

COVID-19: Considerations for African Governments

The coronavirus (“COVID-19”) pandemic has accentuated Africa’s energy deficit in an unparalleled manner. With the informal sector and small and medium size enterprises (“SMEs”) making up over 90% of the economy in sub-Saharan Africa¹, the lack of access to power has compounded the effect of national lockdowns on the continent. SMEs have limited capacity for the work from home approach adopted in many countries due to power outages and the cost of data. Where African governments had initiated the process of competitively procuring new generation capacity for their countries, this all hangs in the balance, as parties on all sides of the projects grapple with the far-reaching impact of the coronavirus.

The fallout from COVID 19 related issues e.g., disruption to the supply chain, will have an acute impact on power sector. This will require governments to make urgent and critical decisions such as delaying already launched competitive procurement processes and issuing or accepting force majeure notices in respect of IPPs. These decisions will involve complex legal issues with serious ramifications. The support of expert legal counsel will be a vital asset to such decision-making process. This is why the African Legal Support Facility (the “ALSF”) is currently engaging with Regional Member Countries (RMCs) to assist them with the development of a tailored approach to their COVID-19 responses.

Despite the challenges that African governments are currently grappling with, now is the time for governments to both adjust ongoing initiatives and prepare for the post COVID-19 future. It is critical for governments to get more innovative in relation to both the form and substance of negotiations of PPAs and IAs. Governments that were, for example, already in negotiations with IPPs should not necessarily stop such negotiations but rather take into consideration the impact that COVID-19 may have on certain risks such as currency risk and curtailment. Thus, negotiations in relation to key principles such as force majeure, material adverse change and change in law should reflect the lessons learned from COVID-19. Furthermore, governments can adjust to a new format of negotiations such as video conferencing and similar technology.

As governments prepare for the post COVID-19 future, it is important to acknowledge that potential disputes may arise as a result of the aforementioned. In anticipation, governments should consider careful review of contract documentation and preparation of litigation strategies. African governments may also consider developing a “Crisis Response Toolkit” that reflects the lessons learned, outlines effective response mechanisms and identifies capacity gaps.

[1] https://www.ifc.org/wps/wcm/connect/REGION__EXT_Content/Regions/Sub-Saharan+Africa/Advisory+Services/SustainableBusiness/SME_Initiatives/

The ALSF's mandate was borne out of the realisation that in times of crises, African governments require expeditious, innovative support to ensure that the decisions to be made are aligned with the long-term objectives of the government, and more specifically their energy needs and planning. The ALSF is prepared and equipped to support RMCs by providing quality legal advice and assistance for strategic contractual management, negotiations and dispute resolution.

For more information regarding the work of the ALSF, please visit our website, www.afslf.org.
For queries regarding this sector and/or to submit a formal request for assistance please contact: alsf@afdb.org.



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