energy, clean technology and carbon reduction.

To raise capital they can approach the world's capital markets in various ways. Through an initial public offering (IPO), listing either in its home jurisdiction or cross-border, a renewable energy company can access major global finance hubs and capital from a deep pool of investors around the world. An IPO can help a company raise its profile with customers, suppliers and the media, as well as providing it with an opportunity to improve internal systems and controls, and increase the general operating efficiency of the business as it prepares to comply with the relevant regulatory scheme for public companies.

Key business attributes of an IPO-ready company:

- Leading market position, supported by clear and achievable strategic goals for revenue growth and profitability.
- Attractive financial model, with an established quarterly forecast process and reliable financial reporting controls.
- Appropriately skilled, experienced and proven management team.
- Robust corporate governance framework.
- Possession of the necessary legal title or ownership rights to relevant materials or resources.



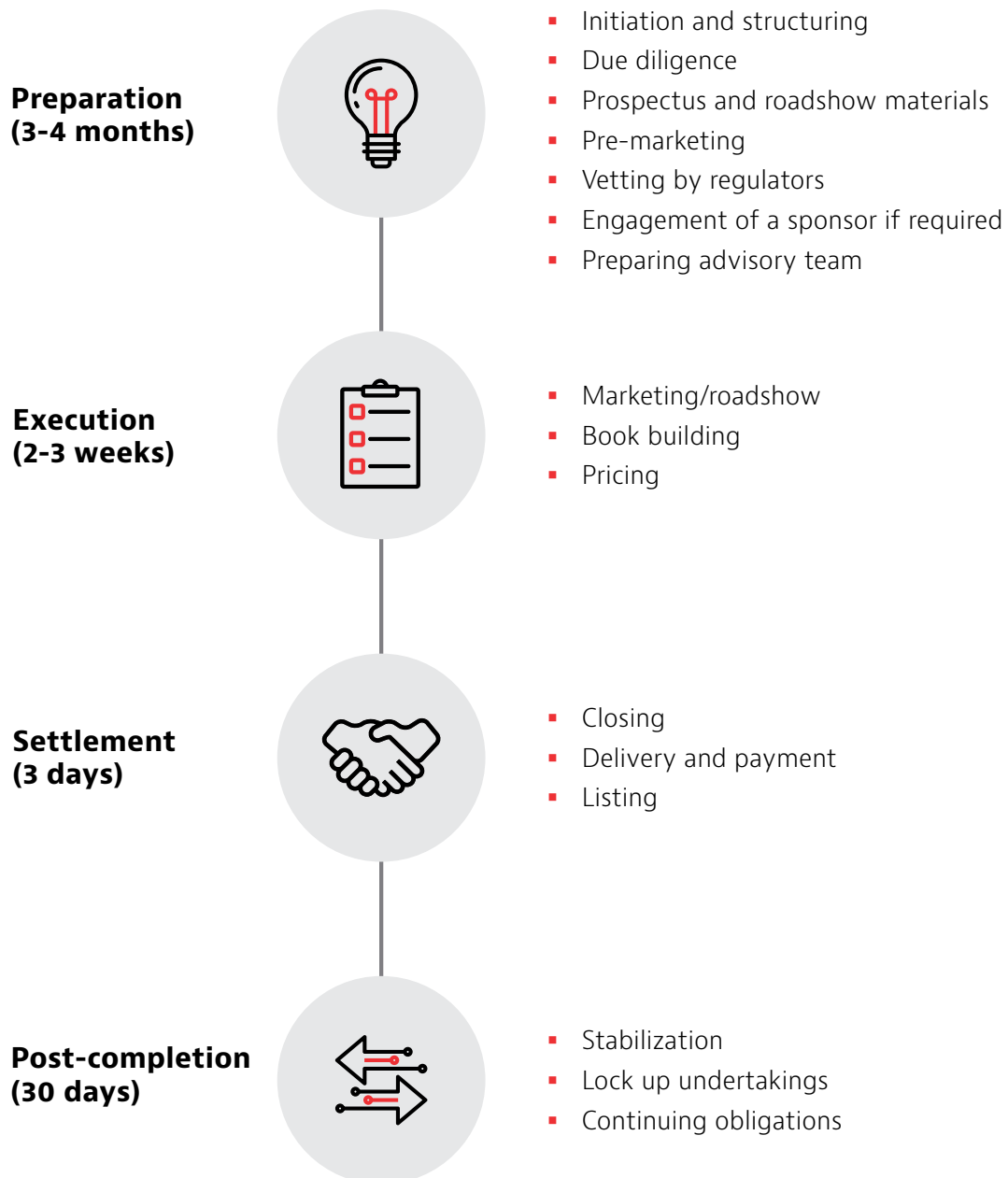
This guide will provide you with:

- An overview of the key stages of the process and an indicative timeline.
- A who's who as regards the IPO deal team.
- Practical tips to help you achieve a successful IPO.
- Important considerations to bear in mind when choosing a listing venue.
- Key issues for renewable energy companies to consider when preparing for an IPO.

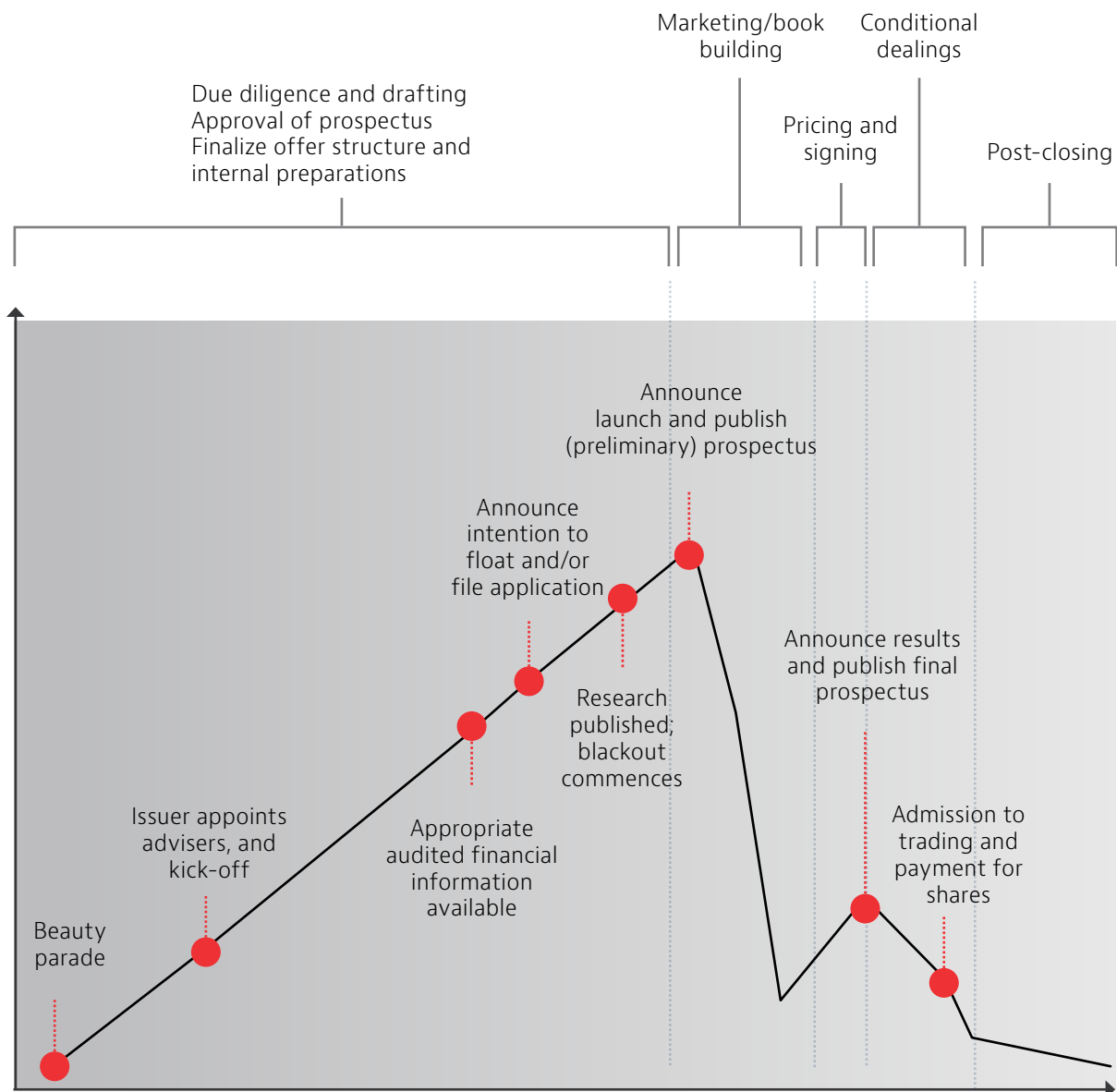
If you have any questions, whether to clarify points or to initiate or progress a discussion on a future IPO for your company, please do not hesitate to get in touch with your [Baker McKenzie contacts](#).

Key Stages and Indicative Timeline

While no two IPOs are ever identical, set out below is a general overview of the tasks that must be undertaken and their place in the IPO timetable.



Due to the bespoke elements of every business, we would advise consulting your **[Baker McKenzie contacts](#)** to discuss how these tasks and the timing indicated might need to be tailored for your company.



Note: Mountain represents estimated level of assistance by advisers

The IPO Team

The IPO process involves many working parties. Establishing the right team of professionals that can navigate the complex interplay of all parties involved is critical for a successful IPO.

Core Deal Team

Issuer

- Significant commitment of management's time and resources required.
- Establish internal core team: minimum of one director with the authority to make commercial decisions, an in-house lawyer to coordinate legal work, and an in-house financial officer to coordinate the financial work.
- Small working teams may be formed for specific tasks, e.g., verification and pre-IPO reorganization.
- Schedule board briefings and meetings to approve the IPO and related matters. Attended by all directors.

Legal Advisers



Investment Banks

- Provide strategic and financial advice.
- Broker and market the deal; keep issuer informed of market conditions; assess investor demand; help establish pricing.
- May purchase unsold shares in exchange for a commission and subject to certain conditions.
- Heavily involved in prospectus drafting process, due diligence and verification.
- Provide after-market support and advice.

Unless restricted from selling due to being part of the management of the company, a key employee, a controlling shareholder or a pre-IPO investor, an IPO also gives the company's existing shareholders an opportunity to sell and thereby realize some or all of their investment in the company, after a hold period, in some jurisdictions.

Marrying the two sides of the core deal team are the legal advisers

We, at Baker McKenzie, are well versed in assuming the crucial coordinating role that lawyers take in any IPO transaction. We have great strength and depth of experience in conducting legal due diligence, preparing prospectuses, issuing carefully considered legal opinions and negotiating key documentation, such as underwriting agreements. Due to our presence in 45 locations worldwide, we

are also able to boast a hugely beneficial, established profile and working relationship with more regulators and stock exchanges than any other global law firm.

Since the issuer will still have to run its business during the IPO process, this level of support can be crucial to significantly reducing the burden on management.

Other Parties

Two other key parties in any IPO are the accountants and the regulators.

Accounting firm

- Audit and report on the issuer's historical financials and pro forma financial results.
- Conduct financial and tax due diligence.
- Advise on internal controls, provide comfort letters related to the audits performed on historical statements and on the adequacy of working capital.
- Provide strategic advice regarding valuation and financial issues.



Regulators

- Act as the main legal authorities that regulate the IPO process and requirements.
- Typically involves at least one financial regulator, stock exchange or both.



Further additional parties that may be involved in the IPO deal team include:

- Technical experts, such as "competent persons" or "qualified persons", industry experts, internal control experts and property valuers.
- Communications consultant to assist the company in public relations surrounding the IPO.
- Depositary/registry responsible for managing the shareholder register.
- Receiving banks that deal with any proceeds received from retail investors.
- Independent financial advisers who can provide advice on business plan, financial modelling, investment case and business valuation.

Eight Practical Tips for a Successful Listing

Regardless of the jurisdictions and listing venues considered for a capital raising, a company should always aim to start to prepare for an IPO at least **12 to 24 months in advance**. This can include general housekeeping such as ensuring company records, material contracts and employee agreements are settled and organized. It can then increase its chances of success by following these practical tips:

1 Prioritize your goals for the listing. These can include, for example, access to a broader investor base, greater visibility among renewable energy industry peers or another goal.

5 Understand the liability risks of listing on a particular exchange.

2 Consider the likelihood that a particular exchange can meet those goals.

6 Choose financial, legal and accounting advisers that have renewable energy industry knowledge and on-the-ground experience with local and international aspects of listing on a particular exchange.

3 Seek an exchange where investors and other market participants are familiar with companies in the renewable energy industry and understand the value of industry products and services.

7 Critique any timetable provided by an adviser, exchange or other third party to confirm that it is realistic.

4 Analyze the trading price and volume of comparable renewable energy stocks on the exchanges being considered.

8 Quantify all initial and ongoing costs associated with a particular exchange and securities regulator. These can include, for example, initial listing fees, annual fees, ongoing disclosure costs and other compliance-related costs.

Stock Exchanges

Over the past few years the majority of listings by renewable energy companies were on their home market

In many cases, this could be attributed to the close ties that those issuers had established with their home countries, culturally, economically, legally, and in terms of their fundamental infrastructure. However, the appeal of cross-border listings is growing as renewable energy companies increasingly consider factors that might motivate them to go public outside their home market, many of which we consider below.

In any event, when considering an IPO, it is crucial to establish what the main goals of the IPO are. This will guide the company to assess which stock exchange and listing option will best help it to meet these goals. Detailed summaries of the principal attributes and listing requirements of more than 40 listing venues around the world can be found in Baker McKenzie's [Cross-Border Listings Guide](#).



Core Considerations

We recommend that any decision concerning the potential location of your IPO be based upon these core considerations.



Strategic goals

Increased brand visibility - A renewable energy company may find it helpful to list or raise capital in the same jurisdiction in which its major markets or customers are located in order to increase visibility and brand recognition. A cross-border capital raising can also increase worldwide prominence.

Participation in indices - An index provides investors with clear and independent benchmarking of stocks, sectors and the market as a whole. This also creates the basis for portfolio trading by active and passive investors.

Liquidity - Some exchanges are better placed to deal with large capital raisings, some offer a more efficient means to raise smaller amounts of capital, while some offer more flexible requirements for already-listed companies to raise additional capital.

Share class structure - A company may want to retain a certain share class structure. Each jurisdiction has its own requirements for different class structures and there may be a listing regime tailored for renewable energy companies in certain jurisdictions.



Factors affecting valuation

Analyst and investor expertise - Well-informed research analysts and investors can help drive a successful capital raising and a strong aftermarket. Some exchanges also have market participants with an acute understanding of comparable renewable energy companies.

Investor appetite - Investors' appetite for the quality, stage of development and risks associated with particular renewable energy assets may differ in each market.

Number and value of peer listings - Companies concentrating on particular renewable energy sources or regions may be more prevalent on certain exchanges or in certain jurisdictions, which may assist investors and enable analysts to provide more accurate valuations.

The concentration of peer companies should also be considered when choosing between jurisdictions and listing venues as it can help provide a benchmark for an issuer's share price in the aftermarket. For example, it is important to consider the key performance indicators (KPIs) used by peer companies. The issuer's financial statements should be aligned to report on the same KPIs so that investors have a comparable benchmark.

Geographic location of projects

- The location of projects and proximity to key customers may be an important consideration for renewable energy companies choosing among exchanges. For instance, investors active on certain exchanges may be more comfortable and place higher valuations on companies that operate in certain countries or regions.



Costs

Initial flotation and ongoing compliance costs - In addition to the variable listing costs of each stock exchange, the company will need to assess the costs of

ongoing compliance, such as financial reporting and reserves/resources disclosures, which may vary significantly between jurisdictions.



Regulatory Environment

Initial listing requirements

- Selecting the most suitable jurisdiction requires careful assessment of a company's ability to meet the relevant listing requirements, whether relating to financial track record or assets, minimum number of shareholders, public float, minimum share price or capitalization. For example, a company focused on exploration or in the development phase may be more likely to satisfy requirements on exchanges that offer asset test financial requirements, rather than requiring a track record of profitability.

In addition, prospectus disclosures covering matters such as the regulatory approval process could require significant time and costs to satisfy.

Corporate governance

- It is important for a renewable energy company to determine early on whether it will be able to meet all the ongoing regulatory obligations for its chosen exchange, remembering that such requirements may be more stringent on certain exchanges or in certain jurisdictions than others.

Settlement issues - A renewable energy company should consider whether there are any transaction settlement issues it may face in certain listing venues, such as the need to issue depositary receipts.

Key Issues for Renewable Energy Companies

Renewable energy companies should be aware of the following key issues often encountered by industry peers undertaking the process of capital raising and listing on a stock exchange. Please get in touch with your Baker McKenzie contacts to access our range of thought leadership materials focused on renewable energy.

Restructuring prior to listing

The business and corporate structure of a renewable energy company's operating group is an important issue to consider at the onset.

Renewable energy companies will want to identify the correct assets to be listed and may need to restructure the group accordingly to ensure the appropriate listing vehicle is used.

There may also be foreign ownership restrictions that impact on the pre-IPO restructuring plans and legal advice should be taken at an early stage. Likewise, some jurisdictions may have more regulatory approval requirements than others in implementing a restructuring.

For corporate governance, tax or marketing reasons, a renewable energy enterprise may decide to re-incorporate out of its home jurisdiction to another location. Companies that wish to take advantage of more flexible governance requirements or a different tax structure will often explore a re-incorporation in conjunction with an initial listing.

Stage of operations

With considerable variation in financial listing requirements among stock exchanges, a renewable energy company's stage of operations is an important aspect to consider at the onset when choosing a listing venue.

Many stock exchanges have general requirements that are based on a track record of profitability, revenues, cash flow, minimum number of shareholders, public float, minimum share price, market capitalization and/or working capital. Others offer alternative financial tests based on assets or may waive generally applicable tests on a case-by-case basis.

A renewable energy company in the early development phase, for example, may be more likely to satisfy asset-based requirements than other general financial tests. Consideration of the operational stage therefore is an important factor in a renewable energy company's listing venue decisions early on in the process.

Due diligence

Due diligence investigations for renewable energy companies are typically more specialized than for many other companies, with a heavy focus on the technology and industry-specific regulation.

In all IPOs, it is essential to have those individuals who help to run the business – whether they employees, consultants or others – to be available to assist the deal parties in their due diligence efforts.

The due diligence investigations will focus both on areas relevant to all industries and on areas that are particularly relevant to a renewable energy company that is undertaking an IPO.

These latter areas may include:

- government permits
- certificates, licences and registrations
- safety ratings

- sales commitments
- labor issues and union awards
- community consultation and social license to operate
- infrastructure access, capacity rights and obligations
- equipment financing and leasing arrangements
- environmental impact, offsets and remediation

Understanding the exposure to potential changes in laws, regulations and governmental policies can be critical and require analysis of how such changes may impact the company's general compliance and revenues.

Management and technical team

The skill set, experience and track record of a renewable energy company's management and technical team in the relevant type of renewable energy and clean technology are also important factors.

Highlighting the team's relevant credentials may provide investors and regulators with confidence in the company and its prospects of developing projects in the manner described to investors in the prospectus.

Typically, a renewable energy company would include within the prospectus relatively extensive curriculum vitae for key team members. It is therefore important for issuers to devise appropriate incentive plans to retain talent, whether before or after listing.

Describing the business

The key prospectus drafting challenge is to provide explanations that are accurate and complete, while satisfying the requirements of both investors and regulators for cogent, easily understood information.

As the market for new technology can be challenging to describe if there are limited public sources available, it is often advisable to have a consultancy firm conduct a market assessment or provide a review report that can also be used as a reference/source in the prospectus. It is very important to agree with such firm the basis for how the report can be used and referred to and make sure it aligns with the disclosure contemplated in the marketing materials.

Renewable energy companies should also carefully consider the key risks associated with their business model or with a subset of products.

A proper explanation of key business risks specific to the company, and how the company is managing and preparing for those risks, is an important aspect of prospectus disclosure.

Formulating a strong equity story is also important for marketing and book building purposes.

Business risks of particular relevance to renewable energy companies include:

- Environmental compliance and permitting requirements.
- Technology risk.
- Environmental concerns leading to changes in government regulation or consumer behavior.
- Ownership and control of assets.
- Reliance on a set of core products or failure to develop and successfully launch new products.
- Liquidity for future operations and product development.
- Fast-paced changes in the competitive landscape.
- Compliance with the regulatory regimes applicable to the business in existing markets, and potential regulatory hurdles in target markets.
- Resourcing and reliance on key employees.
- Access to any necessary infrastructure.
- Risks related to the supply chain and potential procurement risks. An IPO of a company in this sector often requires some of the use of proceeds to either set up or ramp up a production facility. Such complex operations and developments can take more time and be more costly than expected. This risk will need careful consideration and disclosure.
- Broader market adaptation to new technology standards (or ability to adapt new technology to meet existing standards). The risk of a significant time lag for any necessary adaptation may need to be considered for renewable energy companies.

Enhanced prospectus disclosures

In certain jurisdictions renewable energy companies should be mindful that they may be required to meet market expectation to provide enhanced prospectus disclosure.

Describing the highly technical business of renewable energy often poses one of the most challenging aspects a renewable energy company must undertake in a prospectus. The crux of the challenge is to describe the business accurately and in accordance with applicable regulations, while satisfying investors' and securities regulators' desires for easy-to-understand disclosure.

In addition, because of the broad regulatory environment applicable

to renewable energy companies, as discussed above, special prospectus disclosures may be required or advisable. For example, where a legal regime is particularly onerous or unique, a renewable energy company must consider including in the prospectus a summary of the relevant laws. Knowledgeable regulatory advisers that are also experienced in crafting disclosure are vital to the prospectus drafting process.

Further, exchanges may require renewable energy companies to provide specific disclosures in or with the prospectus, such as:

- Information on strategic objectives.
- Collective expertise, experience of technical staff and the extent to which the business is dependent on key individuals.
- New technology substitution and systems failures.
- Current and expected market competitors.
- Any dependence on a limited number of customers or suppliers.
- Compliance with all applicable laws (particularly environment and regulatory laws).
- Claims, litigation or material adverse findings in investigations in respect of liability from usage of the service.
- Research and development.
- Any assets necessary for production that it does not own.
- Transactions with interested persons.
- Transactions with governmental entities.
- Environmental and social matters, including climate-related policies.

Disclosure obligations after listing

Once listed, renewable energy companies can face challenges in meeting ongoing disclosure obligations to keep the market appropriately informed.

Ongoing requirements of the exchange and securities regulator may be more stringent in some jurisdictions, which can result in significant continuing compliance costs. For example, depending on the exchange, a listed company may be required to comply with specific financial reporting requirements, frequent material event notifications and disclosures related to significant stock ownership.

There may be additional reporting and disclosure requirements for renewable energy entities. Such reporting will need to comply with the relevant reporting standard, which will vary depending on the listing venue.

It is important for a renewable energy company to determine early on whether it will be able to meet all ongoing regulatory obligations for a chosen exchange.

Assets and income mix

The assets and income mix for certain renewable energy companies could also affect the degree of regulatory and reporting compliance required.

In some jurisdictions, by virtue of their asset and income mix, early-stage renewable energy companies may be subject to additional levels of securities regulation. In other jurisdictions, these companies may be subject to additional reporting requirements after listing. These additional reporting requirements may include providing more regular reports on cash flow and expenditures, as well as reporting on commitments to implement business objectives.

Certain jurisdictions may require renewable energy companies to have detailed and specific plans to maintain substantive business operations and to update investors on their use of proceeds. This is to ensure the issuer's suitability for listing, as companies that are cash-heavy may be at risk of being regarded as a shell company.

Baker McKenzie Contacts

The most appropriate contacts within Baker McKenzie for inquiries about prospective listings are as follows:



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For transactions involving renewable energy companies, we can also draw on the expertise and experience of our globally recognized renewable energy team:



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* Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law

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We are a transactional powerhouse providing commercially-focused, end to end legal advice to maximize deal certainty and secure the intended value of transactions. Our 2,500 lawyers combine money market sophistication with local market excellence. We lead on major transactions with expertise spanning banking and finance, capital markets, corporate finance, restructuring, funds, M&A, private equity and projects. The combination of deep sector expertise, and our ability to work seamlessly across each of the countries where we operate, means we add unique value in shaping, negotiating and closing the deal.

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