

Cliffe Dekker Hofmeyr launches handbook on power purchase agreements

A handbook titled 'Understanding Power Purchase Agreements in Africa' has been launched in South Africa at Cliffe Dekker Hofmeyr business law firm.



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The book provides a comprehensive guide to power purchase agreements (PPAs) in energy deals on the continent.

The handbook was created when the US Department of Commerce's Commercial Law Development Programme (CLDP), through Power Africa (in partnership with the African Legal Support Facility) brought together a group of international experts (including Jay Govender of Cliffe Dekker Hofmeyr and President Obama's Power Africa coordinator Andrew Herscowitz) to draft and publish a PPA handbook.

At the event at Cliffe Dekker Hofmeyr in Johannesburg, US Consul General Christopher Rowan, explained that most successful power projects needed good PPAs to secure the deal.

Standardised document

"The handbook came about after Power Africa began looking at ways to remove obstacles to developing power projects in Africa, and initially looked at developing a comprehensive standardised PPA document for use in power deals. After a brainstorming session in Washington DC, it became clear that a standardised agreement would not work across multiple jurisdictions and so instead a handbook intended to be a guide to PPAs was compiled," noted Rowan.

Herscowitz said that Power Africa aimed to increase access to electrical power throughout all of sub-Saharan Africa by bringing together resources from both the private sector and public sector. As part of the initiative, CLDP works to improve the legal and regulatory environment for power projects in Power Africa countries.

"In its first year, Power Africa played a role in helping over 3,000MW of energy projects reach financial close. Some of

these projects have been in the pipeline for years and our job is to look at the project and identify obstacles - whether they be a regulatory, technical or a capacity issue, and then work out how these obstacles can be overcome.

"This PPA handbook, compiled with the aid of top energy experts from various jurisdictions in Africa and the rest of the world, is intended to help all stakeholders to overcome obstacles and move energy deals forward," said Herscowitz.

Foundation of success

Jay Govender, head of Projects and Infrastructure at Cliffe Dekker Hofmeyr, explained that the PPA is generally a carefully crafted document, which works as a core against a matrix of other interrelated documents. The foundation of its success is the equitable balance of risk allocation.

"Risk needs to be housed where it can be best managed. The balance between risk and reward is paramount and the astute stakeholder needs to understand the ultimate consequences of shifting or taking on risk.

"In this regard, the handbook outlines how stakeholders can be reasonable during the risk allocation process. There are chapters that outline the different risks of developing a power deal in terms of construction, operation, maintenance, financing, tariffs, and political risks, etc. It explains how risk can be mitigated and the tools that can be used in this regard, such as appropriate insurance and, back-to-back contractual arrangements.

"There is no hard and fast rule with risk, there are so many different risks and permutations influenced by different variables like the regulatory framework, jurisdiction, and political environment, and these are all discussed in the handbook," explained Govender.

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