

Over 600 million people – 70% of the population in sub-Saharan Africa (SSA) – lack access to electricity, stifling social and economic development. A new bill passed by the US Congress is set to become law and is designed to encourage US and international development organizations to prioritize loans, assistance and technical support to spark private investment in projects that increase electricity access and reliability, and emphasize regulatory reform and commercial viability.

The US Congress recently passed the *Electrify Africa Act of 2015*, a bipartisan measure that President Obama will soon sign into law. Once enacted, the Act will codify and strengthen the Obama Administration's *Power Africa* initiative by establishing a comprehensive US policy to improve access to affordable and reliable electricity for at least 50 million people in SSA by 2020. The Act's sponsor, Republican Senator Bob Corker from Tennessee, Chairman of the Senate Foreign Relations Committee, best summarized Congress' intent in passing the measure:

"Creating a favorable environment for private investment to bring reliable, affordable electricity to millions of people in Africa for the first time can be a real game changer in development throughout the region. By establishing an-all-of-the-above approach for expanding power generation in Africa through private capital, we can help reduce poverty and fuel economic growth."

Under the Act, the President will create a multiyear strategy to encourage SSA countries to develop a mix of power solutions, including fossil and renewable energy, to increase access to electricity. In partnership and consultation with SSA governments, the US government's specific objectives include:

1. Increasing power production
2. Strengthening electrical transmission and distribution infrastructure
3. Providing for regulatory reform and transparent and accountable governance and oversight
4. Improving the reliability of power
5. Maintaining the affordability of power
6. Maximizing the financial sustainability of the power sector
7. Improving non-discriminatory access to power in consultation with affected communities

Importantly, the Act provides a roadmap to SSA governments by identifying the types of reforms the US would like to see those governments undertake in order to unlock private investment, including:

1. Reforms designed to allow third parties to connect power generation to the grid
2. Policies to ensure there is a viable and independent utility regulator
3. Strategies to ensure utilities become or remain creditworthy
4. Regulations that permit the participation of independent power producers and public-private partnerships (PPPs)
5. Policies that encourage private sector and cooperative investment in power generation
6. Policies that ensure compensation for power provided to the grid by on-site producers
7. Policies to un-bundle power services
8. Regulations to eliminate conflicts of interest in the utility sector
9. Efforts to develop standardized power purchase agreements (PPAs) and other contracts to streamline project development
10. Efforts to negotiate and monitor compliance with PPAs and other contracts entered into with the private sector

Who should care?

1. SSA governments working to increase power supplies, tackle affiliated regulatory reform and attract foreign investment
2. African regional economic communities
3. Development finance institutions with interests in SSA
4. Independent power producers and PPPs
5. Power project developers/investors/sponsors
6. Corporates looking for off-grid solutions

Why should you care?

The *Power Africa* initiative, while received favorably, was criticized for: (1) lacking a regional approach, (2) involving an allegedly arbitrary selection of participant countries and (3) lacking the long-term commitment and legal framework necessary to sustain the initiative beyond the Obama Administration. The Act resolves these issues by establishing – in law – a long-term US commitment and prioritization of resources to work with governments, the private sector and others to increase SSA's access to power. Put simply, this is no longer just an Obama Administration initiative – it is a comprehensive US government policy.

Make no mistake. There is a more than adequate pool of capital to fund power projects in SSA. However, capital searches the globe for returns, and returns are more likely found in countries whose policies are transparent, reliable and predictable. Investment will flow to those countries whose governments have removed barriers to private investment, mitigated regulatory and financial constraints that inhibit deal flow, and created a stable long-term investment environment. With the Act, SSA governments now have a roadmap of the reforms they should consider undertaking to trigger US support, which will, among other benefits, help build their capacities to handle the development, long-term maintenance and management of power projects.

The private sector features prominently under the Act, which mandates that the US government "shall promote the use of private financing and assistance and to seek ways to remove barriers to private financing for projects and programs . . ." Indeed, the Act's intent cannot be realized without the power of the private sector to help address difficult issues such as how to grow distributed renewable energy markets including off-grid lighting and power. Accordingly, the Act makes available a broad mix of policies designed to remove barriers, incentivize investors and develop bankable projects through, for example, partnerships with development finance institutions such as the Overseas Private Investment Corporation.

What's next?

Time is of the essence. The President is required to prepare and submit to the US Congress his strategy within six months of enactment. Governments, development institutions and the private sector alike are well-advised to engage with the US now to help shape the *Electrify Africa* strategy and its future implementation. Keep in mind, however, that governments and project developers will compete for US prioritization of their power projects.

Accordingly, even the best developed project will not receive priority consideration without a carefully considered and disciplined strategy to engage the US Administration and the US Congress, which maintains considerable authority over the Act via its oversight and appropriations powers.

SSA governments seeking to be an early partner under the Act will have to demonstrate they have the necessary reforms in place or have taken meaningful actions to begin to implement such reforms. Interested private sector parties are well-advised to seek advice on how to successfully position their projects for US support. Those that: (1) can demonstrate that their project fulfills the key objectives set forth in the Act; (2) can orchestrate a diverse mix of financing; and (3) know the policymakers and can navigate and reconcile both the US government and host SSA government decision-making processes, will have a distinct advantage in securing US support.

About Our Africa Business Group

Our Africa Business Group boasts in-depth market knowledge and extensive experience in government relations, business transactions and dispute settlements throughout the African continent. We have established ourselves as a premier firm for Africa-based transactions, particularly in the representation of private sector and government-owned power, oil and hydrocarbon and other natural resources companies. We are also recognized throughout Africa for our service to the mining, electricity, telecommunications, projects and infrastructure sectors. We are particularly skilled with quantifying and mitigating not only financial risk, but also legal and political risk. Our reputation in sovereign representation on the continent is second to none. We consistently engage the public policy mechanism, in concert with our common and civil law expertise, to successfully help clients gain market access, overcome complex and unique challenges and protect and grow their investments in Africa. Our capabilities in Africa include, but are not limited to:

- Energy and natural resources
- Projects and infrastructure
- Sovereign representation
- Banking and finance
- Capital markets
- Communications
- Corporate and commercial
- Litigation and arbitration
- Mining

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