

# Powering China

China's impressive economic growth in the past three decades has been dependent on polluting fossil fuels. Caroline Berube, managing partner at full service law firm HJM Asia says that 95% of China's energy comes from fossil fuels, with coal being the chief supplier. The remaining 5% originates from clean or renewable sources of energy.

This heavy reliance on fossil fuels has been underscored by severe environmental degradation and health risk. Two thirds of China's rivers are too polluted for industrial use, let alone agricultural or drinking, and just 1 in 100 of China's nearly 600 million city dwellers breathes air that would be considered safe in Europe. That will hopefully change in the near future as China begins transitioning to a clean energy economy. According to the Renewables 2007 Global Status Report, China was the second largest investor in sources of renewable energy, and is widely expected to become the world's biggest producer later this year. "China intends to increase the proportion of clean or renewable energy used in the coming years," said Ms Berube.

Beijing is already a leading supplier of many clean energy technologies. It is a leading manufacturer of solar photovoltaic technology, with 820MW of production by the end of 2007, second only to Japan. The Global Wind Energy Council announced in early 2008 that China will become the world's leading manufacturer of wind turbines by 2009. Furthermore, Ms Berube points out that an additional seven wind power projects - each with ten million kilovolt capacities - are planned and will likely be completed in the coming few years.

The global economic slowdown has not slowed down China's rate of clean tech investment and development either. Beijing announced an economic stimulus package worth RMB 589 billion in late 2008. According to HSBC, 34% of the stimulus was allocated to green projects. "The green projects to be focused by the Chinese government (and thus investors) in this stimulus package relate to solar energy systems, energy-efficient automobiles, energy-efficient building designs, large-scale wind power projects and waste energy," explained Ms Berube. According to her, the Chinese government will focus expenditure on advertising/promotion of newly commissioned and in-development energy projects, research and development and the application of research results into the private sector.

Oil and gas will remain the mainstay of Chinese

energy supply for some time though. The large economic stimulus also includes provisions for the petrochemical industry. "Given China's increasing energy demands, it is unlikely that traditional energy sources are likely to be threatened in the near future," said Ms Berube. Foreign investment into the oil and gas industry is also somewhat difficult. "Fossil fuels and the petroleum industry as a whole is quite restricted and dominated by state-owned (or effectively state-owned) companies, although some foreign companies do have a presence in China," said Ms Berube. Likewise, power companies which provide power to homes and businesses are also usually state-owned and segregated into province or region, industry and consumer subsidies.

In an effort to diversify its massive foreign exchange reserves, China has scoured the world in an effort to secure long-term energy supplies. This has been especially felt in Africa. After signing contracts for oil and gas in Sudan, Chad, Nigeria, Angola and Gabon, it presently sources nearly a third of its oil from the continent.

It has also invested heavily in Latin America. China National Petroleum Corporation (CNPC), which already operates two Venezuelan oil fields, has agreed to spend more than \$400 million in developing 15 declining oil fields in eastern Venezuela. Sinopec signed a \$1 billion agreement with Brazilian authorities to build a gas pipeline across the country in September 2004.

The overseas expansion of Chinese conglomerates first began in 2002 when authorities advocated a 'go out' policy. Their global ambitions offer huge scope for foreign investment and expertise. "Chinese enterprises are often interested in collaborating with foreign entities, especially overseas, as China often lacks experience in dealing with overseas projects and projects in the renewable energy field," said Ms Berube, adding: "Foreign investors should focus on the supply or provision of technology and/or equipment, production systems."



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According to Ms Berube, the main legal difficulty faced by foreign investors is restrictions against investment into certain industries or industry sectors. These are often ones that are designated sensitive to national security. Ms Berube pointed out that investment into certain coal plants is restricted, and any proposed foreign investment into a related project requires special approval from the national Ministry of Commerce (and often other government departments as well) and close monitoring afterwards. Certain industry sectors, such as uranium mining, are restricted and completely off-limits to foreign investors. In addition, Chinese energy law mandates that any technology imported into China for energy projects that is not strictly being sold requires approval from Chinese authorities, and in theory, the technology transfer cannot be subject to many use or production restrictions.

HJM Asia provides concrete and ongoing advice and support in relation to all issues faced by both foreign and local companies in China interested in energy projects, and assists its clients in finding the best and most effective legal solution for the problems faced.

The relevant services of HJM Asia include the counselling and advising on relevant laws, regulations, rules and policies related to the renewable energy sector and coal sector; preparation and review of all legal documentation; and assistance in negotiation and government procedural matters. The HJM Asia team consists of dedicated legal professionals, with extensive legal experiences in the energy sector. Its team has a strong sense of responsibility and consists of native English, French, Mandarin and Cantonese speakers.

HJM Asia recently acted on behalf of a foreign company in a BOT ('Build-Operate-Transfer') cooperation between the company and the Chinese government in relation to a wind power project in northern China. The Chinese government was interested in obtaining the company's technology and equipment. "We feel that this is a good example of the Chinese government's willingness to purchase from foreign entities," said Ms Berube. She explained that one issue was the lack of wind data for the region. "The financial institution involved was reluctant to finance a project in this case. The local authorities however found ways to reassuring the financial institution by committing themselves to some obligations," said Ms Berube and the deal successfully went through.

# An education in energy

Founded in 1959, The Institute for Energy Law (IEL) counts among its membership many of the world's leading energy companies and attorneys. Formerly named the International Oil and Gas Educational Center, the Institute for Energy Law provides advanced education for lawyers and other professionals in the energy industry. Through its educational programs, scholarly publications and membership activities, the Institute for Energy Law serves as an important forum in which contemporary issues affecting the energy industry can be examined.

The achievements of the Institute during its first half century are due to the volunteer efforts of many outstanding attorneys, firms and corporations who as members have contributed their leadership, wisdom, time and financial support.

For more than five decades, The Center for American and International Law has been committed to continuing education for professionals in the energy industry.

The very first educational program of the then Southwestern Legal Foundation was an Institute on Oil and Gas Law and Taxation, offered in 1949 (and every year since). Other energy law programs and activities followed, leading to the creation in 1959 of the International Oil and Gas Educational Center as a division of the Foundation.

Renamed the Institute for Energy Law (IEL) in 2001, the IEL has, through its educational programs, scholarly publications and membership activities, served many thousands of energy lawyers and other professionals as an important educational forum in the energy industry.

The energy industry is evolving, and so is the Institute for Energy Law. Historically focused on the oil and gas industry, the organization's new name reflects its expanding scope to serve not only oil and gas lawyers but lawyers and professionals in all other areas of domestic and international energy law as well.

The work of the IEL is done primarily through its Advisory Board, and its committees. The Advisory Board is comprised of representatives designated by IEL Members.

The Advisory Board meets each February on the day before the annual Oil and Gas Law Conference, following business with pleasure in the form of its annual Advisory Board reception and dinner that evening.

## Annual Oil and Gas Law Conference

The Annual Oil and Gas Law Conference is one of the most distinguished educational forums in the United States for the study of contemporary issues in oil and gas law. Both its faculty and its attendees each year include leading oil and gas practitioners from industry, private practice, and government. First held in 1949, this Conference is the oldest continuing legal education program in any field - in the United States.

The annual Conference includes a gala dinner presentation of the Institute's John Rogers Award and a special luncheon featuring the Deans of Oil and Gas Practice Lecture. The Conference is preceded every year by a day of IEL membership meetings and festivities.

The papers presented at each Conference are published annually in the Proceedings of the Institute on Oil and Gas Law by LexisNexis Matthew Bender. The Proceedings are also included in Matthew Bender's Oil and Gas Law Library on CD.

## Annual Law of LNG Conference

The potential for LNG continues at the forefront of the energy industry. This annual conference has become the primary annual gathering for in-house and outside counsel involved or interested in current issues throughout the LNG value chain.

## Annual Energy Litigation Conference

Designed to bridge the gap between general energy law seminars and general litigation seminars, this annual conference addresses key litigation issues in the energy industry and is co-sponsored by the Institute for Energy Law with the Center's Institute for Litigation Studies and the ABA Section of Environment, Energy and Resources.



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## Annual Power and Alternative Energy Law Conference

Created in 2008, the program is designed as an introduction to new energy fields for oil and gas lawyers, whose energy practice is likely to require them to deal more and more with such new legal issues, as alternative energy resources assume a larger share of our energy supply.

## International Energy Law, Contracts, and Negotiations

Created in 1994 by the IEL, the Rocky Mountain Mineral Law Foundation and the Association of International Petroleum Negotiators, this course is an intensive, comprehensive review of issues which may be encountered in negotiating and performing international energy contracts. The course was expanded in 2001 to include two one week segments: one addressing upstream issues and agreements and one addressing midstream issues and agreements.

## Short Course on Oil and Gas Law

This annual comprehensive five-day short course covers the fundamentals of oil and gas law. It is co-sponsored by IEL with the Rocky Mountain Mineral Law Foundation, and presented each year in October alternating between Houston, Texas, and Breckenridge, Colorado. Sessions are taught by some of the premier oil and gas law professors in the country.

## Institute for Natural Resources Law Teachers

This Institute is designed primarily for law professors who teach natural resources law courses. It is presented every other year in early summer at various locations. It is co-sponsored by IEL with the Rocky Mountain Mineral Law Foundation, the Mineral and Energy Law Foundation and the Section of Environment, Energy and Resources of the American Bar Association.

## Membership Activities

The Institute for Energy Law publishes a quarterly e-newsletter, The Energy Law Advisor, members-only website and online forums, an Energy Law Online Articles Index of papers published at past conferences and, with LexisNexis Matthew Bender, the Oil and Gas Reporter (since 1952) and the Proceedings of the Institute on Oil and Gas Law (since 1949).