In 2015 Baker McKenzie released *The rise of corporate PPAs, a new driver for renewables*, one of the first thought leadership reports about corporate power purchase agreements (PPAs), agreements whereby businesses purchase electricity directly from independent generators instead of from a utility. Since the issuance of that report there has been an almost 20% increase in the number of gigawatts of clean energy provided via corporate PPAs, with 5.4 GW of clean energy purchased by corporations in 2017 compared to the previous record of 4.4 GW in 2015, according to Bloomberg New Energy Finance’s (“BNEF”) Corporate Energy Market Outlook. Baker McKenzie has advised on many corporate PPAs throughout the world, some of which are highlighted in the following map.

According to the Climate Group’s RE100 Progress and Insights Report released in January 2018, direct procurement from offsite grid-connected generators has grown fourfold from 3% to 13% of RE100 members’ (corporations pledging to source 100% of their electricity from renewables at some date in the future) total renewable power consumption between 2015 and 2016. Most of the corporate PPAs in 2017 were for wind power.

The majority of renewable corporate PPAs are occurring in the US, which had 2.8 GW in corporate PPA volumes in 2017, which exceeded the 2016 rate by 19% according to BNEF’s Corporate Energy Market Outlook. Europe, the Middle East and Africa was the second-largest market for renewable corporate PPAs in 2017, with corporates there buying 1.1 GW of clean power per BNEF. Corporate PPA volumes are increasing in Latin America and Asia Pacific due in part to increasing corporate demand for sustainable and economical energy solutions and because of regulatory changes.

**Trending**

**Economic, green and reliability advantages sought, and by more entities**

Corporates continue to look to corporate PPAs for economic advantages such as long-term price predictability and the ability to hedge against future price increases from the grid, as well as for green and sustainable reasons. Corporate PPAs are increasingly being used in emerging markets to provide reliability and resilience by counteracting grid outages.

Large multinationals are beginning to apply their sustainability pledges to their global supply chains and data centers, leading to an uptick in Asian and European corporate PPAs. Universities are becoming particularly active in this space due to their large energy consumption and socially conscious procurement teams. For example, in Australia, Monash University, the University of Sydney and the University of Technology in Sydney have each run corporate PPA tenders; in the US, Georgetown University entered into a power purchase agreement to develop a 32.5 MW offsite solar power system to provide almost half of the campus’ electricity. More industrials are entering the space; for example, some mining companies in Africa and Latin America now use corporate PPAs to source clean energy and reduce costs.
Terms shortening and lender confidence growing

In terms of market dynamics, developers prefer to sign 20 to 25 year PPAs on fixed tariffs but in the right markets will consider shortening the term to 10 years and floating tariffs. In the Netherlands, it is increasingly accepted by financiers that the term of corporate PPAs has become shorter than the lifetime of the project loan (but this may gradually disappear if merchant risk increases due to decreasing subsidies). Numerous corporate PPAs have involved projects which were project financed, giving developers confidence that a corporate PPA is bankable.

New deal structures gaining popularity

Buyer consortia

Aggregate buyer groups and consortia by which companies within the same industry or government entities within the same jurisdiction aggregate their power demand and jointly negotiate PPAs are gaining favor as a deal structure. For example, in November 2017, the Melbourne Renewable Energy Buying Group of 14 organizations, including government entities, cultural institutions, universities and corporations, became the first buying group in Australia to contract “firm supply” of electricity and green rights (large scale generations certificates (LGCs)) from a renewable energy project via a 10 year PPA. In Europe, Royal Philips, AkzoNobel, DSM and Google formed a partnership to jointly buy renewable electricity to power part of their operations in the Netherlands by entering into agreements to source electricity from the Krammer and Bouwdokken Wind Parks. In Brazil, groups of consumers may team up in consortia in order to meet the minimum load required to negotiate bilateral PPAs.

Issues to watch for in these arrangements include governance structures and risk sharing. Additionally, where consortia are purchasing power capacity together, consortium members have an increasing desire to agree that they are able to transfer all or part of their capacity share to one or more other consortium members; given the impact on the credit risk of the project company, such arrangements are key to any bankability assessment of such arrangements.

Portfolio structuring

Smaller-scale PPA projects are increasingly being grouped within a fund or other investment structure in order to create a portfolio attractive to lenders. For example, in Asia, developers have created portfolios of rooftop solar projects, aggregating to achieve the necessary scale of at least 30-50 MW to attract finance. In this structure, the developer covers all capital costs including design, installation, full-life operation and maintenance as a turnkey project.

In April 2018 Vattenfall offered an innovative structure to the market in the UK by proposing 10-15 year contracts for the output of its 165 MW South Kyle wind farm in packages of 1 MW of capacity to multiple buyers. This could transform the market for corporate PPAs by opening it to small and medium size enterprises who cannot commit to the entire output of a utility scale wind farm. Such a structure could also improve the bankability of projects by spreading the credit risk between different off-takers.

Similarly, in South Africa, with recent revisions to the licensing regime for IPPs and exemption from certain license requirements in respect of projects under 1 MW, many developers and lenders are looking to follow a portfolio approach where a number of smaller-scale PPA projects are potentially grouped within a fund or other investment structure.

Technology's impact

The reducing costs of storage, price uncertainty and a need for efficient off-grid options (particularly in the heavy industry or mining industries) has resulted in an increase of entities considering and pursuing hybrid solutions (i.e., solutions including multiple technologies such as solar PV with battery storage together with some additional gas or diesel back-up to enhance the electricity price offering and customer load profile) to meet their demand requirements while simultaneously achieving their green energy ambitions. This could promote the development of projects that become available for entering into corporate PPAs.

On the other hand, technology will allow the current renewables infrastructure to be used in different ways, which could lead to fewer projects that can be structured as a corporate PPA. For example, in the Netherlands, wind turbine manufacturer Lagerwey is developing a wind turbine that converts electricity into hydrogen. This hydrogen will, in the first instance, be used for powering lorries. It is currently still a pilot, but if successful, given the scarcity of renewable energy projects in the Netherlands, it could affect the number of projects that become available for entering into corporate PPAs. In the longer term however, hydrogen could in the future be stored for long periods and transported via new, upgraded or existing pipelines to be converted back to electricity at the point of delivery, which will broaden the market for power. If regulatory rules are aligned across Europe to allow for cross-border corporate PPAs, this could increase the number of corporate PPAs entered into.
Landmark Corporate PPA Deals Baker McKenzie Advised

Regional Updates

Americas

With a history of transmission constraints and high utility prices, Latin America has been using variants of corporate PPAs for decades, though limited to a niche of large projects and companies. Renewable energy and power storage can now spread corporate PPAs to a larger number of players. Brazil, Chile, Colombia, Mexico and Peru (followed recently by Argentina) have been issuing regulations that facilitate consumer access to bilateral PPAs and spot markets. The reliability and functionality of such new electricity markets are still being tested, and so is the financeability of private projects.

Argentina

Argentina recently embraced a bold renewables program which will set the basis for a future corporate PPA market. Newly published regulations require that renewable energy should provide for 20% of the national electric energy consumption by 2025. Renewables currently represent 1.8%. To fill this gap, investments are necessary and the government has called for bids for the generation of energy from renewable sources through a simple, efficient and transparent process. Round one of the RenovAr program took place in 2016 and closed with four out of 29 bids awarded at around US$59.75/MWh to solar PV projects totalling 400 MW of solar power capacity. These projects are in the northwest of Argentina in the provinces of Salta and Jujuy. In November 2016, a follow-up round (Ronda 1.5) took place and 20 out of 30 bids were awarded to solar at the price of around US$54.94/MWh. These projects totalled 516 MW of capacity. The second round (Ronda 2) took place in November 2017, awarding 1.4 GW of renewable energy power generation capacity. From these renewable energy projects, 12 out of 66 bids were awarded to solar with the allocation of 556.8 MW of solar power capacity, with an average bid of around US$43.5/MWh. The average price for the new solar projects was around US$41.52/MWh and will contribute an additional 259.5 MW of solar power capacity; wind projects were awarded at an average price of US$40.27/MWh.
Brazil

Brazil is one of the top ten largest producers of wind generated energy, has local manufacturing capacity and has been moving fast towards implementation of utility-scale PV solar generation, all of which encourages corporate PPA projects. Consumers with a minimum load of 3 MW can purchase energy via PPAs as a general rule. Consumers that buy renewable energy (e.g., wind, PV, small hydro) can execute PPAs with a minimum load as low as 500 kW, and the government has proposed a bill of law to gradually reduce the minimum load to 300 kW by 2023. Groups of consumers are considering teaming up in consortiums to meet the thresholds necessary to negotiate bilateral PPAs.

It is common to see private bids for acquiring energy in Brazil. The number of so-called “free consumers” in the free market has multiplied in the last years, and the trend continues. The financing of private projects and functionality of the spot market are challenges to faster corporate PPA growth in Brazil.

Chile

The recent electricity supply tender carried out in 2017 registered historically low prices for distribution companies with an average price of US$32.5/MWh. This led to hundreds of companies that were submitted to a regulated tariff to negotiate directly with the generators or distributors through PPAs, thereby becoming “free clients.” The electrical regulations were amended to allow regulated clients with connection power between 0.5 MW and 5 MW to be free clients. It is estimated that free clients will produce 3,954 GWh in 2021, almost twice the energy they tendered in 2017.

Colombia

Colombian law distinguishes between "regulated users” and "non-regulated users.” Regulated users (i.e., domestic or residential) are those that have no facilities with a capacity greater than 0.1 MW and have no monthly consumption load greater than 55 MW. Non-regulated users (i.e., industries) are those whose installation (maximum demand) and/or consumption exceed the preceding amounts. Non-regulated users are allowed, unlike regulated users, to participate in the competitive market and to sign freely negotiated, long-term of at least one year PPAs at unregulated prices. These PPAs can be entered into between the parties (generator and non-regulated user) directly, with no tender, auction or competitive process to precede them.

Regarding power generation projects based on renewable energy sources specifically, the Colombian government designed a public policy to have renewable energy projects be integrated within the Colombian power generation park through the creation of a competitive process mechanism to award long-term PPAs to those generators obtaining the highest scores, which are based, among others, on the environmental benefits associated with their relevant projects, such as fewer emissions of greenhouse gases. While conventional non-renewable energy sources such as coal can apparently participate in the relevant competitive processes, it is expected that renewable energy projects will be awarded more PPAs due to their scores on criteria such as environmental impact. The details of this mechanism are yet to be defined by the regulator (Comisión de Regulación de Energía y Gas (CREG)), which is expected to happen in 2018.

Mexico

Because of the implementation of the Energy Reform, Mexico allows as a transitional regime (complying certain requirements to remain as prior regime) the execution of PPAs between companies with self-supply generation (inside the fence and/or using the National Transmission Network) permit granted by the Mexican Energy Regulatory Commission (CRE) prior to August 12, 2015 and those offtakers which become shareholders of such power generator (typically through transferring one equity share from the generator to the offtaker).

The new power regulatory model in Mexico now entails two schemes of bilateral PPAs:

1. “Power Hedging Agreements” between Qualified Users which also are registered as market participants in the Wholesale Power Market (holding either alone or in the aggregate with members of the same group of economic interest an average power demand in the last 12 months equal or higher than 5 MW and annual energy consumption equal or higher than 20 GWh) and (a) Power Generators holding a generation permit granted by CRE under the new regime or (b) non-supplier traders. Both acting also as market participant.

2. “Power Qualified Supply Agreements” between Qualified Users (as not market participant) which either alone or in the aggregate with members of the same group of economic interest or related parties exceed 1 MW of average of power demand in the last 12 months and companies authorized as Qualified Suppliers by the CRE acting as market participant. This agreement includes also the legal representation of each load center in the Wholesale Power Market.
Peru

Peru's legislation distinguishes between "Regulated Clients" and "Free Clients." Users whose maximum annual demand, in each supply point, is equal to or less than 200 kW have the status of Regulated Clients. Users whose maximum annual demand, in each supply point, is greater than 2,500 kW have the status of Free Clients. Finally, users whose maximum annual demand, in each supply point, is greater than 200 kW up to 2,500 kW may choose between the status of Regulated Clients or Free Clients.

In this sense, Free Clients may negotiate bilateral PPAs with any generation or distribution company in the country. However, solar and wind power plants cannot subscribe PPAs with Free Clients since the Peruvian legislation does not recognize firm capacity to such technologies. Generators with these technologies can only subscribe the PPAs granted because of Renewable Energy Auctions, which are also subscribed by the Peruvian State.

Additionally, the electricity sales from generators to distributors destined to Regulated Clients can be made through: (i) PPAs without tender process, whose terms are agreed directly between the parties (generator and distributor) and prices cannot be higher than the bus bar fee determined by the Regulatory Authority; or (ii) long-term PPAs resulting from a tender process called by the distributors, whose fixed prices offered by the winning generators are transferred to the Regulated Clients. The prices obtained through the tender process are subject to a maximum price set by the Regulatory Authority.

United States

There has been significant growth in corporate PPAs in the United States over the past few years with offtake agreements signed with corporates exceeding contracts signed with all other offtakers, including utilities, in 2017. This growth has been spurred on by continuing demand from technology companies, but new entrants into the market include large industrial companies, universities and major hospitals. In 2015, technology firms accounted for approximately 70% of the corporate PPAs signed that year but such companies now only account for approximately one-third of the corporate PPAs signed each year. The growth in this sector is being driven by the desire of corporates to meet sustainability goals, as well as economic savings, and also to satisfy the demands of their constituencies, including shareholders, customers and employees. The idea to enter into a corporate PPA may originate with the sustainability office of a corporation, but the final decision to proceed is made at the highest levels of management and requires the support of top tier management.

The recent tax reforms enacted in the United States are not likely to have any significant impact on the demand for corporate PPAs, but the tariffs imposed on solar panels and steel and aluminum imports could affect the pricing of these PPAs and lessen demand in some industries. Despite the lack of support by the current administration in Washington for the renewable energy sector and the decision by President Trump to withdraw from the Paris Agreement, corporates continue to lead the way in reducing their carbon footprint. Corporate PPAs help corporates meet their reduced emissions goals while at the same time offering a hedge against fluctuating power prices.

The advent of battery storage and advances in technologies are likely to continue to fuel the demand for corporate PPAs as the price for renewable energy becomes more affordable and competitive with natural gas powered electricity production. In addition, legislative developments at the federal and state levels regarding the storage and marketing of energy will assist in making the supply of renewable energy more reliable for corporate consumption. While many of today's corporate PPAs are what are referred to as virtual PPAs or contracts for differences, where the corporate offtaker is not taking delivery of the energy but is liable for the difference between the market price at which the energy is sold by the developer and the contract price agreed between the developer and the offtaker in the PPA, there is a growing demand for direct delivery of the renewable energy from the developer to the corporate offtaker, particularly where the generation facility is located near the corporate offtaker. This is the case with data centers and other corporate facilities that require significant amounts of electricity for operational purposes. This trend is likely to continue and is causing concern among some utilities as they see a decline in demand for generated power by their corporate customers.

Finally, there is growth in this market because large corporates are demanding that their suppliers also meet sustainability standards. This development in the supply chain is likely to result in increased demand for corporate PPAs by a new set of offtakers as these smaller vendors look for ways to satisfy the requirements of their larger customers and offset their carbon footprint. This new growth will require some creativity on the part of developers in matching the needs of these smaller offtakers with the generational capacity of the wind and solar projects under development.
Asia Pacific

There is great potential for further growth in the corporate PPA market in Asia Pacific. Corporate procurement should continue to rise in South East Asia, with the regulatory regime under review in the Philippines and Vietnam, according to Inflation News. The Duterte Government in the Philippines is currently formulating a Green Energy Option Program under which larger power users can contract with suppliers, distribution utilities or electric cooperatives to have their electricity sourced from renewables; the utilities and co-operatives will then aggregate the demand for each renewable energy source and contract directly with renewables developers. USAID’s Vietnam Low Emission Energy Program is investigating options for direct PPAs for the Electricity Regulatory Authority of Vietnam. In the last decade, the majority of the 3.2 GW of Asian corporate PPAs have been signed in India according to BNEF. An unreliable grid and access to relatively cheap renewable energy made India a focus for developers, which has led to competitive auctions and a dynamic sector.

In Japan, the feed in tariff for PV projects which have started commercial operation is higher than the market electricity price, so corporates are not interested in signing PPAs for those projects. However, the feed in tariff for new PV projects is now the same level as the market electricity price, so when those projects start commercial operation in two years, we expect corporate PPAs to start in Japan. Five Japanese companies including Ricoh, Sekisui House and Daia House have already joined RE100 initiatives; the numbers will increase due to the rising demand for renewable power. Additionally, the bill for the use of Japan’s general waters for offshore wind projects, which was officially approved by the Japanese Cabinet on March 9, 2018, will likely precipitate an additional source of wind for corporate PPAs in Japan.

In Australia, a number of corporate PPAs have been signed within the last year, whereas prior to that corporate PPAs were generally just a theoretical concept. For instance, telecommunications and media company Telstra signed two corporate PPAs in 2017: it agreed to buy the output of a new 70MW solar farm near Emerald in Queensland, and then led a consortium comprising ANZ, Coca-Cola Amatil, Telstra and the University of Melbourne to enter into a PPA for the 226 MW first stage of the Murra Warra Wind Farm in western Victoria. New players who are seeking to corner the corporate PPA market are also emerging. For example, Flow Power, a wholesale retailer, has created an innovative model to support corporate PPAs under which it plays a role as intermediary.

Multinational corporations with sustainability pledges are beginning to apply the same environmental standards to their Asian supply chains, often across multiple jurisdictions, but many are stalled by a lack of regulatory alignment. For instance, restrictions on transmitting power across the grid mostly restrict corporate buyers in South East Asia (with the exception of Singapore) to solar rooftops physically onsite. Nonetheless, PPAs continue to gather momentum in the region: in February 2018 Microsoft signed its first clean energy deal in Asia, a 20 year PPA with the Sunseap Group’s solar project in Singapore. The project will be the largest rooftop solar project in Singapore to date, with panels spread across hundreds of rooftops around the island.

Europe

The strong regional variation in corporate PPA uptake in Europe reflects the diversity of the legislative frameworks across the region. In the UK, the government has been cutting back support schemes for onshore renewables, and subsidy-free projects are starting to come to the market. In Ireland, the current REFIT support schemes are now closed to new entrants. In Germany, the regulatory system does not support the implementation of corporate PPAs because the regulatory framework for the promotion of renewables still enables developers to obtain better returns. Nevertheless, corporate PPAs are expected to increase in Europe, in part because of demand from US corporates and in part as a new route to market for subsidy-free renewables.

US corporates’ desire to power their European data centers with renewables is predicted to drive renewable corporate PPA growth in Europe. For example, Microsoft has entered into a 15-year PPA with General Electric to purchase 100% of the wind energy from its new, 37 MW Tullahennel wind farm in County Kerry, Ireland, which is the first corporate PPA in Ireland, as well as Europe’s first deployment of battery integration into wind turbines to store energy. In 2017 Microsoft also entered into a 10 year PPA with Vattenfall for the output of the 180 MW repowered and expanded Wieringermeer wind farm in the Netherlands. More than 50 companies said that the post-2020 Renewable Energy Directive had a key role to play in “unlocking the potential” of corporate PPAs, which they said “remain largely untapped in Europe.” One of the proposals made is to establish a fully functioning Guarantee of Origin system, thus allowing companies to credibly trace where the clean power they are purchasing comes from. Furthermore, such a directive would help renewable energy producers to market their green electricity more effectively.

The key markets for corporate PPAs in Europe have been the UK, Sweden, Norway, Netherlands and Ireland. In Sweden, the costs for building wind parks are amongst the lowest in Europe and there has been recent political decisions with the aim to create further incentives to invest in renewable energy sources. In November 2017, the Green Investment Group and General Electric announced plans to construct and operate a 650 MW onshore wind park in northern Sweden and that they had already entered into a 19-year contract with Norsk Hydro, believed to be the largest corporate wind PPA in the world, although no details on watts or price was
disclosed. In the UK, as part of its New Energies business strategy, Shell announced a five-year transaction in January 2018, buying the entire output from the 69.8 MW Bradenstone solar PV power plant (owned by Siem Industries, which also owns solar plants with corporate PPAs with HSBC and UPM Paper). This was followed in May 2018 by an announcement by Facebook that it had entered into a 15-year cross-border PPA from the 294 MW Bjerkreim cluster of wind farms in Norway to power data centres in Denmark and Sweden, with balancing and energy supply services to be provided by Vattenfall.

Other markets to watch in 2018 are France and Spain. For example, solar generation in Spain is generally agreed to have reached grid parity and a number of projects are under development, which are offering corporate PPAs to the market. Some of the PPAs in Spain signed in 2018, such as Ellomay’s Talasol project (on which Baker McKenzie is acting) share many of the characteristics of corporate PPAs.

Africa

Corporate PPAs are very much on the agenda across different markets in Africa. In Sub-Saharan Africa, which suffers from limited electricity distribution and transmission networks and limited generation capacity, large customers such as mines have long been accustomed to generating their own power or procuring diesel or heavy fuel oil (“HFO”)-generated power under various forms of corporate PPAs from specialized providers. We are now seeing a number of projects being developed or proposed to replace off-grid diesel and HFO generation with renewable power or using hybrid solutions such as diesel or gas plus renewables plus battery storage. Off-grid mines and industrial facilities require baseload generation and whilst renewable sources on their own cannot provide the solution, hybrid solutions reduce fuel and logistics costs as well as carbon emissions.

A recent example of this is EREN Renewable Energy and African Energy Management Platform 15 MWp solar farm in Burkina Faso, which was commissioned in March 2018. The output of this project will be sold to theIAMGOLD Essakane SA gold mine under a 15-year PPA and will complement the mine’s existing heavy fuel power plant. It is reported that the solar farm will allow a reduction of around 18,500 tones of carbon dioxide and the saving of around six million litres of fuel per year.

More generally, corporate PPAs are seen as a solution to the hindrance to larger projects caused by the fact that most state-owned utilities in sub-Saharan Africa are not considered credit-worthy. This usually means that projects seek government guarantees for offtaker obligations, but governments are increasingly unwilling to provide such guarantees, which count as a liability under IMF rules. Corporate PPAs are therefore seen to be a solution, by avoiding traditional utilities. The key obstacle to further growth is a lack of large offtakers, which means that many of the projects are at a much smaller scale than in other markets internationally.

For example, outside the mining sector, innovative solutions are being developed to bring renewable energy to smaller commercial customers. For example, in Nigeria, local distributed energy provider Rensource is developing a 1.3 MW project at the Sabon Gari market in Kano, which will supply 12,000 small and medium-sized enterprises at the market by the end of 2018. Businesses will purchase power under a subscription model. Engineering firm Sterling & Wilson also announced in May 2018 a contract to construct a 17 MW solar-diesel-storage off-grid power solution for an educational institution in Western Africa, though the power sale arrangements have not been disclosed. In Kenya, at least 17 projects have been reported as having been constructed under development by companies including Azimuth Power, SolarAfrica and Solar Century, with customers including shopping malls and several agricultural businesses.

In South Africa, given the delays to the closing of various government renewable energy programs, there has also been an increase in the appetite of developers (and customers) to pursue smaller scale renewables projects on a corporate PPA model, and these projects and the market is becoming increasingly competitive. There are however some barriers to growth due to a level of policy and regulatory uncertainty, together with lenders being reluctant to finance projects with shorter term PPAs.

In North Africa, Morocco leads the way. There is a highly competitive renewables independent power project (IPP) program, where under Law 13-09, privately-financed projects are striving to sign PPAs with large private offtakers. At least seven wind farms and eleven hydro projects have been developed or are under development under this law. For example, Nareva operates the Akhenfir, Haouma and Foun El Oud wind farms with a total capacity of 200 MW selling power to industrial customers, whilst ACWA Power developed 120 MW Khalladi wind farm, which commenced operation in December 2017 and supplies 80% of its output to cement manufacturers Holcim Morocco, Asment and Cimat under long-term PPAs, with the remaining output being sold under short term PPAs to other commercial customers. Examples of hydro projects include those developed by Voltalia, which has obtained permits to develop two hydropower plants of 9.8 MW and 7.2 MW in Morocco’s Middle-Atlas region; the electricity produced is set to be sold under long-term private PPAs, which are under negotiation with corporate clients. Platinum Power also has five projects under development which have been authorized under Law 13-09. In Egypt PV firm KarmSolar has signed a power purchase agreement with two subsidiaries of major food exporter Dakahlia Group for two solar projects totalling 23.5 MW.
Having advised a host of clients on corporate PPAs throughout the world, Baker McKenzie is helping to write the rules for the corporate PPA market. This complements years of experience advising clients on standard utility PPAs, particularly those in the renewables sector. For more information, please contact one of our experts below.

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