



Offshore wind

Offshore wind energy is a central component of the European plans to realise the energy transition. According to the German government, a volume of 30 GW is to be installed in Germany alone by 2030. Plant technology, maritime conditions and the international nature of the parties involved pose considerable challenges.

We have been advising clients and contractors since the early days of offshore wind energy and have developed into one of the leading law firms for advising on the planning, construction and operation of offshore wind projects over the last 10 years. Since 2010, Kapellmann has advised on more than 25 offshore wind projects in Germany, Denmark, Poland, the Netherlands and Taiwan.

Our team consists of more than 10 lawyers specialised in offshore wind projects with experience in project-related issues from all phases of project preparation and realisation as well as in all main and ancillary trades.

Our services cover the entire project cycle, starting with support for participation in tenders under the Offshore Wind Energy Act (WindSeeG) and public law approvals, followed by the design and management of procurement processes in compliance with public procurement law, contract drafting and negotiation, advice during project realisation, claim/anti-claim management and, if necessary, the enforcement of claims in proceedings before arbitration or ordinary courts.

The experience that our lawyers have gained in recent years in the offshore wind industry guarantees sound and practical advice for your projects.

„ Listed among the 'Firms to watch' for the Energy sector “

Legal 500 Germany 2024

Our **consulting services** for the offshore wind industry:

Tender support for the client

The tendering of an offshore wind project in a sometimes difficult market environment places high professional demands, requires experience and places a strain on company resources. This is particularly true for the multi-contracting approach that is (currently) market standard. In recent years, our team has negotiated offshore wind project contracts for all key trades based on the usual contract templates (LOGIC and FIDIC (predominantly

Yellow Book (1999/2017)), mainly as EPC(I), T&I or BoP contracts.

Our lawyers know the markets, market practices, topics and negotiation strategies. Our core team for contract negotiations consists of (in alphabetical order):

- > **Dr Nikolas Brunstamp**
- > **Dr Peter Leicht**
- > **Dr Simona Liauw**
- > **Dr David Mattern**
- > **Dr Sebastian Mellwig**
- > **Dr Claus von Rintelen**
- > **Prof Dr Ralf Steding**
- > **Frederik Ulbrich**
- > **Dr Martin Wittemeier**

We have experience in the preparation and negotiation of all trades of an offshore wind farm (WTG, OSS, IAC, foundation, T&I, SMA, BoP), the ancillary trades (e.g. GeoTech, UXO survey/clearance, MWS services, logistics contracts, BIMCO etc.) and insurance.

Selected references:

- Legal advice for the He Dreiht project (900MW)
- Legal advice for a project in the North Sea realised in two phases (approx. 1600 MW)

Project consulting

Due to the complexity and difficult-to-calculate risks of the project task, hardly any offshore wind project is realised without contractual conflicts. Advising our clients during the implementation phase is another core area of our work. Our services include legal claim/anti-claim management and interdisciplinary work with the project to determine the best strategies to avoid disputes or - if a dispute cannot be avoided - to prepare for a dispute.

We are available for our clients at short notice to provide ongoing project advice and support with any legal issues that may arise.

Selected references:

- Legal advice for the Nordsee One project
- Legal advice for the Merkur Offshore project
- Legal advice for the Deutsche Bucht project

Tender support of the contractor

Beside employers, we also advise contractors on contract review and negotiation. Depending on requirements, we provide support in reviewing contracts, commenting on and evaluating other tender documents and negotiating contracts for our clients.

Selected references:

- Legal advice for a T&I contractor on a BoP contract for a project in the North Sea
- Legal advice for several T&I contracts (FOU, IAC) in the North Sea and Baltic Sea

Advice on public law and energy law

We advise on all issues under the Offshore Wind Energy Act (WindSeeG) and support both participation in tenders under the WindSeeG and the submission of applications for planning approval procedures or planning authorisation procedures for the construction and operation of offshore wind turbines. We regularly represent project developers in complex approval procedures, are well versed in all areas of law relevant to approval (e.g. law of the nature conservation, law of the environmental assessment, etc.) and, if necessary, also defend project approvals obtained before the administrative courts.

Marketing via PPAs has increased in recent years. In this area, we advise both suppliers and buyers and prepare or review draft contracts and negotiate them until they are ready to be finalised.

Selected references:

- Advising several projects in the North Sea on issues relating to the Offshore Wind Energy Act (WindSeeG), in particular in connection with tenders

Public procurement of offshore wind

The shareholder structure and/or the financing of the project often result in the need to comply with European public procurement law. We have extensive experience in the development of a project-appropriate, practical and legally compliant procurement design. We support tender teams with legal quality assurance or manage procedures as an external awarding authority. Review procedures are a burden on project deadlines and must be avoided in advance.

Selected references:

- Legal advice for the He Dreiht project on selected public procurement law issues
- Legal advice for the Nordsee One project on various contract awards
- Legal advice for the Global Tech One project on various contract awards

Dispute Resolution

In accordance with the FIDIC standard, disputes in offshore project contracts are usually settled by means of multi-stage dispute avoidance and dispute resolution mechanisms. In recent years, we have represented our clients in numerous proceedings. In addition to traditional representation before ordinary courts, we have experience in proceedings before dispute avoidance/adjudication boards and (international) arbitration tribunals under various procedure rules (e.g. ICC, DIS, NAI).

Selected references:

- Representation of Global Tech I Offshore GmbH in DAB and arbitration proceedings
- Representation of Veja Mate Offshore GmbH in arbitration proceedings

End of Warranty Services

At the end of the warranty period for each main structure, it is customary for wind farm operators to carry out an "End of Warranty Inspection" to ensure that no defects in the wind farm are overlooked and can no longer be enforced against the party responsible after the warranty period has expired. Comprehensive recording, processing, evaluation and enforcement is a considerable effort for every wind farm operator. In our experience, this process is often not carried out with the necessary structure and care in practice - which ultimately leads to hectic measures and/or the loss of rights or problems with the enforcement of claims.

In order to reduce this effort and control the process, we have developed a joint concept together with an external partner for project and engineering services in the offshore wind energy sector, which begins with sufficient lead time before the warranty period expires, records the existing defects in several sequential steps, evaluates them and ensures compliance with the contractual requirements as well as claim protection even if the warranty period expires.

The advantage for our clients is obvious: together with our partner, we offer a standardised solution from a single source. All defects are recorded and tracked without this activity overloading our clients' processes and resources.

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