

INTERNATIONAL DEVELOPMENT LAW INTEREST GROUP NEWSLETTER

Dear IDLIG Members and Friends:

We are delighted to send you this first IDLIG newsletter. We hope you will find it informative and that it will inspire you to send materials for our future newsletters.

We also hope that the newsletter will inspire one or more of you to volunteer to become the IDLIG newsletter editor. Our hope is that the newsletter can become a site for a lively exchange of information and views among IDLIG members and friends.

Danny Bradlow and Charles Di Leva

Opening Essay by Jorge Kamine¹: A Reflection on the Call for Legal Practitioners to Assist in Mobilizing Capital for EMDEs²

Towards the end of a rich discussion at the recent ASIL-IDLIG event on the legal tools necessary to mobilize support for development from multilateral development banks (MDB) and the private sector³, Professor Danny Bradlow posed a fundamental question: how can we as legal practitioners help to expand private sector capital flows to emerging markets and developing economies (“EMDEs”)? After all, those capital flows consistently supply only a fraction of the need in EMDEs and even that fraction remains concentrated in a handful of countries and regions.⁴ Professor Bradlow’s question echoed the core themes in the remarks by Christopher Stephens, Senior Vice President and General Counsel of the World Bank Group, who opened the ASIL-IDLIG event and subsequently expanded on the themes at this year’s World Bank Law, Justice and Development Week. The General Counsel called on legal practitioners to use

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² Very special thanks to Lisa Shakhnazaryan, an associate at Willkie Farr & Gallagher, for her detailed research for this article and questions.

³ The event took place on October 29, 2025, titled “Partnering for Progress: Legal Tools to Mobilize MDB and Private Sector Support for Development” was co-hosted by the World Bank Legal Department at World Bank Main Complex, Washington, DC.

⁴ See, e.g., International Energy Agency (“IEA”), *Scaling Up Private Finance for Clean Energy in Emerging and Developing Economies* (2023), <https://www.iea.org/reports/scaling-up-private-finance-for-clean-energy-in-emerging-and-developing-economies> (“IEA Scaling Private Finance”); IEA, *World Energy Investment 2025* (10th ed., June 5, 2025), <https://www.iea.org/reports/world-energy-investment-2025> (citing the need for EMDEs to triple investment flows from USD \$770 billion in 2022 to USD \$2.2 to 2.8 trillion per year by the early 2030s and noting that China accounts for two-thirds of these cash flows and China, India and Brazil collectively accounting for more than three-quarters of those cash flows) (“IEA World Energy Investment”); and International Renewable Energy Agency & Climate Policy Initiative, *Global Landscape of Energy Transition Finance 2025* (Nov. 2025), https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2025/Nov/IRENA_CPI_FIN_Global_landscape_energy_transition_finance_2025.pdf.

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their legal knowledge, resources and a solutions-oriented mindset to create innovative and more effective products and services that support EMDEs because “[d]eveloping economies today face an investment shortfall of historic proportions” while “[i]nvestment needs are ballooning at an alarming rate”⁵ with an emphasis on infrastructure, private sector engagement and government policies that advance infrastructure and private sector engagement.⁶

So, how should we answer Professor Bradlow’s question and the General Counsel’s call to action, particularly at this moment when the developed world seems to be rapidly moving away from official development assistance (ODA) and foreign aid and more urgently needs greater private capital for development?⁷ As the panelists at the ASIL-IDLIG emphasized, there are a significant amounts of private capital available in global markets which could be directed to these investments in EMDEs.⁸ Why is that not happening? If the private capital is generally available, the infrastructure needs are clearly evident and private capital is actively sought by governments, why does the private sector not rush to address these needs? As a practitioner who has been working with the private sector on developing and financing energy and infrastructure projects since the late 1990s, the answer is far more prosaic and straightforward than needing to develop new, clever ideas to raise more capital in the developed world and leverage it in highly structured and complex ways. Projects need to be designed in ways that clearly make them “bankable”.

5 Christopher Stephens, From Policy to Results: How Legal Solutions Drive Development Impact, World Bank Blogs, (Oct. 29, 2025), <https://blogs.worldbank.org/en/voices/from-policy-to-results-how-legal-solutions-drive-development-impact>.

6 Id.

7 See, e.g., Zainab Usman, The End of the Global Aid Industry, Foreign Aff., May 5, 2025, <https://www.foreignaffairs.com/united-states/end-global-aid-industry>. And Adam Tooze, The End of Development, Foreign Policy (Sept. 8, 2025), <https://foreignpolicy.com/2025/09/08/end-of-development-foreign-aid-oda-collapse/>.

8 See, e.g., The Murky Economics of the Data Centre Investment Boom, The Economist (Sept. 30, 2025), <https://www.economist.com/business/2025/09/30/the-murky-economics-of-the-data-centre-investment-boom>. See, also, IEA World Energy Investment, supra note 4 at 6 (calculating that capital flows to the energy sector are set to rise in 2025 to USD \$3.3 trillion).

The limited pipeline of “bankable” projects and its consequences

In my experience, the challenge is not the availability of capital, but the dearth of well-designed, bankable projects. Meaning, projects that are well-structured based on clear policies and legal frameworks with enabling environments that allow the private investor to easily and effectively evaluate and quantify the returns on investment – whether equity or debt – and the political, legal and economic risks to achieving those returns.⁹ In addition to improving transparency, predictability and reliability in those frameworks, the projects should be scalable and replicable to garner the consistent attention of investors, which also requires knowledge sharing.¹⁰ Governments may seek to promote projects and encourage investment, but the structuring of those projects cannot be uncertain or incomplete and cannot simply shift the shortcomings and risks posed by those gaps to the private sector without discouraging interest and participation.¹¹

9 My anecdotal experience is borne by the development literature. More specifically, the main barriers cited are an absence of a medium/long-term vision and commitments, inadequate or missing regulations, lack of competitive and transparent procurement processes, uncreditworthy utility, insufficient and unreliable grid infrastructure, and a poor lending and foreign exchange issues. See Sabine Mathilde Isabelle Cornieti & Claire Marion Nicolas, How to Unlock Pipelines of Bankable Renewable Energy Projects in Emerging Markets and Developing Countries? (World Bank Group, Sustainable Renewables Risk Mitigation Initiative Position Paper, Dec. 2023) <https://documents1.worldbank.org/curated/en/099120623171525006/pdf/P1742020cf52b60e6096b80854984124388.pdf> at 13-16. See, also, Makhtar Diop, Relentless Resolve: Overcoming Barriers to Private Investment in Emerging Markets, LinkedIn (Apr. 17, 2024), <https://www.linkedin.com/pulse/relentless-resolve-overcoming-barriers-private-investment-diop-alkue>; see, also, Philippe Valahu, What’s Needed to Create More Bankable Projects in Least Developed Countries, Illuminem (Oct. 24, 2023), <https://illuminem.com/illuminemvoices/whats-needed-to-create-more-bankable-projects-in-leastdeveloped-countries>.

10 See World Bank, The Global Infrastructure Facility: Scaling Infrastructure Investment Since 2014 (Apr. 15, 2024), <https://blogs.worldbank.org/en/ppps/the-global-infrastructure-facility--scaling-infrastructure-inves>.

11 Over the years, I have encountered a number of projects with essential, sometimes fatal, gaps that could have been addressed and solved at the outset with better design of the process and procedures. In some cases, even the typical providers of political and credit guarantees were unwilling to provide coverage given the underlying flaws in the design.

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A limited pipeline of bankable projects also reduces the pool of potential investors who are comparing investment opportunities on a global scale. The investment of time and resources required to assess and learn new markets or opportunities can be substantial and potentially require a premium. The attendant risks can make it difficult to convince global investors to undertake that effort unless there are clearly significant, scalable and tangible opportunities, particularly in non-investment grade markets. Investors analyzing these potential opportunities are comparing them to the alternatives in the markets they know, which have more predictable returns, or are simply more understood and follow the broader financial market trends, such as investing in data centers and related infrastructure in developed markets and more established EMDEs.

Moreover, while there are a range of financial instruments designed to deal with political and credit risks arising from investing or lending to EMDEs, my experience has been that (1) there remain material gaps in the availability of coverage for common situations (e.g. nonpayment/credit risk of state-owned entities operating as monopolies), (2) the products are sometimes structured in ways that can make recovery seem complicated by a lengthy process which can diminish the value of the product, and (3) the documentation involved makes it difficult to assess the coverage and risks to recovery. As a result, guarantee and insurance products can be helpful, but cannot serve to correct or resolve the full suite of bankability problems with projects at the scale required. These products must be employed in conjunction with addressing the underlying bankability issues. Lowering the cost of financing alone may not be enough to mobilize capital if there remain doubts about the investment returns and risks cannot be quantified or clearly and easily mitigated.

The potential role for legal practitioners

While lawyers have limited tools to overcome commercial issues that cause projects to not “pencil out”, legal practitioners can play a critical role in doing the work required to identify, analyze and propose holistic solutions to

bankability issues and advise and support host countries in implementing those solutions. There is an essential need for providing knowledge products and advice on the investment climate and framework in EMDEs that do not already attract significant interest from investors. The advice and assistance should include guidance on how best to structure projects and investments to address the risks. This work can be very technical, labor- and time-intensive as it often means doing a deep analysis of existing legal frameworks and commercial ecosystem, understanding the institutional players, political economy and incentives and designing new investment structures and at times new legal, institutional and regulatory frameworks or, at a minimum, changes to the existing systems. Moreover, the political economy may be such that incumbents seek to resist efforts to bring change given that those incumbents have business built around leveraging informational asymmetries and governmental relationships as barriers to entry. As lawyers, we are uniquely suited to contribute to all facets of this work.

While some of that work should come from investors retaining outside counsel, I find capital providers and strategics may not take that step until they determine there are sufficient opportunities to justify the investment of time and money. Consequently, it can be critical for MDBs, NGOs and other organizations to support host governments in undertaking and implementing those solutions. Lawyers can play a vital role in designing investments and institutions structures, sharing knowledge and information, and helping to execute and implement investments. In the end, the answer to Professor Bradlow is that we can all play an essential through our institutions and as a community of development practitioners in addressing these challenges to bankability and thereby increasing capital flows to EMDEs, but we must consider taking the initiative, being more creative and solutions-oriented, and leading our clients and host countries through the often long and difficult process of advancing these efforts in order to contribute to meaningful improvements and change. ■

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