# Client alert

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# "Power Africa" Initiative Creates New Opportunities

## Overview

On June 30, 2013, President Obama, during the course of his state visit to Senegal, South Africa and Tanzania, announced a United States initiative (the "Initiative") to increase electricity generation and access to electricity in sub-Saharan Africa. The Initiative dubbed "Power Africa" aims to double access to electrical power in sub-Saharan Africa by committing $7 billion over five years to resource development, electricity generation and distribution projects (including mini-grid and distributed generation alternatives), as well as energy management capabilities. The Initiative has a stated goal of adding 10,000 megawatts of electricity generation capacity in sub-Saharan Africa in its first phase. The Initiative will focus on clean/renewable energy technology solutions, including geothermal, hydro, wind and solar. The Initiative will be administered by the following U.S. government agencies:

- U.S. Agency for International Development ("USAID"): $285 million in technical assistance, grants and risk mitigation.
- Overseas Private Investment Corporation ("OPIC"): $1.5 billion in financing and insurance.
- U.S. Export-Import Bank ("U.S. Ex-Im Bank"): $5 billion in export support financing.
- Millennium Challenge Corporation ("MCC"): $1 billion in investments through individual country compacts.
- U.S. Trade and Development Agency ("USTDA") and OPIC: $20 million in project preparation, feasibility and technical assistance grants administered jointly.
- U.S. African Development Foundation ("USADF"): $2 million in off-grid energy solutions grants.

The initial set of partner countries for the Initiative are Ethiopia, Ghana, Kenya, Liberia, Nigeria and Tanzania. In addition, Uganda and Mozambique will participate with respect to developing and enhancing oil and gas resources management. The Initiative will also seek to generate private sector funding in advance of its goals. It has been announced that an additional $9 billion in private sector commitments has already been secured as part of the Initiative, amounting to over 8,000 megawatts in additional electricity generation capacity.

# Analysis

## Expanded Capital Pool; New Inroads for Certain Investors, Lenders, Sponsors and Manufacturers

The Initiative will expand the pool of available capital for electricity generation and distribution projects in sub-Saharan Africa. In particular, it expands capital access and is advantageous to investors and sponsors with projects in the six announced partner countries – Ethiopia, Ghana, Kenya, Liberia, Nigeria and Tanzania. Given the announced focus of the Initiative, the expanded opportunity will be especially beneficial to companies that specialize in clean/renewable energy generation solutions. The Initiative will also be especially beneficial to companies in or projects sourced from United States manufacturers.

The Initiative may also have a multiplier and credibility building effect on private funding for sub-Saharan Africa electricity projects. Capital or other assistance provided by the Initiative could serve the role of anchor investments and attract additional capital from the private sector. Private investors and lenders involved in sub-Saharan Africa projects often view favorably the participation of trade, multilateral and development agencies in some form when considering investments.  In addition, the risk mitigation products such as risk insurance, credit enhancements and guarantees that have been announced as components of the Initiative will be beneficial to investors and lenders and may facilitate participation in projects that otherwise would not have been feasible or deemed credible.

## Socially Beneficial Projects and Community Development

The Initiative's social impact is considerable. It has been announced that the public sector component of the Initiative alone will provide electricity access to at least 20 million new households and commercial entities. According to the African Development Bank Group, sub-Saharan African countries currently have a combined installed generation base of only 68,000 megawatts. The 18,000 megawatts in additional capacity projected to be created by the Initiative in its first phase (10,000 megawatts as a result of the United States government commitment and 8,000 megawatts as a result of initial private sector commitments) will represent an over 26% increase in electricity generation capacity. Such increased access to electricity will likely be a driver of increased standards of living and economic development and growth. The Initiative affords opportunities to investors, lenders, sponsors, manufacturers and other industry actors to participate in projects that will have tangible social benefits and result in economic development and enhanced standards of living.

## Boon for Renewable Energy

The Initiative emphasizes clean/renewable energy solutions. This is particularly relevant to sub-Saharan Africa.  Given the political obstacles to constructing and operating transmission networks and the use of cost-prohibitive fossil-fuel powered electricity generators, the clean/renewable electricity generation options that will be part of the Initiative will be cost-competitive. The projects being undertaken as part of the private sector component of the Initiative are illustrative of the sorts of projects that will likely result from the Initiative as a whole: one project is a $1.1 billion investment by Aldwych International in large-scale wind energy projects in Kenya and Tanzania with a goal of developing 400 megawatts of electrical generation capacity, another is a $70 million investment in wind energy generation in Kenya by Harith General Partners, and a third example is a project undertaken by Husk Power Systems for the installation of 200 decentralized biomass-based mini power plants in Tanzania.

While not currently one of the partner countries for the Initiative, the example of South Africa is also illustrative of the viability and flexibility of scale of the kinds of renewable energy solutions that will be focused on under the Initiative: as recently as November 2012, the South African government signed ZAR 47 billion ($5.4 billion) of contracts with independent power producers for 1,400 megawatts of renewable energy capacity to be developed through the first window of the program and contracts for an additional 1,000 megawatts were signed in May 2013 as part of the second window of the program. International sponsors of the first window of the South African program have included Mainstream Renewable Power, Gestamp, SolarReserve, Scatec Solar, SunEdison, Soitec and Abengoa, and investors and lenders have included Denham Capital, Old Mutual's IDEAS Managed Fund and Inspired Evolution Investment Management on the equity investment side and four South African banks – Absa Capital, Nedbank Capital, Standard Bank and Rand Merchant Bank on the financing side.

The Initiative therefore represents opportunities for actors in the renewable energy sector, including sponsors, investors, lenders as well as manufacturers, to participate in the build-out of electricity generation capacity and access in sub-Saharan Africa.

## Role of U.S. Trade and Development Agencies

A notable aspect of the Initiative is that the $7 billion United States government commitment will be administered by United States governmental agencies.

Given the relative funding allocations, it is evident that the US Ex-Im Bank and OPIC, who will jointly administer at least $6.5 billion in funds, will be key players in the implementation of the Initiative. It will therefore become increasingly important for prospective Initiative sponsors, investors, lenders and manufacturers to take into account the specific requirements, standards and procedures of the US Ex-Im Bank and OPIC, as well as those of the other trade and development agencies involved in the administration of the Initiative.

Also, given the role of United States governmental agencies, it is likely that the governing law for the primary documentation related to projects under the Initiative will be laws of jurisdictions within the United States. Sponsors, investors, lenders and manufacturers, as well as other actors participating in the Initiative will need to familiarize themselves with the laws of such jurisdictions and the related standard documentation. They will also need to be prepared to navigate the potential application of the laws of the United States jurisdictions where the U.S. Ex-Im Bank and OPIC are located and the laws of the sub-Saharan African jurisdictions in which the Initiative projects themselves will be built. For instance, while the governing law of the finance documentation for a project may be New York law, it is likely that the governing law of security documents or offtake and maintenance documentation will be the law of the jurisdiction in which the project is physically located.

## Attendant Challenges and Actions to Consider

The opportunities afforded by the Initiative are significant but one should remain cognizant of the attendant challenges. A key challenge stems from the fact that the Initiative is still in its early stages and so one must be mindful of the inevitable gap between the proposed program and actual implementation particularly with respect to:

- Uncertainty as to the availability of U.S. budgetary appropriations to fund the Initiative.
- Navigating the electricity generation and distribution regulatory framework in the Initiative partner countries.
- Managing the inter-relationships and conflicts between U.S. jurisdiction governed documents, U.S. governmental agency rules and procedures and the laws and regulations of the Initiative partner countries.

Some actions to consider in connection with the Initiative include:

- Become familiar with the electricity generation and distribution regulatory frameworks in Ethiopia, Ghana, Kenya, Liberia, Nigeria and Tanzania.
- Assemble and liaise with an advisor team with capabilities in multi-jurisdictional project financings in emerging markets and the interplay of U.S. trade and development agencies with respect to such projects.
- Become familiar with U.S. jurisdiction style documentation with respect to emerging market electricity generation and distribution projects.
- Become familiar with the financing and investment products and services offered by U.S. Ex-Im Bank and OPIC.
- Consider attending the 2014 African energy and infrastructure investment conference that OPIC and USAID will jointly host, given the likely focus on the Initiative at such conference.

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