INTO AFRICA

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NAVIGATING AFRICAN LEGAL LANDSCAPES

CROSS-BORDER MERGERS & ACQUISITIONS CHARTING THE REGULATORY LANDSCAPE

PRIVATE EQUITY IN AFRICA: MANAGING TAX STRATEGY, RISK AND COMPLIANCE

INVESTING IN LUSOPHONE AFRICA ANGOLA AND MOZAMBIQUE

INVESTING IN SOUTHERN AFRICA SOUTH AFRICA, ZAMBIA, ZIMBABWE

INVESTING IN EAST AFRICA: KENYA RWANDA, TANZANIA, UGANDA

INVESTING IN MID AFRICA GUINEA & CONGO BRAZZAVILLE

INVESTING IN WEST AFRICA NIGERIA, SENEGAL, IVORY COAST

INVESTING IN NORTH AFRICA ALGERIA, TUNISIA, MOROCCO

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Welcome to the July edition of INTO AFRICA, the publication with fresh insight into Africa's emerging markets. This month we take a look at investment in Africa with focus on laws and regulations for private and foreign investments across African countries (from Southern Africa to North Africa and East Africa to West Africa as well as Mid Africa regions) and titled: ***Navigating African Legal Landscapes.***

Economic recession in Africa, coupled with weak commodities prices for the continent's principal exports, factored heavily in the decline in FDI flows to the region (-3% to US$59 billion) in 2016, according to the UNCTAD World Investment Report 2017. However, continued robust foreign investment into Egypt boosted inflows to North Africa. In contrast, sluggish commodity prices have diminished economic prospects in Sub-Saharan Africa and tempered investor interest in the continent.

Navigating differing business customs across the continent as vast and diverse, as Africa presents particular opportunities and challenges, for new entrants or companies seeking to expand their existing operations. Investors need to understand different African countries investment laws and regulations and look for ways to navigate the complexity, minimise the risks and optimise the opportunities. African governments try to attract foreign investments into their countries to bring in capital and create employment opportunities. Typically, attention is devoted to political, social and legal incentives that will attract foreign investors, hence the focus of this edition.

In this edition, **DEEPA VALLABH** (Head of Cross-Border M & A, Africa & Asia, Cliffe Dekker Hofmeyr) and **MOTHEO MFIKOE** (Associate, Corporate & Commercial practice, Cliffe Dekker Hofmeyr) in the article *"Cross-Border Mergers & Acquisitions – Charting the Regulatory Landscape"*, point out that the growth of African markets in the recent years has occurred through cross-border M&A activity, and has become an important source of FDI.

Still looking at the cross-border investment, **DAVID LERMER** (Partner, Corporate International Tax, PwC South Africa) and **DEON DE VILLIERS** (Associate Director, Corporate International Tax, PwC South Africa) highlight the tax issues of ongoing concern to PE houses as well as emerging opportunities for the industry in *"Private Equity in Africa: Managing Tax Strategy, Risk and Compliance"*.

On the Southern Africa front, **GONCALO FALCAO** (Partner, Mayer Brown LLP, Brazil) and **PAULO RAGE** (Partner, Mayer Brown LLP, Brazil) author the article *"Angola: A Legal Framework for Foreign Investment"* and *"Mozambique: A Legal Framework for Foreign Investment"* respectively. **BONGANI MEMANI** (Candidate Attorney, Dentons, South Africa) contributes *"Investing in South Africa: Navigating the Legal Landscapes"*. **FARAI NYABEREKA** (Senior Associate, Manokore Attorneys, Zimbabwe) and **CAROLE BAMU** (Associate, Manokore Attorneys, Zimbabwe) write *"Investing in Zimbabwe: Charting the Legal Landscape"*. Also, **MWAKA NWAKA** (Associate, Corpus Legal Practitioners, Zambia) contribute *"Investing in Zambia: A Guide to the Mining Industry"*.

For East Africa, **PETER MOMANYI** (Head of Tax, Mazars, Kenya) talks about tax regulations in Kenya in *"Foreign Investment in Kenya: Tax Regulation Aspects"*. **DOMINIC REBETO** (Partner, Anjarwalla & Khanna, Kenya) and **NAEEM HIRANI** (Principal Associate, Anjarwalla & Khanna, Kenya) provide a legal aspects in *"Foreign Investment in Kenya: A Grasp of the Legal Framework"*. In this same vein, **EMMANUEL MURAGJIMANA** (Senior Associate, K-Solutions & Partners, Rwanda) and **JUVANALIS NGOWI** (Partner, East African Law Chambers, Tanzania) contribute "Rwanda: Investment Protection Through the Investment Code" and *"Tanzania: Legal Framework for Private Investment"* respectively. While **FIONA NALWANGA MAGONA** (Partner, MMAKS ADVOCATES, Uganda) and **MARK TURYAMUREBA** (Associate, MMAKS ADVOCATES, Uganda) contribute *"Investing in Uganda: Laws, Regulations & Tax Aspects"*.

Moving to West Africa, **MICHAEL ORIMOBI** (Global Chairman, Tokunbo Orimobi Legal Group) provides a complete guide to private and foreign investments in Nigeria and also highlights some recent developments in *"Regulatory Framework for Foreign Investment in Nigeria"*. On Francophone West Africa front, **FATOUMATA KPLA** (Audit & Financial Adviser, CLKA Law firm, Côte d'Ivoire) and **ABOUBACAR FALL** (Partner, GENI & KEBE Law Office, Senegal) contribute *"Investing in Ivory Coast: Laws and Regulations Insight"* and *"Foreign Investment in Francophone Africa: A Case Study of Senegal"* respectively. While **JOHN FFOOKS** (Senior Partner, John W Ffooks & Co) provide investment laws and regulations in Guinea and Congo Brazzaville with special focus on the mining industry in *"Investing in Guinea & Congo Brazzaville: Navigating the Legal Landscape"*.

On a final note, **GIORGIO BLANCO** (Senior Associate, Giambrone), **SAMY LAGHOUATI** (Partner, Gide Loyrette Nouel law firm, Algeria & Tunisia) and **SAFIA FASSI-FIHRI** (Managing Partner of BFR & Associés) write on laws and regulations in Tunisia, Algeria and Morocco, respectively.

Tunde Akodu

Editor

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CROSS-BORDER MERGERS AND ACQUISITIONS – CHARTING THE REGULATORY LANDSCAPE

By **Deepa Vallabh,** Head of Cross-Border M & A, Africa & Asia, CDH, LLP
Motheo Mfikoe, Associate, Corporate & Commercial practice, CDH, LLP

It has been well documented that Africa is poised for massive urbanisation which will contribute to the continent's economic growth. Currently, the continent is experiencing a growth of the middle class and the private sector which in turn have an increased influence on the economy and the implementation of structural and economic regulatory reforms. This article deals with the challenges of investing in Africa and what is required in order to establish an effective regulatory landscape which would facilitate unlocking this growth potential.

Despite the fragile and slow economic growth in many developing countries, the growth of African markets in the recent years has occurred through cross-border M&A activity, and has become an important source of foreign direct investment ("**FDI**"). Between 2010 and 2015, 5000 individual FDI deals in Africa were identified by McKinsey Global Institute, in terms of which the deals were primarily produced by multinational companies operating in Africa with a pan-African footprint. Asia has become an important source of cross-border M&A activity in Africa. The investment interests from China, India and Japan are expected to lead to increased M&A activity in Africa. The continent is on an upward trajectory in terms of the volume of M&A deals, with cross-border transactions accounting for 36% of the total M&A volume in 2016, however deal value shows a downward trajectory.

The lack of regulatory certainty or stringent regulatory barriers are known to be one of the biggest threats for M&A transactions in Africa. Merger control, exchange control and sector specific regulations are intrinsic to every M&A transaction and can affect the success or failure of the proposed transaction. For that reason, due diligence investigations are an important part of the M&A process. The due diligence investigation provides information, including but not limited, to the regulatory framework of the country in which the transaction is proposed, the political and economic environment, infrastructure, the cultural aspects of the jurisdiction and the tax and labour issues that may arise. Further the investigation allows for early mitigation of any risks uncovered in the target company and its jurisdiction.

South Africa and Nigeria are examples of how the volatility of financial markets in host countries affect the deal value. The currency instability and insufficient financial recourse against the seller also creates a hindrance to investor confidence. In Nigeria, the Central Bank of Nigeria has implemented policies to increase control over the foreign exchange and these policies, together with a substantially low supply of foreign exchange has led to the devaluation of Nigeria's currency. Similar to Nigeria, Algeria contains a high fiscal budget deficit and like Angola, comprises of higher reliance on the oil production. As a result, the drop in global oil prices has created downward pressure on their currencies. Consequently, the combination of conservative prospects for financial and economic performance and increased risk built into the costs of capital has taken a toll on valuations and as a result on the transaction values of potential deals.

African states can increase investor confidence by implementing exchange control policies in order to restrict the amount of foreign currency or local currency that can be traded and as a result allowing countries a greater degree of economic stability by limiting the amount of rate instability due to currency inflows and outflows. However, caution must be exercised where exchange rate policies result in a further depreciation of currency such as in Nigeria where the non-market derived exchange rate has devalued its currency. Further, African states must focus on having economic reforms improving fiscal policies that make it easier for investors to invest and transact in Africa. Morocco and Egypt have shown an increase in the volume of the deals. Egypt has done so by causing deep cuts to fuel subsidies to reduce its budget deficit and Morocco adopted a new banking law which aims to create a financial and economic crossroad between Africa and the rest of the world.

Africa has an additional difficulty of establishing competition law which aligns with each countries national competition laws. Despite the challenges, common economic links between states makes it ideal to operate a regional competition authority. In East Africa, the East African Community Council of Ministers adopted the East African Community Competition Authority (“**EACCA**”), which is the competition authority over Burundi, Kenya, Rwanda, Tanzania and Uganda. The EACCA has jurisdiction over all M&A transactions and enforcement matters with cross-border competition effects in terms of the East African Community Competition Act, 2006. However, there has been challenges in aligning the approach of both the national regulators and that of the EACCA. Timing of these approvals are also problematic as they may delay deal implementation.

The Common Market for Eastern and Southern Africa (“**COMESA**”) established the COMESA Competition Regulations and Competition Rules, regulated by the COMESA Competition Commission ("**CCC**") for 19 countries within Africa, in terms of which it is to ensure the efficient operation of markets with the view of enhancing free and liberalised trade as a pre-requisite to safeguarding the welfare of customers. These regulations and rules apply only in instances where a transaction has a cross-border impact and therefore does not repeal national competition laws. As mentioned before, this creates another layer of difficulty for investors wishing to invest in Africa as regional frameworks such as the CCC and the EACCA are an additional layer of regulation over national legislation.

The political environment of a country creates additional challenges to investing in Africa. These challenges include issues such as a change in regime, social unrest such as the terrorist attacks by Boko Haram in Nigeria and central Africa or South Africa's political instability under the Jacob Zuma administration resulting in two credit ratings downgrade or the states intervention in business affairs such as the expropriation of land laws in Zimbabwe, which had a significant effect on its agricultural sector. Political and security risks, coupled with high unemployment rates also remain key issues that need to be urgently addressed to unlock growth.

The complexity of certain sectors creates an abundance of laws and regulatory roadblocks which creates an additional challenge for investors. Sectors such as the banking, telecommunications, insurance, oil and gas and mining sectors are overregulated as they have additional sector specific legislation in additional to applicable national legislation and in some cases, regional regulations which are triggered when cross-border transactions are concluded. An example of this would be the failed transaction of Nigeria's Code Division Multiple Access and an American investment group, CAPCOM Limited in terms of which slow regulatory interventions from both the Securities and Exchange Commission and the Nigerian Communications Commission served as a hindrance to the transaction. Moreover, many sectors in Africa contain an uncertainty of the regulatory framework, such as in the oil and gas sector whereby countries such as South Africa, Democratic Republic of Congo and Tanzania are still uncertain as to the revision and development of their energy regulation and policies.

Bribery, corruption and an unfamiliar litigation culture, are additional challenges for M&A activity in Africa. This is particularly high in natural resources projects where international companies find themselves under pressure to bid for concessions with or award contracts to local companies linked to top government officials. These factors accompanied by the inadequacy of infrastructure, lack of sophistication surrounding risk management, unfamiliarity with corporate governance and financial reporting requirements and unknown environmental liabilities creates further challenges to transacting in Africa.

However, despite the regulatory challenges, the growing population and expanding middle class coupled with new consumption patterns, should stimulate growth in sectors such as the financial services, consumer goods, retail, healthcare and transportation services. In 2015, M&A transactions in Kenya's retail industry increased with supermarket chains such as Na-Kumatt having 52 stores in East Africa. In the banking and finance sector, Kenyan banks Kenya Commercial Bank, Equity Bank, Fina Bank and Commercial Bank of Africa have 16 branches in Tanzania, 31 branches in Uganda and 16 branches in Rwanda. In the telecoms sector, MTN Uganda and Safaricom concluded an agreement in terms of which Safaricom mobile money users were allowed to transfer money into MTN mobile money accounts in Uganda and Orange Group exited all its East African operations by selling 70% ownership in Telkom Kenya to Helios and its operations in Uganda to Africell.

Understanding the nuances of the target company's regulatory framework is necessary to mitigate the risks of conducting deals in Africa and doing a detailed due diligence often proves critical in giving investors more confidence. Consequently, African governments play a critical role in introducing reforms to create political, social and economic stability.

"The lack of regulatory certainty or stringent regulatory barriers are known to be one of the biggest threats for M&A transactions in Africa. Merger control, exchange control and sector specific regulations are intrinsic to every M&A transaction and can affect the success or failure of the proposed transaction."

Contributor's Profiles

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UNITED NATIONS
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DEVELOPING ECONOMIES

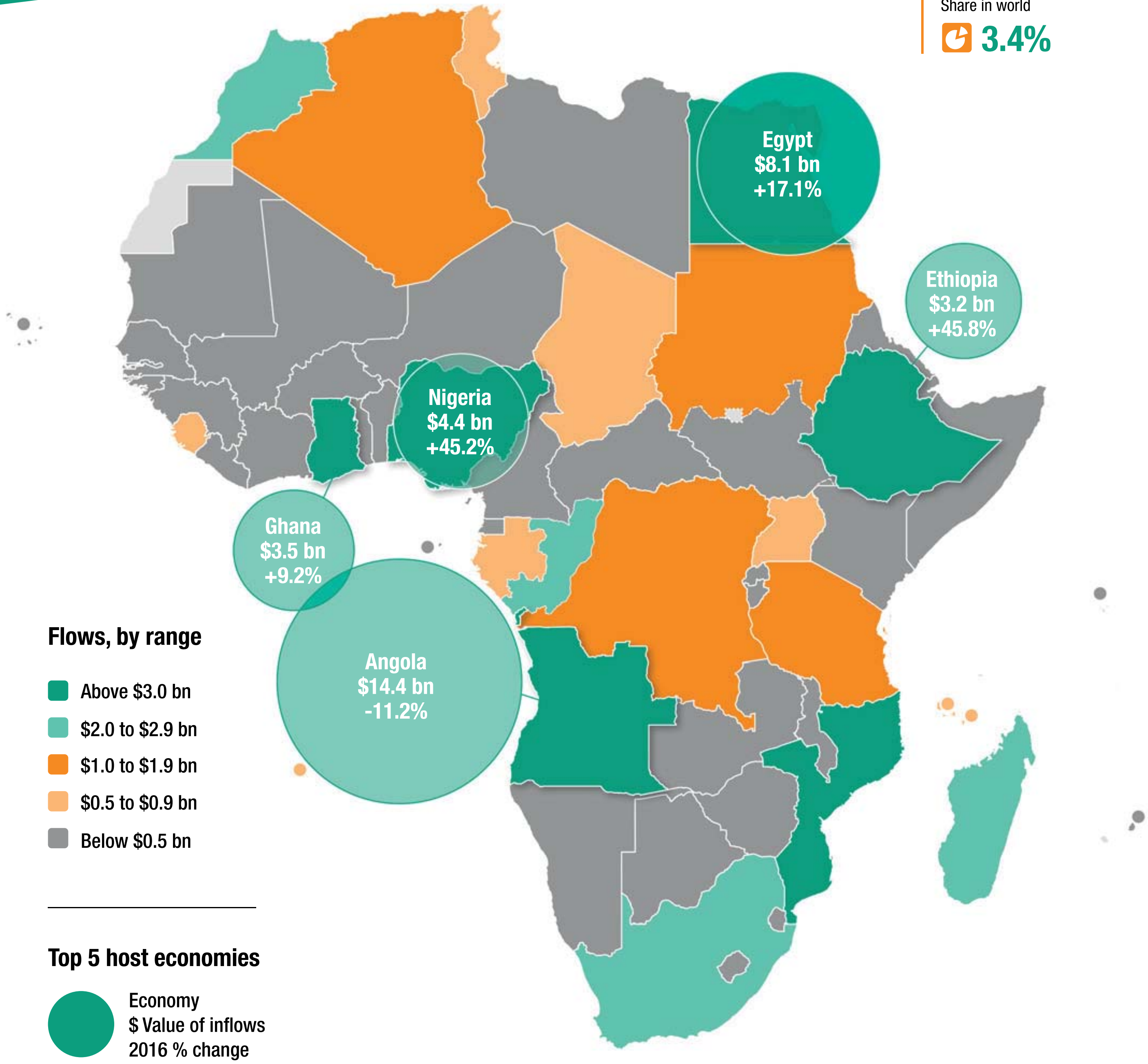
AFRICA

FDI flows, top 5 host economies, 2016 (Value and change)

2016 Inflows
59.4 bn

2016 Decrease
-3.5%

Share in world
3.4%



Outflows: top 5 home economies

(Billions of dollars and 2016 growth)

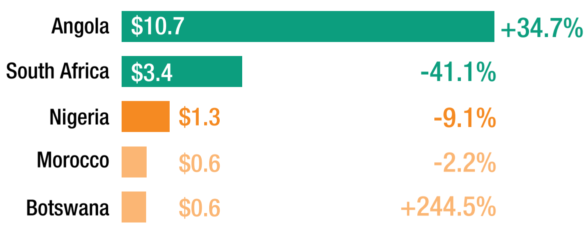
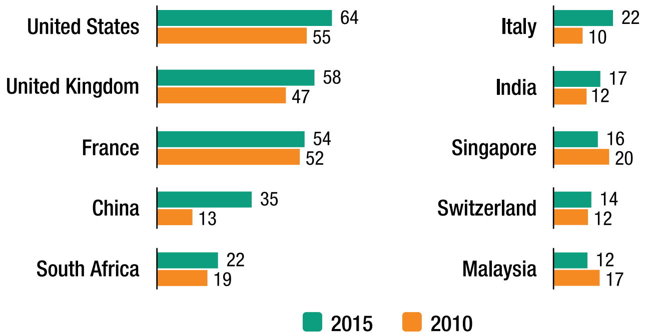


Figure A. **Top 10 investor economies by FDI stock, 2010 and 2015** (Billions of dollars)



Source: ©UNCTAD.
Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined. Final status of the Abyei area is not yet determined.

ANGOLA: A LEGAL FRAMEWORK FOR FOREIGN INVESTMENT

By **Gonçalo Falcao,** Partner, Mayer Brown LLP, Brazil

Over the past 10 to 15 years, Articles about investing in emerging economies have become common, regardless of the continent. African countries have always been included in the investment brochures, but not all of them. In fact, despite the enormous potential of the African continent, African nations have been experiencing different levels of development mostly due to the political context involving each and every one of them.

Nations with long-lasting and stable political institutions have been the ones experiencing the highest growing rates in all aspects, including human development indexes. Nations that are able to add rich natural resources to a stable political environment and modern/competitive legal & tax frameworks have been taking the lead on capturing foreign capital and therefore boosting their growth.

Angola has been one of those countries, extremely rich from a natural resources perspective plus experiencing a politically stable environment since the end of the post-independence (1975) civil war that ended in 2002. Angola growing rates since 2002 have been impressive and above two digits for a few years. Notwithstanding, as a highly oil dependent country, Angola has been hitting the news more recently due to the financial crisis that the sudden drop in oil prices caused to the country's economy. Indeed, the dramatic reduction of oil-related revenues has caused the economy to stall since 2015.

Hence the fair question to ask is whether Angola still deserves to be included in foreign investment publications as before. Our answer to that is: definitely yes.

The reduction on the oil prices made countries like Angola to recognize how vulnerable they are and how important it is to change the economic profile as to diversify the economy and progressively reduce exposure to commodities prices, such as oil.

For that matter, Angola has been trying, more than ever, to attract foreign investors to all sort of other areas, primarily agriculture and industry. Since independence, Angola has been importing the vast majority of what it needs, from basic food to most of the manufactured goods, even the most simple ones. The educational deficit boosted by decades of civil war has not created many local entrepreneurs with the skills necessary to set up new businesses and be the basis of a domestic integrated production chain.

As a result, foreign investment has been seen as the key to help diversifying the economy and the current legal and tax framework was recently tuned for that purpose. In fact, the latest Angola Private Investment law is of 2015 (Law 14/15 of August 11 2015) and has put in place a legal and tax framework far more attractive and "friendly" than its predecessors.

Basically all forms of investment are allowed as the Law defines private investment as (i) the use in national territory of capital, technologies and know-how, capital goods and others in specific economic projects, or as (ii) the use of funds intended to create new companies, groups of companies or any other form of corporate representation of domestic or foreign private companies, as well as the acquisition of the whole or part of the capital of existing Angolan companies, with a view to implementing or continuing a specific economic activity according to their corporate objects.

Investments in some so called strategic sectors can only be made through the establishment of partnerships with Angolan citizens, state-owned companies or Angolan companies who hold at least 35% of the share capital and participate effectively in its management, as reflected in a shareholders' agreement. Such sectors are the electricity and water sectors, hospitality management and tourism, transport and logistics, civil construction, telecommunications and information technology and media requires.

Threshold for tax benefits Incentives and benefits under the law apply to foreign investments amounting to the equivalent in Kwanzas of USD 1 million or more. This means, in practical terms, that there are no minimum amounts of investment required as foreign investments can be of any amount to the extent the invested amounts are adequate to meet the investment objectives. However, in order to be eligible for tax incentives, the minimum investment amount must be the aforementioned Kwanza equivalent to USD 1 million.

The country is divided into the development zones for the purpose of granting tax incentives. Investments in remote and less developed areas are more likely to get incentives as well as higher incentives by comparison to the more developed areas.

For certain high profile investments, i.e. investments in Kwanzas equivalent of USD 50 million or more and capable of creating at least 500 or 200 jobs for Angolan citizens in certain development areas, it is possible to resort to the extraordinary grant of tax benefits by the Head of Government, which is available by negotiation, under the contractual regime for private investment.

Tax incentives may take the form of exemption periods for income taxes and property transfer tax.

Foreign investors are granted the right to transfer abroad
(i) dividends or profits,
(ii) the proceeds of liquidation of investments, including capital gains, upon payment of any applicable taxes,
(iii) the proceeds of indemnities,
(iv) royalties or other earnings resulting from payments for indirect investments, associated with the transfer of technology.

Dividends and profits distributed are subject to a supplementary rate of Investment Income Tax, to the extent that they exceed the recipient's participation in its own funds. This does not apply to dividends or profits reinvested in Angola.

Foreign investors intending to make indirect investments, which are the case of investments financed through loans, must be aware that such indirect component (v.g. loan) shall not exceed 50% of the total investment. Shareholders' loans may not exceed 30% of the amount of investment made by the company, and may not be repaid during the first three years from the date of being recorded as a liability in the borrowing company's accounts.

In terms of process to have a foreing investment, investments shall follow different rules depending on its overall amount, as follows:

(i) for investments of up to USD 10 million, the process should be handled by Government Ministries. The choice of Ministry will depend on the sector in which the investment will be made. Each ministry will create a specialist investment unit to handle the investments, the so called Technical Units for Private Investment ("UTIP" being the Portuguese acronym).

(ii) for investments in excess of USD 10 million, the office of the President of the Republic will set up a specialist investment unit to review these investments.

In terms of bureaucracy, the investment approval involves the submission of an investment proposal to the applicable Ministry, including an application form, corporate documents of the investor and a business plan of the investment, the latter being subject to evaluation meetings with the relevant UTIP. Once the investment features, terms and incentives (if any) are set, an investment contract is signed between the investor and the State of Angola.

In terms of timing, the regulations set that upon receipt of all required documentation in an acceptable form clearance of the investment should be given within 20 days, during which time the investment contract should be agreed. The investment contract should be executed within 10 days of the deadline for clearance. In practice, these timings end up being more indicative than real as actual steps and approvals take a bit longer than expected.

At the end, investor is granted with a Private Investor Certificate (CRIP), which must be sent to the Angolan Central Bank (BNA) and the Ministry of Finance. The CRIP is the private investment certificate and the document that will make the investor eligible to, among other things, license all foreign exchange transactions and exercise its rights as foreign investor.

These are, in a nutshell, the main features of the foreign investment framework in Angola. Although a bit more complex than in other countries, in terms of approval process, Angola has an impeccable track record in terms of complying with investment agreements in the sense that disputes with foreign investors are a rare sight and can be submitted to Arbitration. Angola is a party to the New York Convention which will enter into force in the country on June 4 2017.

"The reduction on the oil prices made countries like Angola to recognize how vulnerable they are and how important it is to change the economic profile as to diversify the economy and progressively reduce exposure to commodities prices, such as oil."

Contributor's Profile
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MOZAMBIQUE: A LEGAL FRAMEWORK FOR FOREIGN INVESTMENT

By **Paulo Rage,** Partner, Mayer Brown LLP, Brazil

Introduction

Mozambique has shown over the last two decades an economic growth of 7,5% on average; currently stands out as one of the countries with the best economical development in the continent; and, is expected to be one of the African countries with the highest estimate of GDP growth in the following years. Agriculture is still the main economic activity in Mozambique, nonetheless, energy and oil & gas, mining and construction & engineering are prominent industries that pose as great investment opportunities. Since it is a coastal country, Mozambique is also an important trading and logistics hub for goods destined for the inner Sub-Saharan African countries. Besides the referred economic activities, the real state sector, banking & finance, as well as industrial activities, also show considerable growth.

Investment and Corporate Aspects

The Investment Law (Law No. 3/93) sets forth the basic legal framework for domestic and foreign investments. Among other guarantees and incentives, Mozambique guarantees the security and legal protection of the ownership of assets and rights, including industrial property rights and the possibility for the investor to use several kinds of assets as authorised investments. A track record of respecting private property is also very positive in the country's investment outlook.

Commercial matters in Mozambique are mainly regulated by the Mozambican Commercial Code (Decree-Law No. 2/2005). The most commonly used limited liability Mozambican business vehicles are the share company and the limited liability company. Foreign entities may also set-up a branch office or a representation office. The type of business vehicle to be chosen will depend on certain aspects such as the simplicity of the structure and operation of the company, the amount of capital to be invested, as well as confidentiality issues in connection with capital ownership. As a rule, there are no requirements for capital to be held exclusively by Mozambican nationals or companies, except in a few specific regulated sectors.

Tax Aspects

Mozambique has a residence-based tax system. A nonresident company is subject to tax only on its Mozambique-sourced income. A company is deemed to be resident in Mozambique if it has its legal seat or place of effective management in Mozambique.

Resident companies and branches of foreign companies are subject to the Mozambican corporate income tax (IRPC) at a rate of 32%. For entities with a registered office or an effective management in Mozambique, the IRPC is levied on the company's revenue, being deductible its expenses and costs, thus, it is ultimately levied on the taxable profit. A withholding IRPC at a rate of 20% applies on services, dividends, interests and royalties paid to non resident entities. Some alternative rates apply for specific economic sectors.

With regards to indirect taxation, the main applicable tax is the VAT, levied at the standard rate of 17% on the sale of almost all goods and services, as well as on imports. VAT is usually recoverable by corporate entities.

Provided that certain requirements are met, private investors in Mozambique may also benefit from tax incentives, such as reduced tax rates, tax allowances, deductions to taxable income, accelerated reintegration and amortization, as well as tax credits. Tax benefits may also be granted upon approval by the Investment Promotion Authority.

Labor Aspects

The most commonly used type of employment contracts in Mozambique are

(i) undetermined-term employment contract, as the general rule;
(ii) fixed-term employment contract; and,
(iii) experience contract

the latter two being used only in exceptional situations. The Mozambican labor system can be considered not complex once it does not impose multiple labor benefits or taxes.

Concerning the employment of foreign workers, four main hiring regimes are set forth under Mozambican legislation, in which foreigners may be hired:

(i) to perform work with a maximum duration of 30 days, on a temporary regime,
(ii) within the general quota for foreigners, ranging from 5% to 10% of the total labor force;
(iii) within an alternative quota established by the Investment Promotion Authority;
(iv) exceptionally and on a case-by-case basis, by means of an authorization issued by the Ministry of Labor.

Foreign Exchange Aspects

The Mozambican Central Bank controls all transfers of direct investments and inward and outward payments. Foreign investors with approved investments are entitled to transfer abroad profits and to repatriate capital, provided tax obligations and exchange formalities have been satisfied. Remittances abroad are made through the local banking system upon presentation of foreign exchange and tax clearance documents.

Financing Aspects

Loan agreements between a resident borrower and a non resident lender must be pre-authorized by the Central Bank. As a general rule, the non resident lender does not need to be licensed or to be registered in Mozambique. The disbursements and the repayments of the loan should be just registered before the Central Bank. As a general rule, the nature of the creditor's rights or assets is what determines the type of security to be created. For instance, real estate property, immovable assets and movable assets subject to registration (e.g. vehicles, vessels and aircrafts) are mortgaged. Movable assets that cannot be mortgaged and other general rights (e.g. credits, claims, receivables or participating interests) are normally pledged. As a general guideline, for creating a pledge it should be followed the same form required for the transfer of the pledged rights or assets. Security trustee or agents may hold and enforce security on behalf of third parties (ultimate beneficiary of the security) by means of intercreditor arrangements. The creation of security over assets may require regulatory consent in the specific regulated sectors.

Sectorial Regulatory Aspects

Some specific economic sectors are subjected to a regulatory framework that stipulates specific criteria and obligations. As examples of regulated sectors we can list: energy (oil & gas, power and renewable), mining, security and defense, telecommunications, aviation, among others.

Mozambique has recently enacted the Mining Law (Law No. 20/2014), followed by its Regulation and a Specific Regime of Taxation that created its new mining legal regime. The referred laws aimed to align the legal framework of the mining activities to the country's current economic perspectives. In addition, the objective was to address the new developments in the mining sector, in order to ensure more competitiveness and transparency, guaranteeing the protection of rights and its correlated obligations.

Recent natural gas discoveries put Mozambique on the world's energy map. Followed such massive natural gas discoveries, Mozambique revised its regulatory framework on hydrocarbons in 2014. The Petroleum Law (Law No. 21/2014), its Regulation and a Specific Regime of Taxation defined the new regulatory framework for activities related to hydrocarbons in the country. Mozambique uses a concession regime for the rights related to implementation of oil & gas operations in Mozambique and has a production sharing mechanism between the investors and the State.

Conflict Resolution

Mozambique is a civil law jurisdiction, meaning that the core principles of law are codified and serve as the primary source of law. Whereas in a common law legal system judicial cases are regarded as the most important source of law (giving judges an active role in developing rules), in civil-law systems codes and statutes are designed to cover all eventualities and judges have a more limited role - to apply the law to the concrete case. To ensure consistency, courts in common law jurisdictions abide by precedents set by higher courts examining the same issue, whereas in a civil law system past judgments are really no more than a (loose) guide.

The Mozambican Investment Law (Law No. 3/93) determines that conflicts that can not be amicably resolved or negotiated will be subject to State jurisdiction. As a rule, disputes are resolved by Mozambican courts, but the legislation also allows alternative dispute resolution mechanisms. The referred Investment Law recognizes arbitration as an effective alternative dispute resolution mechanism, if not provided otherwise under the contract. In addition, Law No. 11/99 (Arbitration Law) allows foreign investors to have access to modern commercial arbitration either in Mozambique or abroad. Decisions of arbitration courts are legally enforceable and definitive, and can only be challenged in court when it comes to formal matters. If a party does not comply with the arbitration award, it is possible to appeal to the Mozambican judicial courts in order to effectively enforce it. Foreign arbitration awards can be enforced in Mozambique after a review process by Mozambican Supreme Court.

Conclusion

Natural resource discoveries, including the large natural gas reserves in the Rovuma Basin, have positioned Mozambique as an outstanding investment opportunity in Africa. Recent progress on reforming the legislation applicable to the mining and the oil & gas sectors support the outstanding economic growth forecast for the next years in Mozambique - way above the expected global average growth.

The projected economic boom related to the development of the gas sector will certainly have positive impacts on Mozambican's economy as a whole and stimulate other economic sectors. The vast possibilities for investments and the natural strategic advantages of Mozambique provide numerous opportunities for those looking to expand into the country and contribute to Mozambican's growth and development.

Contributor's Profile

Paulo Rage is a Partner of of T&C Mayer Brown and Director of the Brazil-Mozambique Chamber of Commerce. He has significant experience in legal planning and structuring for complex cross-border projects, involving the following sectors: infrastructure, construction & engineering, energy and oil & gas, mining, heavy industries and agriculture. He represented several multinational companies in transactions thru different jurisdictions in MEA markets, especially in Sub-Saharan and Lusophone African countries, such as: Mozambique, Angola and South Africa.
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INVESTING IN SOUTH AFRICA: NAVIGATING THE LEGAL LANDSCAPE

By **Bongani Memani,** Dentons Johannesburg, South Africa

South Africa's is considered the regional powerhouse of Africa. South Africa attracts foreign investment because of its diverse, productive and advanced economy, its abundant natural resources; and a transparent legal system. South Africa is party to various market access agreements which canvass the key investment sectors of its economy, namely, minerals, manufacturing, synthetic fuels, mining equipment and machinery, tourism, health and fruit production sectors to mention a few.

In this article, we provide an overview of some of the key legal considerations for foreigners investing in South Africa.

Exchange Control

South Africa has a foreign exchange control regime. Accordingly, the purchase and sale of foreign currency, export of currency and export of capital, is regulated. We deal with some of the most important aspects of foreign exchange control in the context of foreign investment below.

Securities: Approval is required for non-residents to acquire or dispose of any security and/or to make any entry in a security register which involves the transfer of a security into or out of the name of a non-resident. This approval is normally processed by an authorised dealer endorsing the relevant share certificates as "non-resident". It is necessary to ensure the segregation of securities owned by non-residents from those owned by residents by continuing the system of endorsement of the securities of non-residents. This system also acts as an assurance to non-residents that the local sale proceeds of their investments will remain freely transferable by providing for the placing of such funds to the credit of a non-resident account.

Financing: Prior approval is required for non-residents to provide loans to residents (including shareholder loans). In addition, prior approval is required for a non-resident to render any financial assistance to a non-resident (including, by way of example, the guaranteeing by a local entity of the obligations of one of its affiliates). Under South Africa's exchange control regime most major commercial banks have been appointed as "authorised dealers" of the South African Reserve Bank. Accordingly, most exchange control approvals (subject to certain exceptions) can be obtained from your local bankers directly without reference to the South African Reserve Bank. These approvals are normally granted as a matter of course, provided that the requisite documents and information has been submitted.

The Protection of Investment Act 22 of 2015

The South African government has expressed its intention to move away from bilateral investment treaties ("**BITs**") and has accordingly decided not to renew a number of BITs since 2012. Where a foreign investor is not protected by BITs, it can rely on the protections provided for in the Protection of Investment Act 22 of 2015 (the "**Investment Act**"). The key aspects of the Investment Act are briefly outlined below:

Interpretation: The Investment Act must be interpreted in a manner that is consistent with, inter alia, any relevant convention or international agreement to which South Africa is or becomes a party. Accordingly, BITs to which South Africa is a party will continue to be applicable, irrespective of the commencement of the Investment Act.

Equal treatment: Foreign investors must not be treated less favourably than local investors. This provision may not be interpreted in a manner that will require South Africa to, inter alia, extend to foreign investors the benefit of any treatment, preference or privilege resulting from government procurement processes, subsidies or grants provided by the government or any law or measure that is designed to protect or advance historically disadvantaged persons.

Expropriation: Foreign investors have the right to property as provided for in the South African constitution. Accordingly, foreign investors' property may only be expropriated

(i) in terms of a law of general application,
(ii) for a public purpose or in the public interest and
(iii) subject to compensation

(the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court). Accordingly, the expropriation of foreign investors' property must be carried out in terms of the Expropriation Act 63 of 1975.

Repatriation of funds: Foreign investors may repatriate funds, subject to taxation and other applicable legislation. Accordingly, the repatriation of funds will remain subject to South Africa's exchange control regime.

Dispute resolution: If an investor has a dispute regarding an action taken by the South African government, the investor may within six months request the Department of Trade and Industry to facilitate the resolution of such dispute by appointing a mediator. A foreign investor is not precluded from approaching any competent court, independent tribunal or statutory body within South Africa for the resolution of the dispute. If all domestic remedies have been exhausted, the South African government may consent to international arbitration. Such international arbitration shall be conducted between South Africa and the home state of the foreign investor.

South African Government Incentives

The government provides incentives for foreign investors to invest in certain key sectors. Below are some of the incentives provided by the Department of Trade and Industry[1]:

i. The Foreign Incentive Grant which is used to compensate qualifying foreign investors for costs incurred in importing certain machinery and equipment into South Africa.

ii. The Foreign Film and Television Production and Post-Production incentive which is aimed at assisting foreign companies with finances so as to encourage and attract large-budget films and television productions and post-production work that will contribute towards employment creation, enhancement of the South African international profile, and increase the country's creative and technical skills base.

iii. The Business Process Services incentive which is aimed at attracting investment and creating employment in South Africa through offshoring activities, the DTI assists South African National Pavilions to showcase local products at international trade exhibitions.

Merger Control

The Competition Act No 89 of 1998 (the "**Competition Act**") provides for merger control. The Competition Act provides that the possible effects that mergers could have on the public interest and the impact on unemployment be taken into account (in addition to the normal competition considerations) in determining whether to approve a merger.

"South Africa's is considered as the regional powerhouse of Africa. South Africa attracts foreign investment because its diverse, productive and advanced economy, its abundant natural resources; and a transparent legal system."

The Companies Regime

Shareholder Protection

The Companies Act no 71 of 2008 ("**Companies Act**") is provides for shareholders to be provided relief against oppressive or prejudicial conduct or protected from abuse of the relevant company. In addition, the Companies Act provides an alternative for dissenting shareholders to be paid out a fair value of their shares in certain circumstances. Foreign shareholders also benefit from these protections.

Minimum capital requirements and foreign directors

There are no minimum capital requirements for establishing a South African company and it is possible for a South African company to only have foreign directors.

Corporate Governance

South Africa has a well-regarded corporate governance regime. The introduction of the King Code IV, a predecessor of the King Code III, is aimed mainly at providing comprehensive guidelines for companies in all sectors to step up the application of corporate governance and best practice to protect investments. The King Code IV promotes greater stakeholder inclusion in corporate decision making. Previously, it was accepted that directors should act in the best interest of the company, the shareholders and all of the other stakeholders (stakeholder-inclusive theory). The King IV obliges the directors to consider other stakeholders such as employees, not merely as instruments to serve the interests of the shareholders but as having intrinsic value for board decision-making. This creates a necessary balance and improves productivity owing to the fact that the interests of employees have also been considered. Increased productivity also results in higher profits for investors.

Companies Act (Enhanced Accountability)

In addition to the King Codes, the Companies Act provides for a company's memorandum of incorporation to provide for enhanced accountability. Accountability is entrenched in the Companies Act, meaning that evidence of how an investor's capital is used in South Africa will have to be shown. Furthermore, public (listed) and state-owned companies are obliged to have audit committees elected by the shareholders. However, in most cases foreign investors like to inject their capital in private companies. Unlike public and state-owned companies, private companies have to subject themselves to voluntary accountability by, for example, insisting on establishing audit committees for regular audits to be conducted on them.

Directors Fiduciary Duties

Investors usually entrust their interests to directors, who in turn are expected to protect those interests. Since directors are the custodians of companies, therefore, the

1. For a full list, one can visit the DTI website at http://www.dti.gov.za/trade_investment/export_incentives.jsp?subthemeid=26

"As a largely free-market economy, South Africa encourages foreign investment in both the public and private sectors. The potential attractiveness of South Africa is high, compared to other countries in the Africa, but its performance is relatively weak for FDI attraction, despite progress owing to investment potential in infrastructure."

"The country suffers from high crime rate, increasing social unrest (strikes and demonstrations), high levels of corruption and structural issues in electricity supply and logistics. Investors are also worried about the lack of clarity concerning policy and structural reforms. The investment potential remains hampered due to certain legal uncertainties, which may discourage foreign investors, despite the promulgation of the Protection of Investment Act in December 2015, which reinforces legal guaranties for foreign investors."

Companies Act has a number of detailed provisions which deal with how directors should exercise their duties and on whose best interest. Furthermore, the Act provides for indemnity for the company if directors act fraudulently or if they breach the duties required of them in the Companies Act by holding them personally liable.

Black Economic Empowerment

One of the objectives of the Black Economic Empowerment Act 53 of 2003 ("**BEE**") is to promote economic transformation in order to enable meaningful participation of Black people in the economy.

The BEE Act provides for entities to be rated based on the extent to which they promote broad-based black economic empowerment. Failure to promote BEE (and therefore having a poor BEE rating) does not make it unlawful to trade. However, Government and public entities (as well as entities doing business with Government and public entities) take an entity's BEE rating into account when determining

(i) who they do business with,
(ii) who they issue licenses to, and
(iii) who they issue concessions to.

Accordingly, it may be strategically important for an entity to have a good BEE rating. If a foreign investor has found that it would be strategically important for its entity to have a good BEE rating, it would have to assess how it wishes to promote BEE in order to get a good rating. BEE can be promoted by providing an entity with black ownership and management, through black supplier development and use, amongst other things.

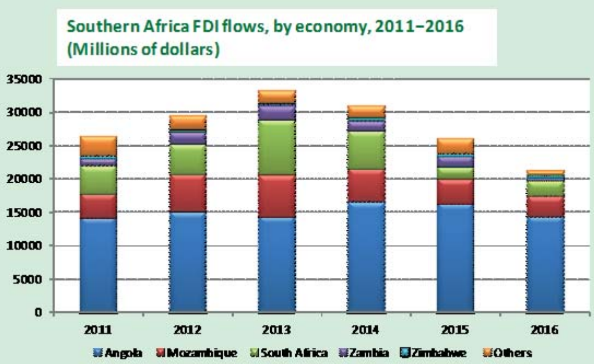
Conclusion

The South African legislative framework and independent judiciary has resulted in investors generally regarding it as a safe destination for investments. South Africa's exchange control regime is generally well run and granted relatively quickly.

SOUTHERN AFRICA: FOREIGN DIRECT INVESTMENT INFLOWS[1]

In Southern Africa, FDI inflows contracted by 18 per cent to $21.2 billion in 2016. With the exception of Malawi and South Africa, FDI fell in all the economies of the sub region. FDI flows to Angola declined by 11 per cent to $14.4 billion, mainly due to a decline in reinvested earnings, reflecting the impact of low prices on profit margins. Flows to Mozambique declined by 20 per cent, although they remained sizeable at $3 billion. Despite a serious financial crunch, investors remained upbeat about long-term value in Mozambique's commodity sector, with Eni (Italy) approving $8 billion in offshore gas exploration at the end of 2016, and Exxon-Mobil (United States) buying a multibillion-dollar stake in Eni (Italy).

Flows to Zambia fell sharply, dropping 70 per cent to $469 million, amid low commodity prices. South Africa, the economic powerhouse on the continent, continues to underperform, with FDI at a paltry $2.3 billion in 2016; that was up 31 per cent from a record low in 2015 but still well off its past average. Nonetheless, State-owned Beijing Automotive International Corporation (China) agreed to build a $759 million automotive plant – the biggest investment in a vehicle-production facility in the country in four decades.



1. Excerpt from UNCTAD'S World Investment Report 2017: Investment and the Digital Economy

INVESTING IN ZIMBABWE: CHARTING THE LEGAL LANDSCAPE

By **Farai Nyabereka,** Senior Associate, Manokore Attorneys, Zimbabwe
Carole Bamu, Associate, Manokore Attorneys, Zimbabwe

Introduction

Zimbabwe's investment legislation landscape has undergone a tremendous shift in recent times. Having slipped 4 places to 161 out of a ranked 190 countries on the World Bank's Ease of Doing Business 2016 rankings, the country is currently undertaking a number of fast-tracked legislative reforms, aimed at facilitating and accelerating implementation of foreign direct investment. As a signal of the recognition of a good investment climate in order to attract capital, there appears to be an acknowledgment of the need to create and foster an enabling regulatory environment, which is conducive to investment.

However, that does not tell the full story. Often viewed as the economic pariah of the Southern African region, there has been an increasing realisation by the Government of Zimbabwe and other key stakeholders for the need for 're-engagement, recalibration and recapitalisation', and a concerted effort to make the country investor-friendly. This has resulted in widespread reforms and legislative amendments and harmonisation of key pieces of legislation under the auspices of the Office of the President and the Cabinet in order to increase the country's foreign direct investment profile.

The ease of doing business reforms have the resultant effect of significantly altering the legal investment landscape in Zimbabwe. There is a strong emphasis on the removal of bureaucratic and time costly processes, which hamper or frustrate the investment process and the extensive measures being taken by the Government are a reflection of how the efforts of the country are increasingly geared towards making Zimbabwe an attractive investment destination in light of our national competitiveness agenda. Practically, the positive yields being reaped include the introduction of a central credit registry system, and e-filing system for all tax registration as well as the proposed digitisation of the Deeds and Company registry to name a few.

What follows below is a summary of the various pieces of key legislative and regulatory considerations for prospective investors, looking to invest in Zimbabwe.

Establishing a Business

Zimbabwe's company laws allow for establishing of different types of commercial entities. Where a foreign investor does not seek to take up equity in a local company, they have the option to enter into joint ventures with locals. For projects in key sectors such as energy, these may be granted 'National Project Status', entitling the investor to a number of tax and fiscal incentives. It is also permissible for investors to enter into partnership with Government through Public Private Partnerships ('PPP's), through the recently enacted **Joint Ventures Act [Chapter 22:22]**.

Foreign investors are also encouraged to obtain a Zimbabwe Investment License which in effect legitimises its operations in Zimbabwe. Licensed investors are accorded the full protection of Zimbabwean laws in the event of investment dispute, and further, they may take advantage of any applicable Bilateral Investment Protection treaties of their respective countries. Holders of investment licenses are also able to repatriate their initial capital investment and are entitled to remit 100% of their dividend out of the country as well as being eligible to obtain investor residence permits for its shareholders.

Local Ownership Requirements

Where an investor is seeking to take up equity in a local company, they must comply with the provisions of the **Indigenisation and Economic Empowerment Act [Chapter 14:33]**, which endeavours to promote local participation in the economy through encouragement of shareholding in local companies by 'indigenous Zimbabweans'. The thresholds for such desired participation are on a sector by sector basis. In April 2016, the President clarified the implementation modalities for compliance with the empowerment policy in a measure to address policy inconsistencies with the resultant position that a sectoral approach must be undertaken in assessing the extent of compliance. However, the aforementioned clarification by the President is in the process of being incorporated into appropriate legislative amendments to give it the force of law.

"Often viewed as the economic pariah of the Southern African region, there has been an increasing realisation by the Government of Zimbabwe and other key stakeholders for the need for 're-engagement, recalibration and recapitalisation', and a concerted effort to make the country investor-friendly."

Whilst the overall intent of the Act is to promote local empowerment, in our experience, this will not in all instances be achieved through direct equity disposal to locals, but rather, through undertaking of other empowerment initiatives (such as skills transfer, creation of employment, beneficiation, creation of linkages, introduction of new technologies etc) undertaken by the foreign investor that will be used as a counterweight to equity disposal in assessing the extent of compliance. As such, there remains a discretion on the relevant line Minister to allow or grant a dispensation for a local partner to hold a lesser shareholding than the foreign partner or to grant a longer timeframe for compliance.

Financing Investment -through debt or equity

Though a liberalised exchange control policy, potential foreign investors are permitted to bring an unlimited amount of foreign currency into the country. Equity may be brought into Zimbabwe in the form of cash or machinery and equipment, and such contributions must be noted through formal banking channels in order to facilitate remittances.

There are certain key differences associated with financing an investment in Zimbabwe through debt or equity. The preferential gearing ratio is 1:1, although this may be relaxed upon granting of such approval by the Exchange Control authorities. Thin Capitalisation rules do apply. The primary consideration with regards to equity investments in Zimbabwe concerns the ability of a potential foreign investor to comply with Zimbabwe's indigenisation legislation. Our experience is that all equity considerations are guided by commercial efficacy and there is nothing at law that prescribes how a business should be capitalised in terms of equity structures and issuances.

The other option available for a potential investor is in the form of debt. Investing in Zimbabwe using debt is subject to approval by the Reserve Bank Zimbabwe's External Loans and Exchange Control Review Committee (the "**ELECRC**")'s foreign exchange guidelines. The ELECRC is tasked with implementing an effective debt management policy by sanctioning and monitoring all new loan commitments undertaken by all sectors of the economy.

All external loans which are approved by the ELECRC or Zimbabwe's Exchange Control Authorities must be registered with Exchange Control authorities. It is worth noting that all applications to the ELECRC will only be only be considered provided the applicants are in compliance with Zimbabwe's exchange control rules and guidelines on external borrowings.

The prior approval limit of external loans/and or trade credits was amended in 2016 upwards of loans of up to US$20 000 000.00. As such, all external private or public loans above US$20 000 000.00 require prior ELECRC approval. External loans that are below the US$20 000 000.00 threshold do not require prior ELECRC approval, but do require Authorised Dealer approval.

Repatriation of Profits and Limitation of Disinvestment Risks

The general position is that Zimbabwe allows for the repatriation of 100% of capital invested plus any dividends earned.

The primary risk faced by foreign investors wishing to repatriate profits accrued from investments in Zimbabwe stems from a failure by foreign investors to repatriate said profits in accordance and conformity with Zimbabwe's exchange control laws.

The Exchange Control Regulations stipulate that unless otherwise authorised by an exchange control authority, no person shall export or cause to be exported from Zimbabwe any Zimbabwean currency or any foreign currency.

The Exchange Control Regulations also provides that Investors may remit offshore any capital plus appreciation as well as dividends in full, as and when they accrue, with the proviso that such remittance of any dividend or profits from Zimbabwe must be effected through an Authorised Dealer.

In light of the provisions of the Exchange Control Regulations, in order for an investor to limit the risks attendant on repatriating profits from Zimbabwe, they must engage the services of a reputable and reliable Authorised Dealer and ensuring formalisation of its investment. In the current context, the repatriation of dividends and profits, principal and interest of any foreign loan, management fees, royalties and net proceeds of sale or liquidation of the business or disinvestment is made less stringent in respect of Exchange Control approval.

> *"Zimbabwe's company laws allow for establishing of different types of commercial entities. Where a foreign investor does not seek to take up equity in a local company, they have the option to enter into joint ventures with locals."*

Zimbabwe-Looking to the Future

The latest notable legislative development pertaining to investments is the recent enactment of the **Special Economic Zones Act [Chapter 14:34]** in 2016 which was promulgated in order to ''provide for the establishment of special economic zones, and the administration, control, regulatory measures and incentives in connection therewith''. The obvious advantage of this piece of legislation is that it will foster a conducive environment (either through identified geographical or sectoral areas) which will be subject to various incentives and dispensations.

Whilst the SEZ Authority itself that will operationalise the Act has not yet been constituted, the Government has already rolled out and introduced in the early part of this year some fiscal tax incentives which include the following:

- **exemption from Corporate Income Tax for the first 5 years of operation;**
- **Implementation of a special initial allowance on capital equipment at the rate of 50% of cost from year one and 25% in the subsequent two years;**
- **Introduction of duty-free capital equipment and inputs imports, which include raw materials and intermediate products for SEZs.**

This piece of legislation, through its implementation can be utilised as a barometer to assess the true political will and policy consistency that has often been so far viewed as lacking in the country's investment policies. Whilst Zimbabwe still has to overcome negative perceptions and economic regression, from ongoing experience in our firm, we remain confident that the measures outlined herald a positive step towards the fulfilment of the country's vast investment potential and as an accelerator to the country's economic growth.

Further and detailed information pertaining to doing business in Zimbabwe can be obtained from our recently updated guide, which is freely accessible on our website resources section at www.manokore.com

"Some of the major concerns regarding investment risk include the unpredictability in the change of laws, the possibility of expropriation of property, as well the implementation of sanctions on Zimbabwe."

Contributors' Profiles

Farai Nyabereka is a Senior Associate and heads up the Regulatory & Compliance Department. Farai has extensive experience dealing with regulatory issues in commercial transactions across different sectors and has a keen understanding of the legislative and regulatory implications (ranging from investment licensing requirements, exchange control approvals, local empowerment laws) in respect of investments in Zimbabwe for a variety of local and international Clients. Farai regularly engages in obtaining regulatory approvals and successful filings for Clients as well as advising on compliance matters.
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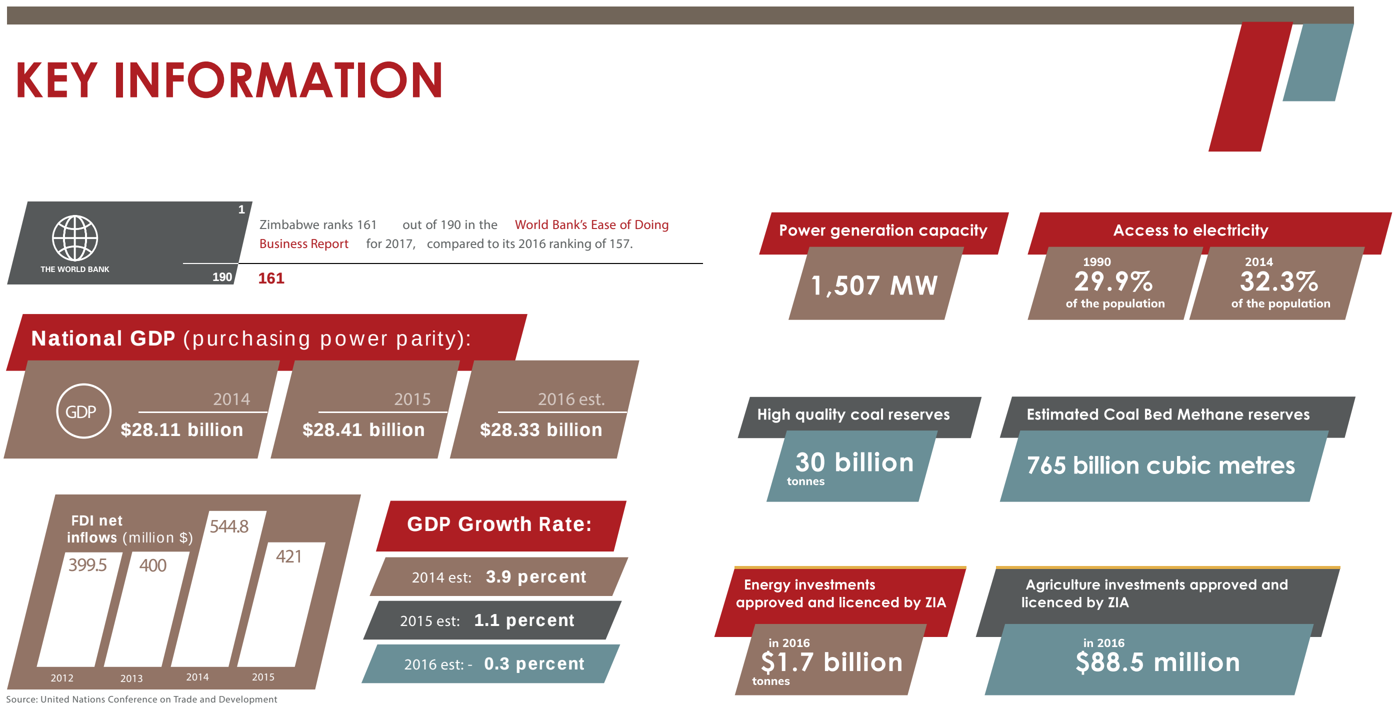
KEY INFORMATION



Source: United Nations Conference on Trade and Development

INVESTING IN ZAMBIA: A GUIDE TO THE MINING INDUSTRY

By **Mwaka Nakazwe,** Associate, Corpus Legal Practitioners, Lusaka, Zambia

Introduction

Zambia is known as a top copper producing country, being the second highest producer in Africa and seventh in the world. Invariably, mining is the backbone of Zambia's economy with the activity accounting for about 70 per cent of the country's export earnings. In the last 20 years, the mining sector has attracted investment in excess of USD8 billion creating over 80, 000 jobs by the year 2013, up from 27,000 in the year 2000.[1] There are several factors that influence the decision to invest. The trending issues at the moment in Zambia relate to how the legal mining and policy framework is affecting existing investors and what impact it may have on future potential investments in the industry.

Security of Mining Right Tenure

The Constitution of the Republic of Zambia provides security of tenure for mining rights by stipulating that property of any description can only be compulsorily acquired under the authority of an act of parliament that provides for the payment of adequate compensation. Under the Minerals and Minerals Development Act, No. 15 of 2015 (the "Mines Act"), the principal Act regulating mining in Zambia, security of tenure is also generally guaranteed as a mining right will only be suspended or cancelled in very limited circumstances; most of them relate to a mining right holder's breach of the terms/conditions attached to the mining right and the provisions of the Mines Act itself and other written laws.

The Mines Act recently created the Mining Appeals Tribunal ("MAT") in order to enhance, among others, administrative resolution allowing for technical consideration of issues with respect to disputes before resorting to the formal courts. In case of suspension or revocation of a mining right, a holder is first given an opportunity to be heard before the Mining Licensing Committee ("MLC"), and only if the MLC upholds its decision to suspend/revoke the mining right, will an appeal against such a decision be made to the MAT. Decisions from the MAT are appealable to the High Court.

Whilst this appeal mechanism is elaborately outlined in the Mines Act, from 2015 when the new Act was enacted, the MAT is yet to be constituted. The non operation-alisation of the MAT currently presents the lingering risk of a mining right holder not having recourse to remedies in the event of a dispute. In essence, and in the absence of the MAT, it is not clear if an aggrieved mining holder can proceed to appeal to the High Court.

The risk related to the absence of the MAT is largely related to policy implementation by government. An investor's approach towards managing the risk of the absent MAT may be to ensure strict compliance with law and licence terms.

Mining Rights versus Surface Rights

Another issue that investors continually encounter during the commencement of mining exploration and operations in Zambia is that of the conflict between mining rights and surface rights. In Zambia, surface rights and mining right are clearly distinct concepts, administered under separate and distinct legal frameworks. Surface rights may only be granted under the Lands Act while mining rights are granted under the Mines Act. Further, there are two types of land tenure systems in Zambia: customary and State tenure which must be taken into account when exercising any surface rights for exploration or mining activities. Generally speaking a mining right is a more superior right in comparison to the surface right especially if the mining right is earlier in time of creation.

Under the Mines Act, the conflict between surface rights and mining rights usually arises where a surface right predates the mining right. Where this is the case, the Mines Act places a number of restrictions on the exercise of the mining right holder's rights. Additionally, the Mines Act requires that a mining right holder obtain written consents from a number of authorities depending on the location of the mining area. One of the instances where the need to obtain this written consent presents challenges to an investor is when the land subject to the mining right is occupied as a village. The Mines Act requires that the mining right holder obtain the written consent of the chief in charge of the village. Conflicts usually arise as some chiefs tend to provide this consent without consulting the people that actually occupy the land. The Mines Act of course does not stipulate that the chief must consult but the outcome of this lack of consultation for some investors has been accusations from locally settled people that their land is arbitrarily taken away.

The Mines Act does attempt to outline particular measures of managing the risks associated with mining in customary areas. One way is the entry into land access agreements with an owner or occupier of land. Access agreements will usually stipulate fees to be paid to the occupier for use of their land. Another option is the entry into benefit sharing agreements with local surrounding mining communities, an international best practice being encouraged in the mining industry today. The general expectation is simply that there has to be a partnership

1. ZDA Mining Sector Profile 2000

between mining companies, government and the local communities in which mining projects are located. The partnership has to identify success factors which include infrastructure (water, power generation, transport facilities), governance, social & environmental issues and livelihoods.[2]

Participation of the State in the Mining Sector

The mining industry has been private sector driven since the privatization of the mining sector and liberalization of the Zambian economy in the late 1990s. The government is, therefore, not entitled to any carried interest or a free carried interest in mining projects; it plays more of a regulatory role and has little participation in terms of the direction of the mining operations or shareholding in mining right holders. Notwithstanding, the Mines Act permits the government to identify areas which are not subject to existing mining rights for government investment; such rights are to be given to government investment companies. Currently, there are two government investment companies, namely Zambia Consolidated Copper Mines Investment Holdings ("ZCCM-IH") which usually retains minority interests in mining projects on a private partnership basis and the Industrial Development Corporation.

As regulator, the State in Zambia wields significant influence on formulation of policies and laws that directly impact on the mining industry. In recent years, one such influence has been with respect to the prescription of mineral royalty rates ("MRT"). One risk that an investor should be aware of is the inconsistent changes to this taxation regime. Unfavorable taxation regimes have the obvious risk of negatively affecting the profitability profile of a project. In Zambia, between the years 1995 and 2015, the MRT rate for the most important commodity, copper, has been changed four times. There is, however, now political will to have a MRT regime that is stable and that encourages investment. This can be seen from the enactment of a variable MRT regime where the MRT payable is dependent on a market driven price.

As stated above, the State may sometimes be granted mining rights in certain reserved areas. This presents an opportunity for investors to undertake projects in direct partnership with the government. Partnering with the government has various advantages to an investor, including, among others, the process of acquiring licences/permits may become less bureaucratic and negotiating incentives for a project may be easier where government interests are present. Notwithstanding, partnership with the government usually brings about the risk of reconciling the interests of the investor and those of the government. The government's interest is usually aligned towards developmental agendas such as enhancing social and economic development through the investment. For an investor, however, the key is to maximize profits and returns from the investment. One way in which an investor can manage this risk would be to actively implement local content and empowerment programs. For example, employing a certain percentage of local citizens or sourcing a fixed percentage of particular required products and services locally.

Restrictions on Foreign Ownership

There are no restrictions or special rules under the Mines Act relating to the foreign ownership of large scale mining licences. Restrictions, however, apply with respect to artisanal mining and small scale mining as these can only be undertaken by citizens and companies with Zambian influence. The issue of restriction on foreign ownership, however, is perhaps more prominent with regard to land in cases where the investor needs to own it. Under the Zambian lands Act, foreign persons are only permitted to acquire and hold land in very specific circumstances. One of the accepted exceptions for a foreign person owning land is if they acquire a certificate of registration as an investor from the Zambia Development Agency.

Conclusion

Zambia remains one of the most favorable investment destinations in Africa in spite of the risks outlined in this article. What is key for an investor is to understand how best to manage the risks identified and employ some of the strategies suggested by this article. Like many African countries, economic and social development from mining is at the heart of the Zambian government's agenda. Legal and political risks in the mining industry usually arise from the inherent conflict between an investors' interest and the government's interest. Investors should, therefore, strive to develop strategies of balancing these interests in their investment plans as this is perhaps the most critical approach in managing political and legal risks.

"Zambia is known as a top copper producing country, being the second highest producer in Africa and seventh in the world. Invariably, mining is the backbone of Zambia's economy with the activity accounting for about 70 per cent of the country's export earnings."

Contributor's Profile

Mwaka Nakazwe is an Associate in the Energy, Resources and Infrastructure Practice Area of Corpus Legal Practitioners, the leading corporate and commercial law firm in Zambia. In her role, Mwaka specialises in providing legal advice and expertise on a wide range of transactions for both local and international firms involved in mining, energy and infrastructure investment projects and operations in Zambia. Mwaka is a graduate of the world renowned Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee. Email: MNakazwe@corpus.co.zm.

2. Opportunities and Challenges of Mining Development in Zambia

FOREIGN INVESTMENT IN KENYA: TAX REGULATION ASPECTS

By **Peter Momanyi,** Head of Tax, Mazars, Nairobi, Kenya

Kenya remains one of the premier destinations for foreign direct investment in Africa. In 2015, Kenya saw a 49% increase in FDI measured in terms of the numbers of FDI supported projects from 57 in 2014 to 85 in 2015. Kenya claimed 12% of all FDI inflows into Africa in 2015 and now boasts 4% of the total overall FDI into Africa.

Kenya has taken steps to improve the business environment in the country and this has culminated in an improvement of 16 places in the World Bank ease of doing business ranking. There have been measures to encourage investment in industries that are viewed as being underdeveloped and having the potential to contribute significantly to the country's GDP and create employment for the citizenry. Spending on infrastructure and alternative and green energy has increased significantly with the country investing in the standard gauge railway, rolling out of modern multi-lane roads and in coal, solar and wind power plants.

Kenya has sought to strike a delicate balance between tax incentivization measures to attract investment and the imposition of the appropriate taxation to ensure the government collects its fair share of revenue from the projects on its territory without causing any investor flight.

Upstream petroleum activity

The discovery of oil in Kenya generated excitement across the country with the prospect of budgetary independence appearing to be a reasonable expectation. The expectation of wealth percolated to the county government (Kenya runs a devolved system of governance) and to the local communities. The sharing of petroleum revenue has remained a thorny issue. The Petroleum Development Bill of 2015 proposed that the county government be allocated 20% and the local community receive 5% of profits from upstream petroleum activity. The bill was rejected by the President with the national government seeking a larger share of the revenue. The current Petroleum Exploration Act was enacted before Kenya promulgated a new constitution and it vests all petroleum revenue with the national government.

The government overhauled the petroleum taxation regime in 2015 with the new regime introducing enhanced tax measures while allowing investors to obtain a measure of fiscal relief.

Investors are allowed to claim 100% of the cost incurred on exploration expenditure in the year it is incurred. This includes the cost of machinery purchased for the sole purpose of petroleum exploration.

Development expenditure is allowed a capital allowance at the rate of 20% per year.

Ring fencing of petroleum activity is done at the level of oil exploration blocks. Losses and expenses incurred in one oil block are not allowed to be offset against income generated in a different block. It is thus possible for a petroleum company to pay income tax in respect of one block while suffering tax losses on another block.

Disposal of interest in an oil block (usually referred to as farm out) is subject to tax as if it were business income and not as a capital gain. Capital gains attract capital gains tax at 5% while business income is taxed at 30%.

Where a petroleum company's debt exceeds twice its equity, the company is considered to be thinly capitalized and is only allowed to claim a proportionate deduction of interest expense. Other companies are allowed to carry a debt of three times their equity.

The industry also enjoys an import duty and VAT exemption on inputs purchased for use in the exploitation and development of petroleum.

Energy

Kenya has progressively advanced the rural electrification agenda, even establishing a Rural Electrification Authority to accelerate the process. In 2016, Kenya added 1.3 million households to its electricity grid and bringing the coverage in the country to 55%, up from a mere 27% in 2013. Kenya hopes to provide universal access to electricity by 2020 with an estimated 60% of the electricity being sourced from renewable sources.

To support the pace of electrification, Kenya has put in place fiscal and contractual measures to guarantee investors in the sector a return on their investment.

Material and machinery imported into the country for use in the generation of electricity to supply the national grid is exempt from import duty and VAT.

Machinery employed for use in the generation, transformation and distribution of electricity enjoys investment deduction at the rate of 100% allowing an investor to claim the entire cost of the machinery in the year the expenditure was incurred.

The VAT Act 2013 increased the VAT rate for domestic electricity supply from 12% to 16% and eliminated zero rating for electricity supply not exceeding 200 kilowatt hours. The Act also undid the tax privileged status of the

Rural Electrification Authority enshrined in the previous VAT Act.

Equipment and material used in connection with renewable energy is generally VAT exempt. This includes biogas digesters, solar equipment and accessories and input and material used for the manufacture of solar equipment, and clean energy stoves.

Agriculture
Agriculture contributes an estimated 25% of the Kenya's GDP. In view of the sector's immense importance to the country, the sector has attracted a lot of FDI with investors setting up green houses for the production of agricultural products for export.

Agriculture benefits from the VAT exemption of almost all unprocessed agricultural products including milk, pyrethrum, live animals, maize, beans, groundnuts and several other products.

Agricultural inputs including fertilizer and pesticides and raw materials and machinery used for the local manufacture of pesticides, are also exempt from VAT.

Services provided to support farmers such as veterinary services, pest control, coffee and tea brokerage and agricultural consultancy services do not attract VAT.

Input or raw materials purchased for use in the manufacture of agricultural machinery are exempt from VAT and are not subject to import duty.

Tea and coffee supplied to an export auction house qualifies for VAT zero rating with farmers being eligible to receive VAT refund on all input tax incurred in production. The government gives preference to agricultural companies in the processing of VAT refund payments.

Farmers are allowed to claim 100% of expenditure on farm works in the year that the expenditure is incurred. Farm works refers to structures such as cattle dips, gabions, terraces and housing for livestock.

Agricultural property of an area of less than 100 acres is exempt from capital gains tax when transferred.

Motor vehicle assembly
Kenya has seen dealerships for established brands set up in the country including marquee outfits such as Porsche and Jaguar. In an attempt to encourage the manufacturers to set up assembly plants in the country, the government recently introduced a reduced corporate tax rate for investors setting up vehicle assembly plants. Motor vehicle assemblers will now pay corporate tax at the rate of 15% for 5 years as opposed to the standard corporate tax rate of 30%.

In addition, locally assembled vehicles specially designed for the transportation of tourists and used exclusively by tour operators qualify for exemption from VAT.

Movie and theatre
The Kenyan movie industry has remained resilient despite the existential threat posed by Nollywood and the indifference of the populace towards locally produced content. The plight of the industry is best illustrated by the bankruptcy and eventual auctioning of the once iconic Phoenix Players theatre outfit.

To remedy the demise, Kenya introduced a tax exemption scheme for items purchased for use by film producers and filming agents. Investment into a structure for use for the training of film producers, actors and crew attracts investment deduction at the rate of 100%.

Payment made to foreign actors and crew members involved in the production of films in Kenya are exempt from withholding tax which would ordinarily apply at 20%.

Other factors
Kenya employs a compensating tax scheme which seeks to ensure that any dividends distributed by a company are sourced from taxed income. Where a company enjoys a tax holiday, preferential income tax rates and tax subsidies, the company could be profitable and cash rich without actually paying commensurate income tax. The rate for compensating tax is 43% of the dividends distributed and this makes it unattractive for investors in subsidized sectors to repatriate their returns as dividend.

The current Income Tax Act is expected to be repealed and replaced in the next year with a New Act and we expect that the new Act will better address the issue of compensating tax.

Kenya has opted not to impose and foreign exchange restrictions and this has made in much easier for investors into the country to move money into and out of the country.

In a nutshell, Kenya remains an attractive investment destination with the country making laudable efforts to improve the ease of doing business. Kenya has the lowest VAT rate in the EAC region (16%) and charges the lowest capital gains tax rate in the region (5%). Tax incentives and taxation measures are designed to operate on a sector by sector basis with ring fencing of income being a common feature of the Kenya tax regime.

Contributor's Profile
Peter Momanyi is the head of tax at Mazars Kenya. He is a lawyer and chartered accountant, with over 14 years experience in tax management. Peter provides comprehensive tax solutions to investors in varied sectors looking to set up in Kenya including pre-investment advice and tax planning.
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INVESTING IN KENYA: A GRASP OF THE LEGAL FRAMEWORK

By **Dominic Rebelo,** Partner, Anjarwalla & Khanna, Kenya
Naeem Hirani, Principal Associate, Anjarwalla & Khanna, Kenya

The Kenyan economy, East Africa's largest, has experienced considerable growth in the past few years. According to estimates by the World Bank, Kenya's economy grew by approximately 5.9 percent in 2016 and is expected to grow by 6.1 percent in 2017.

The legal system in Kenya consists of a mixture of statutory (written) law as well as elements of customary and Islamic law. The sources of law are the Constitution of Kenya, 2010 (the **Constitution**), written laws, English statutes of general application in force as at 18th August, 1897 and the common law and doctrines of equity and customary law. In addition, the Constitution provides that the general rules of international law and treaties or conventions ratified by Kenya form part of the laws of Kenya. Much of Kenya's investment law is modelled on English law. One of the most significant changes that took place in Kenya in the last few years was the enactment of the Constitution. Upon its passing, the Constitution required numerous pieces of legislation to be enacted by Parliament covering a wide range of subjects, including land ownership, consumer protection and the exploitation of natural resources. As a result, the period following the promulgation of the new Constitution has seen the enactment of an unprecedented number of new laws in Kenya. Since 2011, over 140 new statutes have been enacted including an overhaul of several key commercial laws, the originals of which were based on legislation adopted during or soon after the colonial period, to make them more compatible with current global trends and enhance the investment environment in Kenya. New corporate and investment laws include a new Companies Act, 2015, (the **Companies Act**), Insolvency Act, 2015, (the **Insolvency Act**), Business Registration Service Act, 2015 (the **Business Registration Service Act**), Competition Act, 2011 (the **Competition Act**) and Mining Act, 2016 (the **Mining Act**).

The Companies Act is substantively based on the English Companies Act, 2006. It seeks to consolidate and reform the law relating to incorporation, registration, management and regulation of companies; in addition fines and penalties have been revised to reflect prevailing economic conditions and ensure compliance. The Insolvency Act amalgamates both bankruptcy and liquidation into one statute. It sets out various procedures for administration in relation to insolvency. The Competition Act, passed in 2012 seeks to ensure a more competitive playing field and increase consumer protection.

The Mining Act reflects a dramatic overhaul of the regulatory framework for the exploration and extraction of minerals (excluding oil & gas) in Kenya by creating separate licensing regimes for artisanal, small scale and large scale operations with streamlined online application processes, approval time frames and government participation and royalty regimes.

Kenya has traditionally had a vibrant capital market with approximately 70 companies listed on the three sectors of the Nairobi Securities Exchange (the **NSE**). The Capital Markets Authority (**CMA**), the regulator of the Kenya capital markets, has developed and is in the process of implementing its Capital Markets Master Plan (2013-2023) which aims to increase and expand participation in Kenya's capital markets. To achieve this aim, the CMA has implemented a range of corporate governance reforms including the development of a Code of Corporate Governance Practices for Issuers of Securities to the Public, 2016. In June 2013, the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations (REITS Regulations) and the Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations come into force. These key commercial laws now enable the Kenyan legislative framework to reflect and compliment the growing Kenyan economy.

Notable milestones have been achieved in the capital markets including the successful demutualization and self-listing of the Nairobi Securities Exchange, an initial public offer of Kenya's first Real Estate Investment Trust (REIT), the development of Policy Guidance Notes (PGN) aimed at establishing Exchange Traded Products, development of a futures exchange, and the development of the East African Community (**EAC**) Council Directives which have been adopted by the East African Community Council of Ministers aimed at establishing convergence standards for regional securities laws in areas such as licensing, public offer disclosures, takeovers and mergers and product issuance and approval within the EAC.

The Central Depository and Settlement Corporation provide central depository services for listed securities in Kenya. In November 2014, the country completed the process of dematerialization of all listed securities. The dematerialisation process was implemented in phases targeting particular forms of securities. Currently, physical certificates are no longer recognised as prima facie evidence of ownership for listed securities and listed companies no longer issue paper share certificates. Investors have been called upon to replace their share certificates with an electronic record held in the Central Depository System to ease the trading or transferring of such shares. The move to dematerialize shares ensured Kenya was at par with global trends and in line with international best practice.

Over the past few years there have been major efforts to privatise commercial sectors that were previously government owned or managed in order to encourage foreign investment in these sectors. The stated aim of the Government is to have minimal interference in business, and it is increasingly adopting the role of a regulator, rather than an active market participant. In addition, in a move to promote investment, the Government has on several occasions overhauled Kenya's licensing frameworks, reducing the number of licences required to do business, while making licensing regimes simpler and more transparent. Once fully implemented, the Business Registration Service Act will establish a Business Registration Service tasked with the responsibility of implementing policies, laws and other matters in relation to the registration of business entities. It is envisaged that the enactment of the Business Registration Service Act will ease the process of registration of business entities even further.

A new Public Private Partnerships (**PPPs**) Act, 2013, (the PPP Act) aims to expand the participation of the private sector further in infrastructure and the development projects through concessions or contractual profit sharing arrangements. The Public Private Partnership Regulations, 2014 were gazetted on 17th October, 2014 and set out the mechanisms for giving effect to various provisions of the PPP Act. Pursuant to these Regulations, the PPP Unit is working on a pipeline of projects. With the devolution of Kenya's system of government, County Governments are targeting private investors to collaborate with them through county level PPPs in order to enable the County Governments to better deliver services to their constituents. Potential projects include administration of county transport and infrastructure (including construction, street lighting, traffic, ports and parking), providing county health services, fire-fighting services, pre-primary education, disaster management and the implementation of other specific National Government policies.

Additionally, procurement by Government entities is now governed by the Public Procurement and Asset Disposal Act, 2015, (the **PPAD Act**). The PPAD Act gives effect to Article 227 of the Constitution which seeks to set out procedures for fair, transparent and efficient public procurement and asset disposal by public entities and for connected purposes. The PPAD Act provides a framework under which the private sector can partake in public procurement in an efficient manner.

In general, foreign and local investors receive equal treatment. Foreign and local investors can operate in all sectors except where state corporations still enjoy a statutory monopoly or where there are quotas on minimum local ownership, such as in the insurance, aviation, maritime, construction, mining and telecommunications sectors. In 2015, the restrictions on foreign shareholding in Kenyan listed companies were removed, in a bid to attract foreign capital flows. A number of state corporations have been privatized and essential sectors such as energy have been opened to private investors. Residents and non-residents are permitted to hold foreign currency accounts and there are no limits on repatriation of foreign exchange out of Kenya.

"The legal system in Kenya consists of a mixture of statutory (written) law as well as elements of customary and Islamic law. The sources of law are the Constitution of Kenya, 2010 (the Constitution), written laws, English statutes of general application in force as at 18th August, 1897 and the common law and doctrines of equity and customary law. In addition, the Constitution provides that the general rules of international law and treaties or conventions ratified by Kenya form part of the laws of Kenya."

Contributors' Profiles

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RWANDA: INVESTMENT PROTECTION THROUGH THE INVESTMENT CODE

By **Emmanuel Muragijimana,** Senior Associate, K-Solutions & Partners, Rwanda

Introduction

Rwanda is landlocked country with a population of 11.8 million, which makes it one of the most densely populated countries in Africa. After decades of intense civil conflict culminating in the 1994 genocide against Tutsi, Rwanda has experienced a period of remarkable stability over the past twenty years.

Sustained investment by the Government, sound macroeconomic management and robust fiscal discipline is expected to continue to drive output growth in the coming years. By way of example, between 2008 and 2014 the country witnessed a GDP increase at an average of 8% with nominal GDP reaching US$7.5 billion in 2013. The growth of the GDP per capita in 2013 was US$693 from US$644 in 2012 and the GDP target is US$1,240 by 2017.

The country has maintained moderate inflation at a single digit since 2008. Rwanda has a stable exchange rate and a sound financial system and the Government has been successful in improving the business environment, especially in terms of reducing red-tape and increasing credit accessibility[1].

Most of the flows were mainly from Mauritius ($ 143.6 million) followed by United States ($ 55.2 million), Switzerland ($ 54.1 million) and Luxembourg ($ 43.2 million) accounting for 72.3 percent of total FPI in 2012. Flows from Mauritius were mainly to ICT, manufacturing and finance and insurance services sectors, while investments from USA were directed to agriculture and manufacturing sectors. Funds from Switzerland were invested in mining sectors while those from Luxembourg were mostly invested in finance, insurance and ICT activities[2].

All business sectors shall be open to private investment regardless of the origin of the investor. However, Rwanda has chosen energy, transport, industrial manufacturing agriculture, tourism, ICT, financial services and construction of low-cost housing as priority sectors in which to target foreign investment[3]. Indeed, Rwanda is increasingly being considered as one of the most business-friendly countries in Africa.

Finally, Rwanda has been on several occasions ranked among developing countries in the world that are dynamic performers when it comes to social and economic growth.

Friendly Legal Framework Investment

Rwanda's investment law has been in place since 2005. There were challenges in that: Investment law incentives were not directed to priority activities; additional incentives given to companies created market distortions; and some incentives created loopholes that only a few big business exploited to reduce their tax.

It was decided that the law should be repealed and replaced with a more flexible and adapted law which incentivized priority sectors and removed plus identifying loopholes. It is that perspective that the new investment law no 06/2015 of 28/03/2015 relating to investment promotion and facilitation was formulated in May 2015, to replace the law of 2005.

Rights and Protection of Investors

Under the Investment Code, a foreign investor may invest and purchase shares in an investment enterprise in Rwanda and shall be given equal treatment with Rwandan investors with regard to incentives and investment facilitation.

Investors' capital is protected. Under Article 8 of the Investment Code repatriation of capital and assets is allowed upon fulfilling all tax obligations in Rwanda. Investors have a right to own private property, whether individually or in association with others. The Investment Code guarantees that no action to expropriate an investor's property in public interest shall be taken, unless the investor is given fair compensation in accordance with relevant laws.

Investors' intellectual property rights and legitimate rights related to technology transfer are guaranteed.

Investment Registration

To qualify for the incentives provided for by the law, an investor is required to register with the Rwanda Development Board (RDB). An investor who fulfills the registration requirements referred to in the Investment Code is issued with an investment certificate within 48 hours from the date of receipt of the complete application by RDB.

Investment Incentives

Under the Investment Code, investors who have secured investment certificates are eligible for various incentives, including: preferential corporate income tax rate of 0%; preferential corporate income tax rate of 15%; corporate

1. Fitch, Rating Report – January 2015.
2. Foreign private investment in Rwanda, 2012 by the National Bank of Rwanda at p. 11
3. Article 3 of the law n° 06/2015 of 28/03/2015 relating to investment promotion and facilitation published in Official Gazette n° Special of 27 May 2015

"Rwanda is landlocked country with a population of 11.8 million, which makes it one of the most densely populated countries in Africa. After decades of intense civil conflict culminating in the 1994 genocide against Tutsi, Rwanda has experienced a period of remarkable stability over the past twenty years."

"Sustained investment by the Government, sound macroeconomic management and robust fiscal discipline is expected to continue to drive output growth in the coming years. By way of example, between 2008 and 2014 the country witnessed a GDP increase at an average of 8% with nominal GDP reaching US$7.5 billion in 2013. The growth of the GDP per capita in 2013 was US$693 from US$644 in 2012 and the GDP target is US$1,240 by 2017."

income tax holiday of up to 7 years; corporate income holiday of up to 5years; exemption of customs tax for products used in Export Processing Zones ; exemption of Capital Gains Tax; Value Added Tax refund; accelerated depreciation; and immigration incentives. The Investment code provides for the conditions applicable for each incentive.

Dispute Resolution

According to the investment code, any dispute arising between a foreign investor and one or more public organs in connection registered investment enterprise shall be amicably settled. When an amicable settlement cannot be reached, parties are required to refer the dispute to arbitration as agreed upon in written agreement between both parties. Rwanda is also enforcing foreign awards in less than 30 days. Where no arbitration procedure is provided under a written agreement, both parties should refer the matter to the competent commercial court in Rwanda which can issue decision in 2-3 months.

Conclusion

Rwanda has come a long way since 1994. It has established a stable government, secured peace and safety in its territory. It has made great strides in restoring and reforming the economy and in 2010 was named by the by the World Bank as the world's the world's top reformer. It has articulated an inspiring vision of its future-Vision 2020-that sees the country reaching middle-income status over the next three (3) years. With the new Investment Code, there are greater things to be seen in the future.

Contributor's Profile

Emmanuel Muragijimana has over 14 year experience in provision of legal advice and supporting organization to compliance with the legal requirements. Emmanuel has been involved in legal due diligence exercise for acquisition and other business combination, finance transaction, facilitating clients in their relationship with local banks, corporate governance, organization registration, legal compliance, organization restructuring and litigation. He is highly conversant in offering both legal advisory and drafting services. Email: emmanuel@ksolutions-law.com.

EAST AFRICA: FOREIGN DIRECT INVESTMENT INFLOWS

East Africa received $7.1 billion in FDI in 2016, 13 per cent more than in 2015. However, the aggregate increase masks divergent FDI performance within the sub-region. Flows to Ethiopia rose by 46 per cent to $3.2 billion, propelled by investments in infrastructure and manufacturing. FDI was also buoyant in Mauritius, thanks to a variety of services investments and in Madagascar, in the context of a continued recovery since the decline in 2014. FDI into Kenya continued its decline, slumping by 36 per cent to $394 million in 2016 – only slightly more than a quarter of its 2011 level – despite investment reforms and a supportive domestic policy environment. Yet the trading value on Kenya's liquid stock exchange overtook that of Nigeria's exchange for the first time last year. This propped up cross-border M&As, with the private equity fund Helios (United Kingdom) buying 70 per cent of Telkom Kenya from Orange (France). Flows to the United Republic of Tanzania shrank by 15 per cent to $1.4 billion amid concerns about the country's regulatory environment and tax policies towards foreign firms.

TANZANIA: LEGAL FRAMEWORK FOR PRIVATE INVESTMENT

By **Juvenalis Ngowi,** Partner, East African Law Chambers, Tanzania

Tanzania, known at that time as Tanganyika, got its independence in 1961. Under the leadership of Julius Nyerere, who became the first president immediately after independence, the country followed the ideology of African socialism commonly known as Ujamaa. In 1967 the government started nationalization of major investment such as banks, insurance industry, energy, mining and many other sectors. The economy was state owned until the end of the 1980s and the beginning of the 1990s when liberalization of the economy started. Liberalization of the economy made it necessary for the country to create a legal framework to regulate investments in the country. A number of legislations were enacted for that purposes.

One of the most important legislations enacted to regulate investment was **The Tanzania Investment Act**[1]. The main purpose of this Act is to provide for favourable conditions for investors both local and foreign investors. The Act defines a *foreign investor* to mean a natural person who is not a citizen of Tanzania and in case of a company to mean a company incorporated under the laws of any country other than Tanzania. A *Local investor* is defined under the Act to mean, in case of a natural person, a citizen of Tanzania or in case of a company , a company which is incorporated under the laws of Tanzania and having a majority of its shares owned by a citizen of Tanzania.[2]

The Tanzania Investment Act, among other issues, establishes a Centre known as the Tanzania Investment Centre (TIC) whose functions is to support and assist investors, both local and foreign, and to promote investments. Generally, it provides incentives for investors and it provides a guarantee to investors against expropriation.[3] The provision against expropriation is an important provision because of the historical background of the country, where the government in 1967 did nationalize private investments. To give confidence to investors that there would no longer be nationalization of their investments is very crucial, particularly because the Constitution of the United Republic of Tanzania still states that the country's economy is based on socialist ideology.[4] The investors would need assurance of their investment. To address this situation and the historical background of the country's ideology, The Act provides that there shall be no acquisition of business enterprises by the State unless the acquisition follows due process. The investors are guaranteed under section 22(2)(a) of the Act to get adequate and prompt compensation in the event of acquisition by the State.

The Act also has provisions regarding disputes settlement. Most investors would want assurance that in the case of dispute particularly between an investor and the government, such dispute is fairly resolved. To give comfort to investors, the Act recognises Arbitration which may be conducted either in accordance with the Arbitration laws of Tanzania or in accordance with the rules of procedure for arbitration of the International Centre for the Settlement of Investment Dispute (ICSID). Further the Act also recognizes bilateral or multilateral agreements on investment protection agreed to by the government of Tanzania and the country where the investor originates. The importance of recognising these bilateral and multilateral agreements together with regulations of ICSID is to address the concernof investors that fairness shall prevail in the process of dispute resolution particularly if the government of Tanzania is a party to the dispute. The Act does not provide for dispute settlement mechanism but it recognises dispute settlement mechanism which exists under other laws or international agreement.

Another important aspect of the Tanzania Investment Act, 1997 is provision of incentives for investors who hold a certificate of incentives issued by the Tanzania Investment Centre. These incentives include tax reliefs and other benefits which the Minister of Finance may publish.

It is important to note that Tanzania Investment Act does not apply to business investments in mining operations, exploration and production of oil and gas or manufacturing of hazardous chemicals, armaments or any explosives. There are specific legislations dealing with investments in these areas.

Apart from Tanzania Investment Act, there were enactments other legislations dealing with regulatory matters in competition, energy, communication, transport and mining. The Fair Competition Act[5] was enacted to promote and protect effective competition in trade and commerce. This Act established two important bodies which regulates competition in the Country. These bodies are Fair Competition Commission (FCC) which is established under section 62 (1) of the Fair Competition Act, 2008 and another important body is Fair Competition Tribunal (FCT) which is established under section 83(1) of the Fair Competition Act, 2003.

FCT is a quasi-judicial body whose functions is to hear and determine matters involving competition and regula

1. Act No. 26 of 1997
2. See section 3 of The Tanzania Investment Act.
3. See section 22 of the Tanzania Investment Act
4. Article 9 of the United Republic of Tanzania's constitution 1977
5. Act No.8 of 2003

-tory matters. FCC on the other hand deals with competition issues and generally it promotes competition by fighting anticompetitive practices. It also sits as a quasi-judicial if there is an objection in a transaction of merger and acquisition, but FCC can also act suo moto if it is suspects there is commission of an act which is anticompetitive. Decisions of FCC are appealable to FCT.

Other regulatory bodies which were established by acts of Parliament include Energy and Water Utilities Regulatory Authority ("EWURA") which regulates petroleum industry on downstream activities. Upstream activities are regulated by Petroleum Upstream Regulatory Authority ("PURA"). Telecommunication industry is also highly regulated by Tanzania Communication Regulatory Authority ("TCRA"). Transportation by land and water is also regulated by Surface and Marine Regulatory Authority (SUMATRA). Generally, all these regulatory bodies also are involved in dispute settlement in their respective regulatory sectors and their decisions are appealable to FCT.

Apart from dispute resolutions which are recognised under the Tanzania Investment Act and dispute resolution mechanism provided and implemented by regulatory bodies, there are other mechanism of dispute resolution in investment. Court system in Tanzania is the common mechanism of dispute resolution. However, there has been a complaint that the court system is inefficient and in addressing the problem, the commercial division of the High Court of Tanzania was established. The division to a greater extent has lived up to expectations and we see disputes being resolved in the shorter time compared other divisions of the High Court and subordinate courts.

Investments in Tanzania are very well regulated within the constructs of its legal framework. The legal framework covers all important aspects which an investor would require for the smooth operation of the business. However, the practicability of those legislations might be another matter for discussion.

Contributor's Profile

Juvenalis is a founding partner of East African Law Chambers, and a full time legal practitioner at the firm. He has developed a strong background in litigation. He worked at the Attorney General's Chambers for six months and subsequently joined the firm Ishengoma, Karume, Masha & Magai Advocates (IMMMA Advocates). Juvenalis' key areas of expertise are in banking and finance law, labour laws and commercial litigation. He has extensively been involved in dispute resolution matters, at magistrate courts, at the High Court, and even at the Court of Appeal. He has also numerously advised clients on execution of foreign awards in Tanzania. Juvenalis is an active member of the Tanganyika Law Society and the East African Law Society. Juvenalis is also an Arbitrator recognized by Tanzania Institute of Arbitrators. Email: j.ngowi@ealc.co.tz.

INVESTING IN UGANDA: LAWS REGULATIONS & TAX ASPECTS

By **Fiona Nalwanga Magona,** Partner, MMAKS ADVOCATES, Uganda
Mark Turyamureba, Associate, MMAKS ADVOCATES, Uganda

Regulatory Environment

Incorporating/ Registering a Company: Investment vehicles in Uganda take on various forms including among others single member companies, private limited liability companies, incorporated and unincorporated joint ventures, partnerships and trusts. The most common vehicle for investment is the private limited liability company.

The process of incorporating a local company or registering a company in Uganda is governed by the Companies Act 2012. It is a fairly fast and straight forward process usually completed within 3 days of submission of the requisite company documentation with the Companies Registry. The documentation submitted covers details like shareholders, directors and share capital. Save for sector specific requirements, the Companies Act does not prescribe minimum share capital requirements and/or local or resident director requirements.

Investment Licence: Under the Investment Code Act (Cap. 92) (the "Code"), every foreign investor is required to obtain an investment licence from the Uganda Investment Authority ("UIA") before commencing business in Uganda. A foreign investor is defined to mean a person who is not a citizen of Uganda, a company in which a person who is not a citizen of Uganda holds more than 50% (fifty percent) of the shares, or a partnership in which the majority of the partners are non-citizens of Uganda. The application for an investment license is addressed to the Executive Director of the UIA in a prescribed form which contains the name and address of the applicant, proposed business activity, projected fixed capital investment costs over a period of 3 years and the number of jobs expected to be created by the project.

Following an administrative decision taken by the Board of UIA, an applicant for an investment license should attach to its application its bank statement reflecting a minimum balance of USD 100,000 (United States Dollars One Hundred Thousand).

No fees are payable on application for an investment licence and the licence will usually be issued within 3 (three) business days of an application being submitted to UIA provided all the supporting documentation is in order.

Certificate of Tax registration: Under the Tax Procedures Code Act 2014 (the "TPCA"), every person liable to pay tax in Uganda is required to apply to Uganda Revenue Authority ("URA") for registration. Upon registration, the person is issued a certificate of tax registration. A foreign investor looking to conduct business in Uganda would be liable to pay tax in Uganda and would therefore have an obligation to apply to URA for a certificate of tax registration.

An application for tax registration is made online via the URA web portal. The applicant is required to submit information regarding its legal status, place of business, bank account and contact details. The applicant can indicate in its online application the tax heads it would like to register for. These include income tax, value added tax and import and export duty.

If the applicant is a company, URA requires the company to have a tax representative that already possesses a tax identification number before it can be issued with a certificate of tax registration. Under the TPCA, the tax representative can be either the company's managing director, chief executive officer or any of its directors.

No fees are payable on application for a certificate of tax registration and provided URA is satisfied with the information provided by the applicant, the certificate will be issued within 3 (three) working days of the application being submitted.

Trade licence: Under The Trade Licensing Act (Cap. 101), every person is required to obtain a trade license before commencing business. The application for the trade license is submitted to the local authority where business is to be conducted together with the registration documents of the entity, the investment licence, the certificate of tax registration, the tenancy agreement for the premises where the business will be operated from and a tax clearance certificate issued by URA confirming that the applicant is tax compliant.

A trade licence fee is payable depending on the nature of business to be undertaken.

Restrictions on Investment

Foreign investment is generally allowed in all sectors of the economy and, save for certain regulated sectors like oil and gas and banking, companies may be 100% foreign-owned.

Investment Protection

Uganda's Constitution provides that no person shall be compulsorily deprived of property except where the acquisition is necessary for public use or public interest and the acquisition of property is made under a law which provides for payment of fair and adequate compensation, prior to the acquisition, and a right of access to a court of law by any person who has an interest or right over the property.

Under the Code, if a business enterprise of a licenced investor is compulsorily taken over, compensation in respect of the fair market value of the enterprise must be paid to such investor within a period not exceeding 12 months from the date of acquisition.

Repatriation of funds from Uganda

The Foreign Exchange Act 2004 (the "FEA") governs the transfer of funds out Uganda and requires all payments in foreign currency out of Uganda to be made through a bank.

The FEA does not impose any exchange control requirements and/or restrictions on repatriation of funds out of Uganda. The Governor of the Central Bank is empowered under the FEA to impose temporary restrictions on payments from Uganda where the country experiences severe balance of payments difficulties. This temporary restriction is not to exceed 3 months unless the consent of the Minister of Finance is obtained to extend it for a further period not exceeding 3 months, and, thereafter, for such further period as may be authorised by Parliament by resolution.

The Governor is yet to exercise this power, and there are currently no restrictions in place on the transfer of funds out of Uganda.

Capital Markets

The Capital markets industry in Uganda is regulated by the Capital Markets Authority ("CMA") established under the Capital Markets Authority Act (Cap.84). CMA approves the offers of all securities to the public and licences market players including fund managers, investment houses, trustees, custodians or depositories.

CMA is also empowered to licence stock exchanges and has to date only issued a licence to the Uganda Securities Exchange ("USE"). Currently 16 companies are listed on the USE, with the last listing having taken place in 2012. CMA is also empowered to licence stock exchanges and has to date only issued a licence to the Uganda Securities Exchange ("USE").

The Capital Markets Authority Act (Cap. 84) was amended in 2016 to broaden the powers of CMA to include acting as the supervisory authority for anti-money laundering in the capital markets as well as tracing and freezing any assets of any person engaged in fraudulent dealings in securities or insider trading.

Taxation

Income Tax: Income tax in Uganda is imposed under the Income Tax Act Cap.340 ("ITA") and is based on whether a person is a resident or non-resident for tax purposes.

Residents are taxed on their worldwide income whereas non-residents are taxed only on income sourced in Uganda.

A company is resident in Uganda if it is incorporated or formed under Ugandan law, has management and control of its affairs exercised in Uganda or the majority of its operations are carried out in Uganda during the year of income.

An individual is a tax resident if they have a permanent home in Uganda, spend at least 183 days in any 12-month period in Uganda or are present in Uganda for an average of more than 122 days during 3 consecutive tax years.

Tax rate: The ITA imposes tax on every person who has chargeable income for the year of income. Chargeable income under the ITA is a person's gross income less their allowable deductions. The corporate tax rate under the ITA is 30% for resident companies and branches of foreign companies. The rate for individuals ranges from 10% to 45% depending on their chargeable income.

Chargeable income under the ITA is a person's gross income less their allowable deductions. The corporate tax rate under the ITA is 30% for resident companies and branches of foreign companies.

Withholding Tax: Withholding tax ("WHT") of 15% is imposed on every non-resident person who derives any dividends, rent, natural resource payment, interest, royalties and management fees from sources in Uganda.

Value-added tax ("VAT"): VAT is chargeable on taxable supplies of goods and services in Uganda and the import of certain goods. The standard rate of VAT is 18%. However, the supply of certain goods and services like unprocessed agricultural produce, financial services and insurance services (health insurance, micro-insurance, re-insurance and life insurance) are exempt from VAT.

Double Tax Agreements ("DTA's"): Uganda has DTA's with 9 countries i.e., Denmark, India, Italy, Mauritius, Netherlands, Norway, South Africa, United Kingdom and Zambia. The purpose of these DTA's is to eliminate double taxation and allocate taxing rights.

The ITA however imposes restrictions on the enjoyment of benefits under these DTA's. It lays down 3 (three) conditions that must be fulfilled before a non-resident can benefit from a DTA that Uganda has signed with their country. The non-resident must be the beneficial owner of the income, have full and unrestricted ability to enjoy the income as well as determine its future use and have economic substance in the treaty country.

Conclusion

The Government of Uganda continues to encourage both local and foreign investment across the various sectors by ensuring relative political stability and economic growth through policies intended to liberalize the economy.

Special emphasis has been placed on the public infrastructure and energy sectors largely due to the infrastructural deficiency in the country particularly in light of the projected boom associated with Uganda's oil production in 2020. This emphasis is evidenced by the bulk of Government expenditure for the financial year 2017/2018, estimated at UGX 4.9 trillion being allocated to infrastructure.

"The process of incorporating a local company or registering a company in Uganda is governed by the Companies Act 2012."

Other historically prioritized sectors for investment among others include health care, education, agriculture, agro processing, manufacturing, tourism and hospitality, micro finance.

Contributors Profiles

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HIGHLIGHTS

- Weak commodity prices held back FDI to Sub-Saharan Africa
- Robust FDI to Egypt continues to boost FDI in North Africa
- FDI is expected to increase moderately in 2017

UNITED NATIONS
UNCTAD

Figure B. FDI inflows, 2010–2016
(Billions of dollars and per cent)

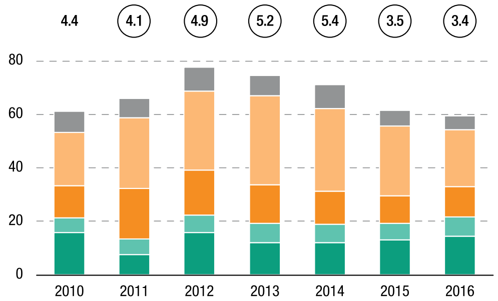
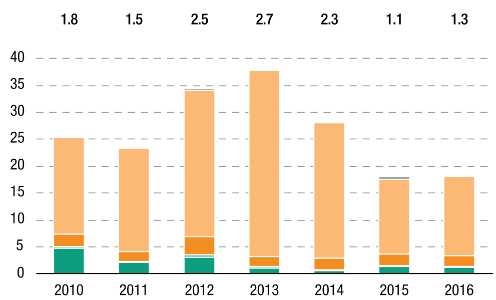


Figure C. FDI outflows, 2010–2016
(Billions of dollars and per cent)



North Africa · East Africa · West Africa · Southern Africa · Central Africa · Share in world total

Table A. Cross-border M&As by industry, 2015–2016 (Millions of dollars)

Sector/industry	Sales 2015	Sales 2016	Purchases 2015	Purchases 2016
Total	**21 259**	**9 689**	**3 533**	**6 061**
Primary	**998**	**52**	**-419**	**329**
Mining, quarrying and petroleum	998	45	-806	329
Manufacturing	**21 716**	**-254**	**-391**	**3 667**
Food, beverages and tobacco	221	780	9	-35
Basic metal and metal products	-72	-1 102	-	-
Furniture	20 433	-	-	3 027
Services	**-1 455**	**9 891**	**4 343**	**2 065**
Trade	75	6	212	-174
Information and communication	-2 572	-39	938	342
Financial and insurance activities	652	426	2 374	1 336
Business activities	309	103	803	315
Human health and social work activities	-	9 350	-	16

Table B. Cross-border M&As by region/economy, 2015–2016 (Millions of dollars)

Region/economy	Sales 2015	Sales 2016	Purchases 2015	Purchases 2016
World	**21 259**	**9 689**	**3 533**	**6 061**
Developed economies	**22 357**	**-2 199**	**-165**	**5 792**
European Union	18 605	847	490	3 131
France	612	236	-180	-
United Kingdom	201	596	161	965
United States	2 194	-3 085	-396	2 445
Developing economies	**-1 194**	**12 911**	**2 497**	**162**
Africa	174	390	174	390
Morocco	81	-	-	375
South Africa	43	284	-9	-
United Arab Emirates	-616	9 187	1 543	-
China	53	2 932	279	-
Transition economies	**-**	**-1 135**	**1 200**	**106**

PRIVATE EQUITY IN AFRICA: MANAGING TAX STRATEGY, RISK AND COMPLIANCE


By **David Lermer,** Partner, Corporate International Tax, PwC
Deon de Villiers, Associate Director, Corporate International Tax, PwC

The private equity ("PE") industry continues to operate in a changing and challenging environment. This article highlights the tax issues of ongoing concern to PE houses as well as emerging opportunities for the industry.

Global footprint and economic nexus

As PE houses increase their international outlook and operations we are witnessing a diversification of the roles performed by satellite offices. Activities performed by PE houses outside their home territory are no longer limited to preliminary research and general marketing. Many groups now include deal sourcing, analysis, research and deal execution, investment committee representation, investor relations, capital raising, fund administration and back office support services, among the activities carried on overseas.

Many countries are seeking to argue that PE firms with a global footprint, by virtue of having “feet on the ground” in different jurisdictions, should be considered to have a local taxable presence. This focus on the global tax attributes in-country of a PE Firm’s global footprint, in turn, requires a more in depth understanding of the fund’s operating model by the key personnel in the fund management structure, including an understanding and alignment to the operating model of the key people functions.

In line with a fund’s investor mandate for tax risk mitigation, many PE firms are identifying and managing this potential tax risk through appropriate internal controls.

These controls would typically cover the activities of investment committees, deal professionals and investor relationship/marketing personnel and aim to prevent establishing nexus for a fund, its investors and/or the management company.

Trading safe harbour

Trading safe harbours have been introduced by several jurisdictions and are aimed at protecting foreign investors from the tax net of a jurisdiction where the investment manager or sub-advisor is located. In the current global tax environment that is dealing with the implementation by Governments across the world, as especially in Africa, of Base Erosion and Profit Shifting (“BEPS”) driven tax assessment and collection initiatives, there is a clear global tax strategy emerging in terms of BEPS compliant or substance planning that leverages off the global business strategy, to the extent that it may be commercially aligned to take advantage of Government backed initiatives developed to grow the country’s economy for the benefit of its people.

South Africa for example has a "fund manager exemption" ("FME") that essentially ensures that a foreign limited liability partnership can have South African general partner(s) and the fund managed from South Africa, without triggering a South African permanent establishment for any of its foreign limited liability partners, provided that they are all passive investors and do not have any management responsibility or contractual authority.

The FME also covers funds operating in the form of trusts and entities (e.g. certain types of limited liability companies) that are fiscally transparent — that is, the entity is not subject to income tax but rather the individual members/partners are taxed on a look-through basis.

In a world where permanent establishment risk is increasing as tax authorities around the world and especially in Africa (including South Africa) focus on this area of taxation, the FME provides a domestic safe harbour for foreign passive investors investing through a foreign partnership.

The feasibility of the FME will depend on each fund’s facts and circumstances, but there is no doubt that it is a safe harbour worthy of consideration.

Global footprint and transfer pricing (“TP”)

Many PE houses are large multinational corporations with ever expanding international presence which can only be sustained with increasingly global business models.

We see that PE houses globally are focusing on their TP arrangements in light of significant changes in the TP landscape over the last couple of years, including challenges by tax authorities worldwide.

It follows that existing TP arrangements should be evaluated in light of changes to business models, key people functions and their location, tax rules and practices of tax authorities globally.

Funding insights

There are a number of tax rules that could impact on the after-tax cost of funding of portfolio companies, including related disclosure requirements.

For example, there are rules that could:

- Limit interest deductions in respect of acquisition transactions;
- Deem dividends on certain types of shares to be income;
- Deem interest to be dividends in specie;
- Trigger withholding tax on interest and dividends; and
- Require funds to disclose to the tax authorities interest and dividend flows to investors.

The application of these existing and developing provisions on funding structures should be monitored on an ongoing basis.

BEPS

Drawing on the work of the OECD, the G20 joint project on BEPS and independent bodies such as the Tax Justice Network, various governments on the African continent has committed to taking further measures to address revenue losses related to BEPS.

For the PE industry, it is expected that the most significant changes will be the impact:

- On intermediate entities enjoying treaty benefits;
- Of globally mobile marketing and deal sourcing teams on the tax footprint of PE houses;
- on hybrid funding arrangements and gearing generally;
- Of shifts in TP focus from contracts and risks to value creation and "significant people functions", and
- Of the increasing degree of transparency and disclosure required of taxpayers coupled with the increasing interaction and collaboration between tax authorities around the globe.

The current "front of mind" question to be answered for any investment fund structure is: "Where do we stand on the "BEPS Barometer"?" "Are we current, are we fit for purpose?"

Carried interest update

Carry incentive measures which inter alia are provided by fund management companies remain appropriate mechanisms to incentivise and reward deal professionals.

The tax treatment of carried interest continues to be a hot topic globally and South Africa is no different. Many countries have specific tax rules aimed to tax management carry as ordinary income rather than capital gains or dividend income.

It follows that PE houses should continuously monitor how tax could impact the ways that key persons' interests are aligned with those of the PE Funds' investors and, where possible, refine their structures to achieve and optimise the alignment.

In summary

PE firms face a constantly evolving regulatory, tax, and business environment. The tax issues explored in article will continue to pose challenges and present opportunities for the industry.

Firms are advised to examine their risks in light of the changing regulatory and tax landscape, ensure effective controls are in place to manage these risks and evaluate the controls on a regular basis.

For the PE industry, ongoing regulatory and tax change is a fact of life, as is monitoring and adapting to the evolving environment in which they operate. This requires appropriate internal controls and practices, as well as the use, with supporting commercial alignment, of appropriate Government backed tax efficient incentive regimes. In this way, it is possible to manage down their tax risk and impact within the constraints of a continuously evolving regulatory, tax and business environment.

Contributor's profile

David Lermer is PwC Africa's country leader for International Tax Structuring. He is also South Africa's country leader for PwC Global Tax Services, comprising International Tax Structuring, Transfer Pricing and cross-border M&A specialist divisions. He is a founder member of "Afritax", the PwC network of tax and exchange control specialists working in Sub-Saharan Africa. David has over 30 years of professional experience in advising large SA and foreign multi-national groups in respect of their international tax, transfer pricing and exchange control requirements. He has worked on numerous re-organisations of multi-national groups, mergers and acquisitions and BEE transactions. David is heavily involved in representations to Government on tax and exchange control policy and legislative changes. More recently, he has been one of the main lobbyists of "Gateway into Africa" initiative, including the specific protection from tax for foreign investors in foreign or local investment funds, mainly in the private equity and venture capital space.

Deon de Villiers is an Associate Director at PwC South Africa and has more than 15 years' experience in the South African tax environment and two years' experience in the Netherlands. He is a qualified Chartered Accountant (SA) and has a Masters degree in tax. Deon's experience in the financial markets and funds sector includes assisting numerous foreign investment funds in all aspects of corporate and international tax, including inbound investment strategies, exit strategies, tax structuring, mergers and acquisitions, opinions, tax due diligence engagements and matters of general tax compliance. He has advised global and South African groups on the investment and operational requirements to invest and carry on business in a spectrum of African jurisdictions (inter alia with regard to direct and indirect taxes, exchange controls, company law and immigration implications).

INVESTING IN GUINEA & CONGO BRAZZAVILLE: NAVIGATING THE LEGAL LANDSCAPE

By **John Ffooks,** Senior Partner, John W Ffooks & Co.

Foreign investment in Congo Brazzaville

Congo is member of the Central African Economic and Monetary Community (CEMAC) and the Organization for the Harmonization of Business Law in Africa (OHADA).

There is a legal framework to attract foreign investors and to protect investments in Congo.

Investment Charter

Congo has adopted an Investment Charter to make foreign investment more attractive. Investment Charter is governed by Law No. 6-2003 of 18 January 2003 (the "**Investment Charter**").

The Investment Charter grants several guaranties to foreign investors. Foreign investors are free to undertake agricultural, mining, industrial, forestry, craft, commercial or service activities in Congo Brazzaville. Foreign investors operating in the Republic of Congo are free to repatriate funds in connection with their activities.

The Investment Charter also provides tax and customs advantages. The tax and customs advantages are not applicable to commercial activities, brokering, trading, importation, manufacture of weapons of war, import of toxic waste or similar activities.

However, these benefits extend, exceptionally, to commercial activities related to the collection, storage, warehousing, distribution and export of locally manufactured products, excluding drinks.

To be eligible to the tax and customs advantages provided in the Investment Charter, a company must:

- Be registered in the commercial register;
- Create permanent jobs, which are exercised for at least 280 days per year;
- Have a share capital equal to or greater than 1/5 (20%) of the investments;
- Use first and foremost the local raw materials necessary for the production of the finished product, or semi-finished product, on the same conditions as prices, quality and delivery time in relation to the outside, in the case of industries;
- Use the services of local companies on an equal basis with quality services, prices and deadlines for the performance of services provided by outside companies, in the case of service companies;
- Be registered with the National Social Security Fund;
- Open an account in a local bank or any other financial institution, duly established savings and credit institution; and
- Use local labor as a priority, with equal competence in relation to foreign labor.

Mining Code

In 2005, Congo has adopted Law No. 4-2005 of 11 April 2005 on Mining Code (the "**Mining Code**") to regulate its mining sector and especially to attract foreign investment. The Mining Code offers several guarantees for foreign investors.

The Exploitation permit is granted to any natural person or legal entity without making a distinction of nationality.

The Mining Code allows the free exportation of substances obtained, free transfer and free convertibility between foreign and domestic currencies resulting from exploitation.

Investors have administrative recourse and the possibility of appeal to arbitration in case of contentious matters.

"Foreign investors are free to undertake agricultural, mining, industrial, forestry, craft, commercial or service activities in Congo Brazzaville. Foreign investors operating in the Republic of Congo are free to repatriate funds in connection with their activities."

Foreign investment in Guinea

Guinea is member of the Organization for the Harmonization of Business Law in Africa (OHADA). In Guinea, there are no laws that discriminate against foreign investors.

In Guinea, there is a legal framework to attract foreign investors and to protect investments.

Investment Code

Investment in Guinea is governed by Law L/2015/008/AN of 25 May 2015 relating to Investment Code of Republic of Guinea (the "**Investment Code**").

The Investment Code does not make a distinction between national investors and foreign investors. Foreign ownership of up to 100 percent is permitted in commercial, industrial, mining, agricultural and service sectors. However, foreign majority ownership in the communication sector, such as radio, television and print media is not permitted.

Foreign investors receive in the Republic of Guinea the same treatment as national investors. The government guarantees that it will not, except for reasons of public interest, take any measure to expropriate or nationalize foreign or locally held assets or businesses.

Foreign investors are free to transfer funds related to investments .

The Investment Code also provides the existence of an Agency for the Promotion of Private Investment (APIP). Its mission is to support investment and to implement the government's policy on the promotion and the development of national and foreign. It is a stop shop. It' s a reliable source of information that is committed to assisting foreign businesses with entering the Guinean market.

Mining Code

Law L/2013/No 053/CNT of 8 April 2013 (the “Mining Code”) governs the mining sector in Guinea. The purpose the Mining Code is to regulate the mining sector in order to promote investment and ensure a better understanding of the soil and sub-soil of the Republic of Guinea.

The Mining Code provides non-discrimination between foreign employers and employees in Guinea. They are subject to the laws and regulations of the Republic of Guinea without discrimination of any kind as when compared to Guinean nationals.

According to article 107 of the Mining Code, the holder of a mining title, and companies working on its behalf, must give preference to Guinean companies of its choice in respect of any contract, provided they offer comparable prices, quantities, qualities and delivery schedules. In order to promote private sector development, holders of mining operation titles and mining operation permits for quarry substances and independent companies, must implement the support plan for the building and/or strengthening of capacities of SMEs, SMIs and companies owned or controlled by Guineans for the supply of goods and services widely used in their activities. Each holder of a mining title shall submit to the Minister, on an annual basis, a report on its use of SMEs, SMIs and businesses owned or controlled by Guineans, detailing the progress of the holder of the mining title towards achieving the minimum thresholds set out in this Article, as well as its activities towards creating or strengthening Guinean capacities. This report, a copy of which must be filed with the Ministry in charge of SMEs and SMIs, will be published in the Official Gazette and on the official website of the Ministry in charge of Mines, or any other site designated by the Minister. Each holder of a mining title shall submit to the Minister, on an annual basis, a report on its use of SMEs, SMIs and businesses owned or controlled by Guineans, detailing the progress of the holder of the mining title towards achieving minimum thresholds (During the exploration period: 10%; during the development period: 20%; during the operating period: 1st - 5th Year: 15%; 6th - 10th Year: 25%; 11th - 15th Year: 30%) as well as its activities towards creating or strengthening Guinean capacities. This report, a copy of which must be filed with the Ministry in charge of SMEs and SMIs, will be published in the Official Gazette and on the official website of the Ministry in charge of Mines, or any other site designated by the Minister.

With regard to the employment of personnel, article 108 of the Mining Code provides that the holder of the mining title or authorization must give preference to employing Guinean managers having the required skills. As a result, the holder of a mining operation title or mining operation permit for quarries shall, during the development phase, file with the Ministry in charge of Professional Training and with the Mining Administration a training plan for Guinean managers to enable them to acquire the skills required by the management of the company to occupy managerial positions in the first five years from the date of the art of commercial production. The holder of a mining title or authorization and companies working on its behalf are required to exclusively employ Guineans for all unskilled positions. There is a minimum quota of Guinean employees for each phase of the evolution of the project.

The Mining Code of Guinea commits also the country to increasing transparency in the mining sector. Mining contracts are given by competitive tender and to publish all past, current, and future mining contracts for public scrutiny.

“Foreign ownership of up to 100 percent is permitted in commercial, industrial, mining, agricultural and service sectors. However, foreign majority ownership in the communication sector, such as radio, television and print media is not permitted.”

Contributor’s Profile

John Ffooks has lived and worked as a lawyer in Madagascar for 15 years. He is familiar with the specific legal and business cultures across Francophone Africa and has extensive experience of French-based legal systems.

John has handled finance transactions in excess of USD 9 billion in relation to natural resource and project finance projects, with all the requisite due diligence such complex transactions require. John has also been involved in acquisitions and disposals of assets in natural resources and telecommunications fields.
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THE REGULATORY FRAMEWORK FOR FOREIGN INVESTMENT IN NIGERIA

By **Michael Orimobi,** Global Chairman, Tokunbo Orimobi Legal Group

Nigeria is Africa's second largest market and a gateway to the African business hub with a population of over 190 million, a consumer market of over $400 billion yearly and a middle class of circa 25 million people.

All over the world, governments particularly in developing countries try to attract foreign investments into their countries. This is due to the fact that such investments amongst others bring in capital and create employment opportunities. Therefore attention is devoted to political, social and legal incentives that will attract foreign investors. Nigeria as a developing country is no exception. "Nigeria is open for business" – this has been the mantra of several governments in Nigeria till date.

It is common knowledge that Nigeria's economy, like most frontier and emerging markets, is dependent on external aid, trade and foreign direct investments. Consequently, to ensure that the investment climate is conducive and friendly, countries enact relevant investment legislations aimed at attracting foreign investments and assuring the investors of the security of their investments. Nigeria has joined other countries in this respect and has put in place quality investment legislations with a view to providing a conducive and encouraging legal environment for foreign investors and investments. An alien whether individual or corporate may invest and participate in the operation of any enterprise in Nigeria except those on the negative list[1].

In this brief write-up, the ultimate goal is to bring to life a better understanding of salient regulatory frameworks for foreign investments in the commercial-nerve-centre of Africa's economy. Thus, when you think investment, think Nigeria!

The Nigerian Legislature, recognizing the immense roles and importance of foreign investments in the economy, has at various times enacted laws that allow and encourage foreign investments in Nigeria by non-Nigerians.

Foreign investments are initiated in Nigeria either through:

a. Foreign Direct Investment (FDI): these are direct investments by foreign investors who invest by incorporating a Nigerian entity (either solely or with Nigerians) or acquiring or investing in an already existing one; or
b. Foreign Portfolio Investment (FPI): which involves participating indirectly in business by purchasing shares in existing companies, usually through the Nigerian Capital Markets. It is the passive holding of securities, none of which entails active management or control by the investor.

The relevant laws governing Foreign Investment in Nigeria are as follows:

a. The Companies and Allied Matters Act Cap. C20 Laws of the Federation of Nigeria (LFN), 2004;
b. Nigerian Investment Promotion Commission Act Cap. NI. 17 LFN. 2004;
c. Immigration Act Cap. I.1 LFN. 2004;
d. Investments and Securities Act Cap 124, LFN, 2007;
e. Foreign Exchange [Monitoring and [Miscellaneous Provisions] Act Cap. F 34 LFN, 2004;
f. Industrial Inspectorate Act Cap. I.8 LFN. 2004;
g. National Office for Technology Acquisition and Promotion Act Cap. N. 62 LFN. 2004.

Companies and Allied Matters Act, ("CAMA"), LFN 2004

The law governing the formation and regulation of business enterprises in Nigeria is the Companies and Allied Matters Act, and this law established the Corporate Affairs Commission, which is the body responsible for the registration and regulation of companies.

By the provisions of the Companies and Allied Matters Act a foreign investor may join in forming a Nigerian company subject to the provisions of any law regulating a particular trade or business. Also, any foreign investor wishing to set up business operations in Nigeria is obliged to take all necessary steps to obtain local incorporation of a Nigerian company or branch or subsidiary of an existing company which would be a separate and distinct entity from its parent company. . Without such compliance, the foreign company shall not have a place of business in Nigeria for any purpose other than the receipts of notice and other documents. The CAMA, however, sets out exceptions to the general rule that all foreign investors doing business in Nigeria must incorporate in Nigeria. These exceptions include companies engaged by the Federal Government to execute specific projects, companies undertaking approved loan projects on behalf of donor countries or international organizations, and foreign government owned companies engaged wholly in export promotion activities.[2] The Corporate Affairs Commission administers the CAMA.

The Nigeria Investment and Promotion Commission ("NIPC") Act, CAP N117, LFN 2004

This Act, established the Nigerian Investment Promotion Commission ("NIPC") which is the primary body responsible for encouraging, facilitating and monitoring foreign investment activity in Nigeria. A foreign investor,

1. Section 17 Nigerian Investment Promotion Commission Act Cap NI 17 LFN. 2004
2. Section 54 & 56 CAMA.

before commencing business is required to register with the NIPC by virtue of Section 20 of the NIPC Act. The foreign enterprise is permitted to commence operations once it has it has been registered with the NIPC. Thus, the NIPC Act allows foreigners to invest and participate in the operation of any Nigerian enterprise 100% without any restriction.

This is however, subject to certain sectors where local content policies apply - sectors where Nigerians must own majority shares in the companies.

Interestingly, due to the avalanche of regulations that need to be complied with by foreigners desirous of doing business in Nigeria, there exists a One-Stop Investment Centre (OSIC) to ease registration of companies, obtaining relevant permits and licenses for incoming investors etc. The Centre is a facilitation mechanism that brings all relevant investment facilitation agencies in one location to provide a well-coordinated, speedy, and transparent service to investors.

- **Investment Assurances under the NIPC Act**

Further to liberalizing the economy, the NIPC Act contains a number of investment assurances and incentives. These assurances and incentives together make the Nigerian economy more attractive to foreign investors.

A foreign investor is guaranteed unconditional transferability of funds in freely convertible currency through an authorized dealer:

- Dividends or profits [net of taxes] generated by the investment;
- Payments in respect of loan servicing where a foreign loan has been obtained;
- The remittance of proceeds [net of taxes] in the event of sale or liquidation of the enterprise.

- **Guarantees Against Expropriation**

The Act also guarantees that no enterprise shall be nationalized or expropriated by any Government of the Federation; and no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person unless the acquisition is in the national interest or for a public purpose under a law which makes provision for:

(a) Payment of fair and adequate compensation; and a right of access to the Courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.
(b) Any compensation payable shall be paid without undue delay and authorization for its repatriation in convertible currency shall where applicable, be issued.

- **Settlement of Investment Disputes**

The NIPC Act contains liberal provisions for settlement of investment disputes. This is intended to make the investment environment as conducive as possible. Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach amicable settlement. The NIPC Act provides in Section 26 (1) & (2) that any dispute between a foreign investor and any government in Nigeria arising out of investment shall be submitted to arbitration within the framework of any investment treaty entered into between the government of Nigeria and any state to which the investor is a national, or in accordance with any other international machinery for settlement of investment disputes as agreed upon by the parties. Where in respect of any dispute, there is disagreement between the investor and the government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes shall apply.

The Immigration Act Cap I. I LFN, 2004

By virtue of the Nigerian Immigration Act, Foreign investors are to obtain the following:

i. **Expatriate Quota:** this is the official approval granted upon application to the Minister of Interior to a company, which enables it, employ expatriates to specifically designated jobs. There is no restriction on the number of quota positions that may be applied for; however, the number of quota positions that will be granted is at the discretion of the Minister of the Interior. The applicant company is, amongst other things, required to have an authorized share capital of at least N10,000,000.00 (Ten Million Naira). The expatriate quota is of two types; permanent until reviewed granted to the chairman of the board of a company or the managing director and the temporary quota granted for a period of five(5) years in the first instance renewable for a further period of two (2) years to directors or other employees of the company.
ii. **Business Permit:** Operational license granted to an expatriate to enable him carry on business activities in Nigeria;
iii. **Residence Permit:** This is required for entry into Nigeria where a foreigner intends to stay beyond three (3) months. The application is made to the Nigerian Embassy or Consular Officer in the country where the applicant resides. The foreign investor is granted a 'Subject to Regularization (STR)' Visa which is regularized on arrival and a work permit issued to the investor as the STR Visa alone does not entitle the foreigner to take up employment in Nigeria right away. An application for regularization of stay must be made after arrival in Nigeria and thereafter the CERPAC (Combined Expatriate Residence Permit and Aliens Card) - a combined residence and work permit - will then be granted which is valid for two years.

Investment and Securities Act ("ISA"), LFN, 1999

The ISA as a law embodies comprehensive provisions on issues relating to securities and investments in Nigeria. Some of the major provisions of the ISA are as follows:

(a) The ISA establishes the Securities & Exchange Commission (the "SEC") and delineates its functions to include: the regulation of investments and securities business in Nigeria, registration of Securities Exchanges, Capital Trade Points and any other recognized Investment Exchanges, registration of securities to be offered for subscription or sale to the public etc.

(b) The ISA provides for the establishment of an Investment and Securities Tribunal ("IST") to settle "any dispute arising from the operators of capital market and exchanges in Nigeria.

(c) The ISA includes a provision for the electronic transfer of registered shares.

(d) The ISA further provides for the establishment of an Investor Protection Fund ("IPF"), which is used to compensate investors who suffer any pecuniary loss from the misuse of assets by a member of a stock exchange and any directors/employees of capital market operators.

The ISA further provides for the obligatory maintenance of accounts for clients' funds by market operators, dealers, amongst others, separate from their business accounts. The ISA also covers the public offer and sale of securities and investments to the public, mergers, takeovers and acquisition, investment schemes, registration of securities and registration of interests in securities and capital market operators, amongst others.

Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap F34, LFN, 2004

This is the basic foreign exchange control legislation. It establishes an Autonomous Foreign Exchange Market. The highlights of this Act include the following: liberalized dealings in foreign exchange; guarantees foreign investors who invest in Nigeria, unconditional transferability of funds relating to their investment in Nigeria out of Nigeria, subject to the payment of relevant taxes etc. Such funds to be repatriated must have been imported into Nigeria through an authorized dealer. By virtue of Section 15 of the Act, a **Certificate of Capital Importation ("CCI")** shall be issued to any person who imports capital into Nigeria through an authorized dealer (banks licensed by the Central Bank of Nigeria to deal in foreign exchange). Nigeria's foreign exchange regulations require that foreign investors must, obtain a CCI as evidence that their investment has been brought into Nigeria in order to have access to the official foreign exchange market to purchase foreign exchange and in order to open special nonresident accounts into which all proceeds from sale of securities, dividends and interest are credited and to repatriate capital, capital gains, dividends, interest and income received in freely convertible currency. Thus for investors that are not keen on accessing the official foreign exchange market for their deals, the CCI is not compulsory.

Industrial Inspectorate Act Cap. I8 LFN, 2004

This Act is established for the purpose of investigating and following the undertakings of industries including investments and other related matters. To this end, it carries out investigations into any proposed, new and existing undertaking involving any proposed capital expenditure, and in particular, for the purposes of determining the investment valuation of the undertaking, that is -

i. the actual capital (whether foreign or local) employed or proposed to be employed in the undertaking; and

ii. the actual valuation of buildings, plants and other machinery employed or proposed to be employed in the undertaking and any addition thereto.

The National Office for Technology Acquisition And Promotion Act ("NOTAP") Cap N62, LFN, 2004

By virtue of the establishment of this Act, contracts between foreign investors and Nigerians for transfer of technology are required to be registered with the National Office for Technology Acquisition and Promotion not later than 60 days from the execution of the agreement. The National Office issues a Certificate of Registration to evidence the registration.

It is pertinent to point out that the Federal Ministry of Finance, the Central Bank of Nigeria and other licensed banks in Nigeria are mandated not to make payments due under a contract or agreement involving transfer of technology, unless the Certificate of Registration is presented by the party or parties concerned together with a copy of the Contract or Agreement certified by the National Office.

Tax System

- Companies Income Tax

The Companies Income Tax Act charges the profits of any company accruing in, derived from, brought into or received in Nigeria in respect of any trade or business at the rate of 30%. The profits of a company other than a Nigerian company (i.e. a company not incorporated in Nigeria) from any trade or business shall be deemed to be derived from Nigeria if such company has a fixed base of business in Nigeria and profit is attributable to the fixed base; or such company not having a fixed based habitually carries on business in Nigeria through an authorised representative.

- Petroleum Profit Tax

The Petroleum Profits Tax Act imposes tax on the profits of upstream oil and gas companies. The tax rate usually depends on the contractual relationship with the Federal Government through the Nigerian National Petroleum Corporation (NNPC) and the number of years of operation of the company.

Companies which have entered into a Production Sharing Contract with the NNPC are taxed at 50% of their profits. Companies in a Joint Venture with NNPC are taxed at 65.75% for the first five years of operations and thereafter taxed at 85%.

- Personal Income Tax

By virtue of the Personal Income Tax Amendment Act, all allowances or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites granted to any temporary or permanent employee shall be liable to personal income tax[3] at an average graduating rate of between 7% to 24% of the individual's annual income in the manner below:

Income to be taxed	Taxable Band	Rate of Tax	%'age
For every Naira	First 300,000	7,000 per Naira	7%
For every Naira	Next 300,000	11,000 per Naira	11%
For every Naira	Next 500,000	15,000 per Naira	15%
For every Naira	Next 500,000	19,000 per Naira	19%
For every Naira	Next 1,600,000	21,000 per Naira	21%
For every Naira	Above 3,200,000	24,000 per Naira	24%

- Withholding Tax (WHT)

WHT is usually deducted at source at the applicable rate for certain transactions including dividends, interest, discounts, royalties, charges, annuities, fees, dues and allowances for services rendered.

The withholding tax rate on investment income such as dividends and interest is 10%, and 15% on royalties.

- Capital Gains Tax:

Capital Gains Tax is payable on gains that accrue to any person on a disposal of assets for the year of assessment. The tax is chargeable on all forms of property (including options, debts, incorporeal) whether or not it is situate in Nigeria. It is, however, useful to state that capital gains tax will be charged on assets situated outside Nigeria if any amount thereof is received or brought into Nigeria.

The rate of capital gains tax is 10%. Capital Gains Tax is not chargeable on gains arising from the acquisition of shares of a company that is taken over, absorbed or merged.

- Value Added Tax (VAT)

VAT in Nigeria is governed by the Value Added Tax Act No.102 of 1993 (as amended)('VAT Act') which imposes a consumption tax on the supply of taxable goods and services, at the rate of 5% of the value of the taxable goods or services being supplied.

Thus, all goods and services supplied in Nigeria are taxable at the rate of 5% unless they are specifically excluded by (Schedule 1) of the VAT Act.[4]

Incentives

By way of incentives, the government introduced several tax reliefs as an effort to encourage and promote FDI in the country. These reliefs are discussed below:

- Pioneer Status

Pioneer status is granted to specific companies in certain sectors of the economy such as agriculture, manufacturing, quarrying, tourism etc. These pioneer companies are situated in certain low investment areas of the country such that the companies eligible for pioneer status must meet certain conditions by way of the category of products in which they are involved and to this end, are exempted from payment of taxes for a period of up to seven years. These companies must be starting off business in Nigeria for the first time and the area of business sought to be undertaken by the company must fall within the categories of business declared to be of pioneer status under the NIPC Act.

- Double Taxation Relief

Nigeria has signed double taxation relief treaties with many commonwealth countries. Thus, where a foreign company doing business in Nigeria is able to show that it has remitted tax in another country which is a party to that treaty, it will be granted tax relief by way of exemption[5].

- Utilisation of Local Materials

Where a company meets its minimum local raw materials requirement, 20% of its profits are exempt from taxation for a period of 5 years.

- Rural Investment Allowance

Where a company incurs expenses in the course of providing basic amenities such as water, means of telecommunication, good roads or other basic amenities in order to enhance its business, it will be granted specific allowances[6].

- Bonus for filing returns in due time

A 1% concession of the total tax payable is given to a company for filing its annual returns within the required time-frame.

- Research and Development (R&D):

A company that participates in research and development for commercial purposes will be granted 20% tax credit on its expenditure[7].

Conclusion

In a bid to meet the objective of improving the ease of doing business in Nigeria, President Buhari established the Presidential Enabling Business Environment Council, (PEBEC) last year to review the procedures for doing business in Nigeria. The Council has adopted several action plans aimed at pushing ease of doing business reforms in the country. It is hoped that the results will be efficient and this action by the government would engender cost-effective regulation in multiple areas that positively affect businesses and confer credibility on the government's economic plans among Nigerian businesses and foreign investors.

The PEBEC reforms are expected to also help improve Nigeria's rankings in the World Bank DB index for 2018.

Indeed, Nigeria is ready for business!

3. Section 3 (b) of the Personal Income Tax Amendment Act 2011.
4. Section 2 VAT Act. The exempted goods are: medical/pharmaceutical items, basic food items, books and educational materials, baby products, all exports, plants, machinery and equipment purchased for utilisation in the down-stream petroleum operations, etc.
5. Companies Income Tax (Amendment) Act No. 11 2007
6. Section 34(1)(2) Companies Income Tax Act, Laws Of The Federation (2007).
7. Section 26(3) Companies Income Tax Act, Laws of the Federation of Nigeria (2007)

INVESTING IN IVORY COAST: LAWS AND REGULATIONS INSIGHT

By **Fatoumata KPLA,** Audit & Financial Adviser, CLKA Law firm, Côte d'Ivoire

The Francophone West Africa biggest economic and financial power and second in West Africa, after Nigeria, Côte d'Ivoire is by far the best entry point for any business in West Africa.

Indeed, since the end of the post-electoral crisis that the country has suffered, the Government has undertaken vast infrastructure and industry projects to upgrade and modernize the country and enable a quickly regain of strong growth allowing to resume its place and to display new ambitions.

Côte d'Ivoire also aspires to become an emerging country by 2020. In order to carry out this project, the Ivorian Government has adopted a strategic plan, the National Development Plan (PND), over a five-year period (2016- 2020).

The objective of this ambitious plan, is the structural transformation of the Ivorian economy for the country's economic growth and development.

Within this plan's implementation process, a preponderant place is given to private sector investments, which are the privileged actor of the economic growth.

Indeed, the investments expected from the private sector represent 62% of the PND 2016-2020 financing and are estimated at 30 000 billion FCFA (US$50 billion).

Therefore, in order to create favorable conditions for investment, Côte d'Ivoire has undertaken major reforms for the business environment improvement, with the aim of offering this sector, the guarantee of a dynamic and competitive development on an international scale.

This vast reform plan set up since 2012, with the support of the International Finance Corporation (IFC), is part of the Doing Business framework which evaluates the business regulation and its effective application in the private sector of 189 economies worldwide.

Since then, Côte d'Ivoire has embarked on forty (40) reforms, allowing it, over two consecutive years, to position itself among the ten (10) most reforming countries in the world.

Through this initiative, Côte d'Ivoire has won thirty-five (35) places, allowing it to be ranked at the 142th position instead of the 177th in the Doing Business (AIP) ranking.

This performance is explained by the legislative and regulatory adoption of a series of reforms in support of the strategic sectors of the country's economic development and of multiple investment incentives, especially in the fields of posts and telecommunications, mining and oil, water and electricity, real estate...

The State is taking significant measures to introduce innovative investment incentives by sector of activity so as to make Côte d'Ivoire one of the preferred destinations for private capital.

We will focus here on the attractive reforms of the investment code, which encourage private investors to prefer Côte d'Ivoire's destination.

The process of reforms to improve the business environment has resulted in eleven reforms (11) in 2013, fourteen (14) in 2014 and fifteen (15) in 2015. The reforms implemented to date mainly rely on ten (10) pillars, namely:

Company creation: This major indicator registered reforms in 2014, 2015 and 2016. The application of the texts in force to date has enable, among other, time and cost reduction when setting up company as well as the simplification of the related formalities through the creation of a one-stop-shop for setting up a company.

Investors Protection: Various texts were adopted in order to enhance investments security.

Taxes payment: In 2016, the reform of this axis was mainly initiated by the adoption of a range of text in order to facilitate and simplify the declaration and payment of taxes and duties; Reduce the burden of tax control; Facilitate the repayment of tax credits and strengthen the guarantees given to taxpayers.

"In order to create favorable conditions for investment, Côte d'Ivoire has undertaken major reforms for the business environment improvement, with the aim of offering this sector, the guarantee of a dynamic and competitive development on an international scale"

Contracts Compliance: Aware of contracts importance, texts have been adopted in order to streamline the procedures for resolving commercial disputes and to formalize alternative dispute resolution methods.

Insolvency settlement: Strengthening the legal framework of insolvency proceedings and incentives for buyers are the main points of the texts that has been adopted.

Ownership transfer: The texts adopted mainly aimed at:
- Tax requirements reduction prior to real estate transactions in order to reduce the time required to complete tax formalities related to any real estate transaction.

- Costs and procedures reduction for ownership transfer

The building permit: Facilitation and reduction of costs and procedures related to building permits granting are at the heart of these reforms, which enable the creation of a one-stop shop for building permits.

Connection to electricity: Since the procedures and timing of connection to electricity were considered to be too long, texts were adopted in order to remedy the difficulties caused by this situation.

Loans obtention: This key indicator registered some substantial reforms, essentially with the institution and establishment of private credit office in charge of collecting data related to credit and borrowers.

Cross-border trade: Aware of cross-border trade importance for the country's economy development, the state of Côte d'Ivoire has undertaken reforms related to the one–stop shop for the external trade operationalization, reducing thereby the costs of cross-border operations.

“The Francophone West Africa biggest economic and financial power and second in West Africa, after Nigeria,
Côte d'Ivoire is by far the best entry point for any business in West Africa.”

Moreover, the new investment code, adopted on 7 June 2012, provides two (02) favourable tax regimes for the creation and / or development of activities in all sectors excluding buildings and public works, commerce and Transport, banking and financial services, namely: The Declaration Regime and The Regime of Accreditation.

The benefits granted cover a period of 5 to 8 years and are related, as appropriate, to exemptions from corporation tax; patents and licenses; customs duties; tax on industrial and commercial benefits, or property tax on constructed properties.

Undoubtedly, these reforms will remove the last locks that will definitely enable Côte d'Ivoire to become an attractive state for both domestic and foreign investors. The ultimate goal for Côte d'Ivoire is to be ranked among the fifty (50) best economies in the World Bank Doing Business rankings, by 2019 at the latest.

CLK Avocats, aware of the importance of this project and its strong impact on the country's economy, has been contributing to the DOING BUSINESS project since 2012 and is at the heart of all these reforms. Indeed, we regularly review the reforms undertaken by the State of Côte d'Ivoire for the benefit of the World Bank, which on this basis has criticized the said reforms and improvement projects.

Given this strategic position, which provides special expertise, CLK Avocats supports and advises its clients with a broad anticipation on future reforms.

“Since the end of the post-electoral crisis that the country has suffered, the Government has undertaken vast infrastructure and industry projects to upgrade and modernize the country and enable a quickly regain of strong growth allowing to resume its place and to display new ambitions.”

Contributor’s Profile
Fatoumata KLPA is an Auditing expert and Financial Engineer, with the CLKA Law firm in Côte d’Ivoire. She holds a Master degree in Accounting and Finance as well as in Consulting and Business support. Fatoumata has more than ten years of practice within the Industry during which she performed and demonstrated her skills in management, organization, financial analysis and founding restructuration.

For some years now, her activity is increasingly related to providing support to companies and institutions for added value creation.

FOREIGN INVESTMENT IN FRANCOPHONE AFRICA: A CASE STUDY OF SENEGAL

By **Aboubacar Fall,** Partner, GENI & KEBE Law Office, Senegal

Francophone Africa covers over 5000 sq km in area, 31 countries and more than 100 million potential consumers. For many foreign investors, entering the francophone Africa market has often has been perceived as a great challenge due, in particular, to the barriers of language and the legal system (civil law). Political instability has also been a major risk to consider in some countries of the francophone region. It is fair, however, to say that investors and operators perception of that market is now evolving rapidly.

Indeed, francophone Africa offers many advantages to international investors and operators in sectors such as natural resources (including mining, oil & gas), telecommunications, agro-business, tourism, infrastructure etc. Long time considered as France's playground, the francophone region is now attracting investors from around the world including China, India, Europe, the US, Canada, Australia, and the Middle East etc. Such interest in the region has mainly to do with the political and economic integration mechanisms that exist across the francophone countries and which provide stability and predictability for investors as well as access to a larger market.

Illustrative of this regional integration are the West Africa Economic & Monetary Union (UEMOA for its French acronym) on the one hand, and the Economic and Monetary Community of Central Africa (CEMAC for its French acronym), on the other hand. These two regional economic communities (RECs) share a common currency (XOF for West Africa and XAF for Central Africa) which is tied to the Euro with the same fixed conversion rate. This constitutes a great advantage in comparison with other Africa regions where currencies are subject to volatility and facilitates trade and investment.

In addition to the political and economic integration, the francophone countries have successfully managed to achieve a legal and judicial integration through the Treaty for the Harmonization of Business Law in Africa (OHADA for its French acronym) whereby they share the same business laws through Uniform Acts in matters such as company law, security law, insolvency, land transport, arbitration etc. A Common Court of Justice and Arbitration has also been created to harmonize the construction and implementation of the Uniform Acts and to promote arbitration as a key dispute resolution mechanism. The OHADA system was designed by francophone countries as a major tool to attract and secure foreign direct investment through a conducive and predictable legal and judicial environment.

As a member of both UEMOA and OHADA Senegal is a major investment destination due to several factors including, among others, (i) its longtime political stability (ii) the existence of the Agency for Investment Promotion (APIX for its French acronym), a one stop shop which provides assistance with business creation and expansion as well as the performance to complete all documents and administrative formalities. In 2014 nearly 9000 enterprises were created and in 2015 about XOF 596.8 billion were registered as certified investments.

As from 2012, Senegal has designed an ambitious economic and social plan called Senegal Emergent Plan (PSE for its French acronym) based on the development of private sector investment to bring about economic growth and social inclusiveness. The PSE is structured around the following four pillars (i) Investment Promotion and Infrastructure Development (ii) Public Private Partnerships and Innovative Financing Mechanisms (iii) E-government and (iv)Coordination of the Management of Public sector.

Further, the PSE has three major components: Structural transformation of the economy and growth; Human capital, social protection and sustainable development and Governance, institutions, peace and security.

As indicated in the 2017 Report of the Ministry of Investment Promotion and Partnerships, significant reforms have been achieved through the PSE includes:

- Improving the business legal and institutional framework as well as governance indicators. This resulted in Senegal gaining high scores in the World Bank Doing Business .
- Reducing the timeframe to transfer of land/ a real estate title ownership from seventy (70) days to thirty (30) days.
- Reforming the judicial system in order to speed up the processing of court casework and provide more specialized courts such as the new commercial courts.
- Promoting PPP and Private Equity schemes as innovative financing tools to support the implementation of the Senegal Emergent Plan .
- Reforming the legal and fiscal framework to facilitate the implementation of innovative financing policies.
- Developing on a broad base this utilization of electronic tools and processes to modernize the investment climate.

As a result, in the 14th edition of the World Bank's Doing classification, Senegal, for the third consecutive year, has ranked among the top 10 reformer countries.

Despite legal and institutional reforms as well as the development of both economic and social infrastructure (airports, toll roads, access to universal health coverage, increase of education standards etc.) some challenges still remain to be overcome. However, Senegal, as one of the major economies of francophone Africa, offers tremendous opportunities for international investors.

With the successful implementation of the PSE *"Senegal could be at the leading edge of a joint effort to put the region on a path to inclusive growth and poverty reduction and to become a locomotive for other countries in UEMOA".*

IN-BOUND FOREIGN INVESTMENT IN TUNISIA – A NEW AGE

By **Giorgio Bianco,** Senior Associate, Giambrone, Tunisia

Tunisia enjoys a strategic location on the Mediterranean and Tunis, the capital city, is an average of two hours flight from all major capital cities in Europe. The country boasts an impressive education policy and a productive work force with competitive salary levels all aiming to support the modernisation of the country.

Tunisia actively encourages inward investment with new investment law simplifying the procedures and authorisations required together with the considerably easier process to engage workers from overseas should the need arise. The fact that Tunisia enjoys a reasonable reputation for credit-worthiness is also an encouraging factor for a foreign investor. The Tunisian government recognised that the governance of foreign investments would benefit from a more streamlined system combining the previous administrative bodies dealing with foreign investment in one body.

Tunisia offers considerable advantages for the foreign investor; a company can be created quickly, in around two weeks, with only €400 as the minimum capital. Those companies involved purely in export enjoy a rate of corporation tax of only 10%, as well as a VAT exemption on all goods purchased locally on behalf of the business. In addition, all overheads, including salaries and taxes, are considerably less than in Europe, the minimum wage being €140. An added advantage for textile businesses manufacturing clothing is that there is a wealth of well trained workers capable of an excellent standard of workmanship.

The new investment law came into force in January this year and three major platforms have been created for the promotion of foreign investment, known as the Council, the Instance and the Fund. The Conseil Supérieur de l'Investissement, the Higher Council for Investment, known as the Council, composed of ministers with particular expertise in the foreign investment arena, headed by the Prime Minister, will in the future draft State policy related to investments, promote and monitor foreign investments and take responsibility for the improvement of the commercial environment throughout the country. The Council will also oversee the system of incentive bonuses in respect of the projects which impact on the national interest.

The Instance Tunisienne de l'Investissement, known as the Instance, is also to be introduced and will be under the authority of the minister in charge of investment and the Council. Its job will be to analyse bonus applications for project in the national interest and make decisions relating to grants. There is also provision for someone to be appointed to liaise with and inform foreign investors as to the best way to obtain the required authorisations.

The Fonds Tunisien de l'Investissement, known as the Fund, will pay the bonuses and be entitled to make subscriptions, directly or indirectly, in risk mutual funds, venture capital funds and seed funds.

The new investment law considerably smoothes the path for foreign investors, enshrining in law non-discrimination principles, meaning the foreign investor cannot be treated less favourably than a Tunisian investor, conditional on there being comparable circumstances; also removing the previous "prior approval" requirement which applied under the former Investment Code applicable to certain foreign investors. All barriers to investment may not have been removed entirely but considerable progress has been made. Investment Law clarifies the principles of free acquisition, rental and utilization of non-agricultural lands by investors. Also, there is a desire to ensure that both foreign and Tunisian investors alike have access to relevant information.

Foreign investors will have the ability to recruit and employ foreign workers in their projects amounting to 30% of the complement of its management staff in the first three years of incorporation and 10% from the fourth year. The new law also seeks to reassure foreign investors by way of guarantees relating to the relationship between the Tunisian authorities and the investors. Administrative authorisations relating to investments will have to have a reasonable as well as a justifiable rational and also will have to be put in writing.

Tunisia is making strides to implement the reforms that the International Monetary Fund (IMF) has highlighted as necessary to improve the financial strength of the country. The finance minister said in recognition of the need to reduce public sector wages, reforms on public works will include a raft of measures such as early retirement to reduce the spend. In response the IMF released a delayed $320 million tranche of Tunisia's $2.8 billion in loans.

Some significant companies on the world stage have seen the advantage of outsourcing some parts of the business by setting up an off-shore company in Tunisia, but you do not have to be a large corporation to set up an off-shore company and take advantage of the benefits offered. One of the most beneficial advantages in having an off-shore Tunisian company is the special agreement that Tunisia enjoys with many countries in avoiding double taxation, guaranteeing the transfer of dividends in full (no tax on that income will be paid to the country of origin under the Agreement of Double Taxation). This together with the zero VAT rate and low rate of 10% tax applied to profits of off-shore companies makes the Tunisian proposition very attractive. Another consideration is that the banks respect the privacy of your business dealings and do not divulge business activities of their customers.

Tunisia is an example of how to implement a democratic transition in the wake of a radical and sudden change of government. It has enacted a new constitution, held free elections and adopted a diplomatic approach to the political tensions between secular and Islamist leaders to improve the overall environment. There is a considerable desire within Europe for investment in Tunisia with France and the UK leading the way.

Contributor's Profile

Giorgio Bianco is an Associate Lawyer responsible for the Tunisian office management. His expertise encompasses corporate and commercial work, international cross-border trade in respect to foreign companies operating in and out of Tunisia and in all Arabic Countries (specifically in Maghreb and Mashreq area). Additionally, Giorgio deals with private clients, wealth management and family law. He also provides specialised legal expertise with respect to debt collection, employment, personal injury, professional negligence and Italian immigration matters.

Giorgio graduated at the University of Sassari with a thesis in European law about "European Neighborhood Policy Instrument" drafted in Bruxelles. Giorgio is a legal mediator and a qualified Italian Lawyer who joined Giambrone in January 2012. Giorgio is fluent in Italian, French, English and Arabic.
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AFRICA FOREIGN DIRECT INVESTMENT: INFLOWS, OUTFLOWS AND PROSPECTS[1]

FDI flows to Africa continued to decline in 2016, though by a moderate 3 per cent to $59 billion. Continued robust foreign investment into Egypt boosted inflows to North Africa. In contrast, sluggish commodity prices have diminished economic prospects in Sub-Saharan Africa and tempered investor interest in the sub-region. Flows to Angola – the largest FDI recipient in the continent – were subdued. Despite some recovery from its 2015 lows, FDI to Nigeria and South Africa remained well below past averages. Some diversified producers of East Africa registered strong FDI in 2016, with Ethiopia attracting more inflows than ever before. Multinational Enterprises from developing economies are increasingly active in the continent, but those from developed countries still hold most of the foreign investment stock.

FDI outflows from Africa remained flat, at $18.2 billion (up 1 per cent from 2015). The reduced investments from South Africa, the Democratic Republic of the Congo, Ghana and Nigeria, in that order, were offset by the rise of outflows from Angola, the region's largest investor. Investments from Angola, mainly by the State-owned petroleum and natural gas MNE Sonangol, increased by 35 per cent to $10.7 billion. FDI from South Africa slowed by 41 per cent in 2016 to $3.4 billion, down from a high of $5.7 billion in 2015. Outflows from Nigeria contracted by 9 per cent to $1.3 billion. Outward FDI from North Africa fell by 6 per cent to $1.3 billion, with FDI from Morocco contracting 2 per cent to $639 million. Weak commodity prices and higher borrowing costs (as the value of local currencies fell and interest rates rose) tempered the expansion of many African multinational enterprises. India and the United Kingdom were key targets for cross-border M&A purchases

FDI inflows to Africa are expected to increase by about 10 per cent in 2017, to almost $65 billion, in view of modest oil price rises and a potential increase in non-oil FDI. An uptick in oil prices, if sustained, should help stabilize capital spending in major oil dependent African economies in 2017 and might revive foreign appetites for oil assets, even as capital expenditure remains muted. French oil giant Total has already agreed in 2017 (through its South African subsidiary) to purchase a stake in a development in Uganda led by Tullow Oil (United Kingdom) for $900 million in order to revitalize an ailing project. The launch of a $3.3 billion joint venture by the Africa Finance Corporation, a Lagos-based development institution, and the infrastructure fund of South Africa's Harith General Partners to create one of the biggest pan-African energy companies will further support energy investments in the continent. Africa will need to rely on greater non-oil FDI in 2017, if FDI is to expand amid low commodity prices.

The challenge remains putting policies in place to leverage this FDI so as to diversify domestic productive capacity before the next commodity downturn. Growing inter- and intraregional integration through the signing of economic partnership agreements with Europe by key African regional economic communities in the last years, as well as the negotiations between the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community towards the Tripartite Free Trade Agreement, should foster competitive global integration and encourage stronger FDI flows. The Continental Free Trade Area negotiated under the African Union could also have a significant impact on intra-African FDI flows in the medium term.

1. Excerpt from UNCTAD'S World Investment Report 2017: Investment and the Digital Economy.

FOREIGN INVESTMENT IN ALGERIA UNDERSTANDING THE LEGAL FRAMEWORK

By **Samy Laghouati,** Partner, Gide Loyrette Nouel law firm, Algeria & Tunisia

Algeria has attracted strong interest from foreign investors over the last few years. As a market of 40m people, which boasts substantial energy resources and maintains a steady demand for modern infrastructure supported by signficant public investment, the country appears primed for significant growth in the coming years.

During 2009, in the context of the fallout from the global economic crisis, the country saw a fall in revenues from its oil and gas exports, along with a sharp rise in dividends distributed to foreign investors and in imports of goods and services. The combination of these three factors led to a deterioration in Algeria's balance of payments. The situation prompted the government to amend existing regulations overseeing foreign investment in the country by limiting the maximum permitted participating stake of foreign shareholders in Algerian companies to 49%. The move was intended to shore up the economy.

Known as the "49/51" rule, this restriction applies to any investments made in the sectors of production of goods and services, as well as in the sector of importation.

New Investment Law

Following the adoption in June 2016 by the People's National Assembly ("Assemblée Nationale Populaire") and in July 2016 by the Council of the Nation ("Conseil de la Nation") of the bill relating to investment promotion, Law No. 16-09 on the promotion of investment (the "Investment Law") was published in the Official Gazette of 3 August 2016.

With the exception of certain provisions concerning the National Agency of Investment Development ("Agence Nationale pour le Développement de l'Investissement", ANDI) and the National Investment Council ("Conseil National de l'Investissement", CNI), Investment Law repeals the provisions of Ordinance No. 01-03 on the development of investment.

The legal framework currently applicable to investments is mainly composed of the Investment Law and the Finance Law for 2016, in which a certain number of provisions of Ordinance No. 01-03 have already been reflected, including:

- The "49/51" rule and the obligation for companies majority-owned by foreign investors to comply with such rule, now governed by Article 66 of the Finance Law for 2016;

As regards the "49/51" rule: since the 2009 Complementary Finance Law, Algerian foreign investment regulations provide the limitation of foreign ownership to 49% in any investment. Such "49/51" rule implies the creation of joint ventures in which Algerian partners hold the majority stake.

Non-Retroactivity Of The "49/51" Rule: While the "49/51" rule was clearly applicable to investments realised after the publication of the Complementary Finance Law for 2009, there were doubts as to its application to investments realised before then.

The Complementary Finance Law for 2010 (as subsequently modified, notably by the Finance Law for 2012) and the Finance Law for 2016 clearly provide that "Any modification of the trade register leads to the prior bringing into compliance of the company with the rules governing capital ownership".

However, there are some exceptions to the obligation to comply with the 49/51 rule.

- The obligation to resort to local financing for investments, a softer version of which is currently set out in Article 55 of the Finance Law for 2016;

Such obligation to resort to local financing for investments (excluding the constitution of social capital for companies), which has been relaxed since Article 55 of the Finance Law for 2016, enables Algerian companies to raise foreign financings aiming to the completion of strategic investment subject to prior approval of the government. However, practically, in the absence of regulation implementing such measure, it cannot be applied as is.

Shareholders' loans granted by the foreign partners of Algerian company are possible on the condition that no remuneration is paid to the shareholder in this respect, and to extent that the funds do not remain available to the company for more than three years. After the three-year period, the balance of the shareholders' loans would have to be capitalized in the share capital of the company.

- The privatisation through opening up of state-owned companies' share capital, formerly ruled by Article 4 of Ordinance No. 01-03, is now governed by Article 62 of the Finance Law for 2016.

““The “49/51” rule applies to any investments made in the sectors of production of goods and services, as well as in the sector of importation.”

Main Measures Concerning Foreign Investments
Investment Law clarifies and/or amends certain provisions of the former legislation, namely:

- Modification of the invested capital and investment proceeds transfer guarantee: eligibility is now subject to a capital contribution in cash equal to or in excess of minimum thresholds defined according to the project's global cost. The reinvestment in capital of transferable profits and dividends are considered as external contributions that benefit from the transfer guarantee and contributions in kind are eligible to the transfer guarantee under certain conditions;

- Maintaining the Algerian State preemption right: Article 30 of Investment Law restates the principle that any sale of shares by or to foreign investors is subject to the State preemption right. Investment Law refers to regulations on implementing provisions. Since former Article 4 quinquies of Ordinance No. 01-03, which set out a minima the implementing provisions of this right, was repealed, it seems difficult to apply the State preemption right as is unless reference is made to past practice;

- Clarification concerning the Algerian State's “right to repurchase”: any sale of 10% or more of shares of a foreign company owning an interest in an Algerian company that enjoyed advantages or benefits at the time of establishment, triggers prior information of the State Holding Council ("Conseil des Participations de l'Etat", CPE). Non-compliance with this obligation or the reasoned objection of the CPE, within one month of receipt of information, confers on the State a right to repurchase at most the interests in the Algerian company held by the sold foreign company. In the absence of specifications regarding its implementation conditions, the Algerian State's right to repurchase should not be applicable as is unless reference is made to past practice;

- Competence of the Algerian jurisdictions in the event of disputes between foreign investors and the Algerian State, except where bilateral or multilateral conventions or an agreement including an arbitration clause are in place (Ordinance No. 01-03 related to “competent jurisdictions”).

Recasting the Investment Incentive Regime
After slightly amending the definition of investment, Investment Law provides for a single and prior registration with the ANDI of investments in order to benefit from the advantages provided for by this law:

- Eligibility to the advantages: investments registered with the ANDI and that are not included on the lists of activities excluded from all advantages (“negative lists”), automatically benefit from the advantages provided for by Investment Law, except (i) investments whose amounts is equal to or higher than five billion Algerian dinars (approximately EUR 45,000,000) and which are subject to prior CNI approval; (ii) investments with a specific interest in the national economy and that are subject to the derogation regime of the investment agreement; and (iii) activities with their own regime of advantages (such as the hydrocarbons sector);

- Three levels of advantages: Investment Law makes a distinction between (i) the advantages that are common to all eligible investments; (ii) the additional advantages for privileged activities and/or employment-generating activities; and (iii) the exceptional advantages for projects presenting a special interest for the national economy;

- Nature of the advantages: Investment Law grants advantages whose nature and duration vary according to the qualification of the investment and the implementation stages of the project (completion and operational stages).

“Algeria has attracted strong interest from foreign investors over the last few years. As a market of 40 million people, which boasts substantial energy resources and maintains a steady demand for modern infrastructure supported by significant public investment, the country appears primed for significant growth in the coming years.”

Contributor's Profile
Samy Laghouati is the partner in charge of the Algiers Office which he founded in 2003. He has been exclusively involved in business ventures and investments in Algeria, acting for both public bodies (government agencies and state-owned enterprises) and foreign investors. He mainly handles privatisations, acquisitions, as well as large-scale infrastructure transactions (real estate and energy, water). He assists his clients with every stage of the deals, from the structuring (legal and fiscal) to the execution and following through of the investments.

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MOROCCO: FOREIGN INVESTMENT LAWS AND REGULATIONS

By **Safia Fassi-Fihri,** Managing Partner of BFR & Associés, Morocco

Morocco is a country located in the northwest of North Africa with a population of nearly 33 million inhabitants. Morocco is a constitutional monarchy, in which the sovereign is King Mohammed VI. The Moroccan legal system is based on civil law. While some sections of Moroccan law, family law in particular, are inspired by Islam, commercial law is completely disassociated from it.

Morocco has a strategic geographical location. It is located at the Mediterranean border, at the junction between Africa and Europe. Thanks to the various free trade agreements signed with multiple geographical areas (Arab countries in 1998, the European Union in 2000, Arab Mediterranean countries in 2004, and the USA in 2004), Morocco offers to all its commercial partners and investors access to a market of more than a billion consumers in 55 countries that represent approximately 60% of the global GDP.

Political and economic stability, proactive reforms (administrative, customs, banking, etc.), cost competitiveness, clear and targeted sectoral strategies, massive investments in robust infrastructures, a favorable business environment, strong and stable economic fundamentals: these are factors that allow Morocco to offer a compelling value proposition to its commercial partners and investors and that have allowed Morocco to rise to the rank of one of the most attractive countries in terms of FDI in the African continent. In 2017 Morocco ranked first in Africa in terms of foreign investment[1].

Going forward, Morocco wishes to take advantage of its privileged geographical location and its relationship with its European, American, Middle-Eastern and Mediterranean commercial partners to position itself as an economic and financial hub towards the African continent. An example of this, is the recent creation of the financial platform, Casablanca Finance City Authority (CFCA), which aims to attract foreign investors and provide them with an infrastructure and favorable conditions that will allow them to optimize their return on investment in projects in North Africa, West Africa, and Central Africa.

The Regulatory Framework of Investment of Morocco: The regulation

Investments in Morocco are mainly governed by:

(i) Framework law n°18-95, creating an investment charter that establishes fiscal, financial, property and administrative incentives;
(ii) Law n°44-10, creating the status of "Casablanca Finance City", together with decree n°2-11-323 adopted for the application of law n°44-10 allowing certain financial firms that have activities abroad or certain multinationals wishing to locate their regional or international headquarters in Morocco to benefit from attractive advantages;
(iii) The general instruction on foreign exchange transactions of December 31st, 2013;
(iv) The general tax code;
(v) Various laws governing commercial law: law n°17-95 relating to public limited companies, law n°6-96 relating to limited liability companies, law n°15-95 creating the commercial code, law n°65-99 creating the labor code, decree n°2-13-349 on public procurements, etc.

The Regulatory Framework of Investment of Morocco: Competent authorities

Depending on the type of investment, the competent authority may differentiate between:

Regional Investment Center (CRI): the CRI's main mission is to simplify procedures, especially for the company creation, for the proximity and unicity of partners, and for the development and promotion of investment.

Moroccan Agency of Investments Development (AMDI): the AMDI accompanies and monitors the investors and provides them technical assistance in their investment process in Morocco.

Interdepartmental Investment Commission: presided by the prime minister, this commission is responsible for approving beforehand all contracts between a public entity and a foreign company that result in an investment agreement.

Foreign Exchange Office: the Foreign Exchange Office enacts the measures relating to foreign exchange regulations and controls the foreign exchange operations delegated to the banks. The foreign exchange operations that are not explicitly authorized by the regulation require a special authorization from the Foreign Exchange Office.

The Moroccan Capital Markets Authority (AMMC): the AMMC is the capital markets regulator. The AMMC enacts the rules of professional practice, ethical rules and the technical or practical details of application of laws and regulations. It also examines application files of brokerage companies and Management Company of OPCVM, OPCR and FPCT. The AMMC endorses the information notes of issuers during public offering operations, public offers and buyback programs. The AMMC controls the financial information of the issuers, receives the complaints of the investors about the securities transactions operations and ensures the compliance of securities transactions in order to ensure its integrity.

Supervisory Authority for Insurance and Social Security (ACAPS): the ACAPS is responsible for the regulation and control of activities of insurance, reinsurance and capitalization bodies. The ACAPS grants insurance licenses. Furthermore, certain operations on insurance companies are subject to prior approval from the ACAPS (change of control, sale of more than 10% of shares, takeover of more than 30%, etc.).

Bank Al Maghrib: This is the Moroccan central bank. The Bank ensures the good functioning of the banking system and

1. Africa Attractiveness Survey 2017, Ernst & Young

ensures that the laws and regulations relating to the exercise and control of the activities of credit institutions and similar organizations are applied. Bank Al Maghrib grants approvals for credit activities. It is worth noting that changes affecting the nationality or management of a credit institution or the nature of the operations it usually conducts are subject to the granting of a new license.

Casablanca Stock Exchange: This is a privately owned public limited company (owned in equal parts by the brokerage firms) whose mission is to ensure the functioning, development and promotion of the stock market.

The Competition Council: the competition council monitors compliance with the free competition within the framework of the market economy in order to guarantee the competitiveness of the economic and national fabric. Any transaction that results in awarding to an operator a dominant position (i.e. more than 40% of market shares) will have to be submitted to the competition council's opinion.

The Moroccan Office for Industrial and Commercial Property (OMPIC): the OMPIC is the body responsible for the protection of industrial property (trademarks, patents, and industrial designs) and the maintaining of the Moroccan central trade register.

Invest in Morocco: General principles
There is no obligation in Morocco, as part of a foreign investment, to make such investment with a Moroccan partner. Furthermore, there is no limitation in the percentage of participation that a foreign investor can hold in a Moroccan company. Foreign investors wishing to establish their activity in Morocco can:

- Create a new company;
- Acquire or purchase securities through a capital increase in kind or in cash;
- Set up a representation office or a branch.

Invest in Morocco: Types of companies
The different types of companies/entities in Morocco are primarily:

- Limited liability companies (joint-stock company, simplified joint-stock company, limited liability company);
- General partnerships;
- Branches.

It takes approximately ten days to create a company in Morocco (provided that the application file is complete).

Invest in Morocco: Exchange regulations
Cross-border flows with Morocco must comply with the existing exchange regulations, whose essential principals are that (i) the Moroccan dirham is neither exportable nor freely convertible and (ii) all export of capitals abroad, subject to specific exemption schemes, is submitted to the prior approval of the Exchange Office.

However, Morocco has adopted a system of freely convertible currency for foreign investors that will allow them to freely convert the fruits of their investment (dividends, interests of their shareholders current accounts as shareholders, products resulting from an asset's liquidation, etc.) provided that it has been made in foreign currency in Morocco.

Invest in Morocco: Taxation
The commercial companies in Morocco are mainly subjected, depending on their activities, to the following taxes:

• Corporate tax (standard rate 30%) • VAT (standard rate 20%) • Business tax (between 10% and 20% - exoneration for 5 years) • Income tax (proportional rate between 0% and 38%) • Registration fee (1% for the constitution and increase of capital / 4% for the acquisition of building land or a building / 4% for stock transfer / 6% for stock transfer of a real estate company)	• Land registry fees (1% for the registration of real estate and 1% for the registration of a mortgage) • Local authority services taxes (10.5% of the rental value for properties located in the city and 6.5% of the rental value for properties located in the suburbs) • Stamp duty (20 dirhams) • Customs duties (rate depending on the nature of the asset and the country of origin – the minimal rate is 2.5%)

It is worth noting that the general tax code provides tax incentives and exemptions in some cases, such us the companies granted the Casablanca Finance City status and the companies established in a "free zone". Moreover, Moroccan law provides tax benefits to companies that sign an investment agreement with the Moroccan state subject to meeting the required criteria. Finally, Morocco has signed double tax treaties with many foreign countries.

Special regimes: "Casablanca Finance City" Status
Casablanca Finance City (CFC) is a financial platform created for investors seeking to reach high-growth African markets. It aims to attract foreign investors and provide them with an infrastructure and favorable conditions that will allow them to optimize their return on investment in projects in Africa.

CFC status can only be granted to financial institutions (credit institutions, insurance companies, investment services providers…), professional services providers which carry out the activities of financial offshoring business, specialist financial services, audit and legal, tax, finance, actuary and human resource services and all other professional services activities in relation to the entities referred to above, regional and international headquarters and holding of foreign companies. All this companies must carry out a proportion of their activities with non-Moroccan companies.
Companies registered under "CFC status" would benefit from the following:

- tax exemptions or reductions of the corporate in-come tax from exports (ranging from total exemption during a certain period to 10% exemption as the case may be),
- all individuals working for a company benefiting from CFC status will be subject to a tax rate of 20% (vs. 38%) applicable for a maximum period of five years that will start from the beginning of their assignments.
- the CFC status offers foreign exchange facilitations such as the free management of foreign currencies and fluidity of intra-group cash flows

Invest in Morocco: Social law

The labor code is characterized by its conformity to the basic principles set by international standards as laid down in the UN conventions and its specialized organizations in relation to labor matters. The protected rights include:

- union freedom and the effective adoption of the right to organize and collective bargain
- the ban of all forms of work under duress
- the ban of child labor
- the ban of discrimination in terms of employment and occupation
- wage equality

The minimum wage in Morocco shall not be less than 2350 dirhams per month in the private sector on the basis of a statutory working time of 44 hours per week. Any Moroccan employer wishing to hire a foreign employee must obtain an authorization from the government authority responsible for labor.

Invest in Morocco: Foreign trade

Law n°13-89 on foreign trade recognizes the liberal nature of the national foreign trade policy. It retains as a fundamental principle the freedom of imports and exports of goods and services, except when it comes to safeguarding morality, security and public order, or the health of the people, or to protect wildlife or the national archeological and artistic heritage, or to preserve the external financial position of the country.

Law n°15-09 on trade defense measures sets the rules governing the application of trade defense measures. Trade defense mechanisms establish all the rules and procedures governing the application of the trade defense measures that take the form of:

- antidumping measures: in case of importing dumped products
- countervailing measures: in case of importing products that benefitted from government subsidies in the exporting countries
- Safeguard measures: in case of a massive increase in imports.

Morocco collects customs duties according to the imported goods and their place of origin.

Invest in Morocco: Industrial property

In Morocco, industrial property is an exclusive right that gives its holder the right to enjoy the advantages of the use of the concerned asset. It concerns the following intangible assets:

- Technical creations: patents;
- Ornamental creations: industrial designs;
- Distinctive marks: brands, company names, trade names, designations of origin and geographical indications.

Law n°17-97, as completed and modified by law 23-13, on industrial property protection includes provisions relating to trademarks' opposition system, to the measures at borders in case of import and export of counterfeit products infringing on trademarks in Morocco, to the protection of audible signs and smell marks, as well as to the electronic filing of trademarks. Membership to the main international treaties on industrial property offers Morocco many advantages, namely strengthening its legal framework for the protection of industrial property rights for domestic and foreign investors, and alignment with international standards.

Invest in Morocco: Real Estate

Ownership rights are guaranteed by article 35 of the constitution. While the law can limit its extent and exercise if this is required for the economic and social development of the country, there can be no expropriation except by virtue of a decree justified by public interest and implemented according to strict conditions such as granting a just compensation.

There are in Morocco two real estate protection systems: registered real estate that provides a solid protection to the real estate owner, and unregistered real estate governed by customary law, which provides little protection to the owner. Foreigners are authorized to own real estate in Morocco. However, there remains an exception when it comes to agricultural lands, which require an administrative authorization. This authorization is granted on a discretionary basis according to the nature and duration of the project built on said land. Any transfer of real estate must be done before a notary.

Judicial System and Arbitration: Judicial system

The Moroccan judicial system is based on the right to a second hearing (court of first instance, appeals court, Supreme Court). Considering the slowness and sometimes unpredictability of the decisions, it is most often recommended to foreign investors to include an arbitration clause in their contracts as method of conflict resolution.

Judicial System and Arbitration: Arbitration

Arbitration is a common practice in Morocco, and this occurs mainly:

(i) Within the Moroccan Court of Arbitration created by the International Chamber of Commerce whose mission is to settle by one or three arbitrators any disputes not of an international character which may be submitted;

(ii) Within the International Court of Arbitration of the International Chamber of Commerce Morocco whose mission is to settle by one or more arbitrators any disputes of an international character which may be submitted.

Morocco is a signatory of the New York Convention of 10 June 1958 on the recognition and enforcement of Foreign Arbitration Awards. The enforcement of arbitration awards is subject to the exequatur, which sends it to the administrative court in whose jurisdiction the sentence will be executed or to the Rabat Administrative Court when the arbitration award involves the national territory in its entirety.

Contributor's Profile

Safia Fassi-Fihri is the Managing Partner of BFR & Associés, a leading independent law firm based in Casablanca (Morocco) and part of the African Legal Network. Safia specializes in mergers and acquisitions (listed and non-listed companies, investment funds, etc.), joint-ventures, capital markets transactions and also in financings. Safia also advises real estate or touristic developers in connection with the structuring of investment funds. Safia also takes an interest in corporate governance and socially responsible investments. She practiced law as a lawyer in renowned international law firm in Paris and London before accepting a position as general counsel for a major insurance company in Morocco.

Safia hold a master in business law form the University of Paris II – Assas and is graduated from the "Grande Ecole" program of ESSEC Business School. Safia is fluent in Arabic, French and English.

AFRICAN QUARTERLY GROWTH AT A GLANCE: EXPANSION, CONTRACTION & RECESSION

Botswana's economy grows sluggishly in first quarter of 2017. Botswana's economy expanded 0.2 percent quarter-on-quarter in the first three months of 2017 against 0.1 percent in the final quarter of last year, data from the statistics office showed. The increase in growth in the first quarter of 2017 was due to expansions in trade, hotels and restaurants as well as financial services, while the largest contraction was seen in the mining sector due to closure of copper and nickel mines.

Ghana's economy expands most since 2014 in the first quarter of 2017. Gross domestic product rose 6.6 percent in the three months through March from a year earlier, according to the Ghana Statistical Service. That is the fastest expansion since the third quarter of 2014 and compares with 4.1 percent in the last three months of 2016. Mining and quarrying, which includes oil, surged 33 percent. Agriculture, which accounts for 14 percent of the economy, expanded 7.6 percent.

Morocco's economic growth hits 3.8 percent in first quarter of 2017, compared to 1.6 percent over the same period in 2016, according to the High Commission for Planning (HCP). This growth is due in particular to the significant rebound in agricultural activity, which reached 14.2 percent by the end of March 2017 compared to the 10.9 percent decrease a year ago. At current prices, GDP grew by 4.1 percent. As a result, the increase in the general price level was 0.3 percent instead of 0.1 percent as seen the previous year.

Mozambique's economy grew by 2.9 percent year-on-year in the first quarter of 2017, compared to 3.3 percent over the same period in 2016, according to the National Statistics Institute (INE). The GDP growth was revised from 3.3 percent to 3.8 percent for 2016. The performance of economic activity is attributed primarily to the tertiary sector, which grew by 6.7 percent, with a major highlight in the trade and repair services sector, with growth of around 8.1 percent. In addition, the primary sectors, in turn, had a positive performance of about 4.5 percent.

Senegal's real GDP growth accelerated to 5.1% year-over-year in the first quarter of 2017 from a four-year low of 4.0% in 4Q16, largely because a stronger performance in the trade and transport sectors offset a weaker contribution from agriculture. The latter may contribute less to headline real GDP growth after three strong years, but this is likely to be offset by increased investment in the energy sector.

Tunisia's embattled economy picked up in the first quarter of 2017, and there was a slight fall in unemployment, according to data published by the National Statistics Institute (INS). Economic growth in the first quarter stood at 2.1 percent, slightly above the one percent mark registered in 2016, as GDP grew by 0.9 percent. An up-tick in tourism revenues, agriculture and mining activity, namely phosphates, were among the sectors that contributed to growth. At the same time unemployment dropped slightly to 15.3 percent, compared with 15.5 percent in the previous quarter.

Uganda's economy appears to be on a recovery path after expanding by 2.5% last year. GDP data showed growth of 1.8% quarter-over-quarter in 1Q of 2017, following expansion of 1.4 percent in 4Q of 2016. This improvement largely reflected an increased contribution from agriculture, where output rose 3.4% after four consecutive quarterly contractions. The service sector expanded 2.7% in first quarter, its strongest advance since Q4 of 2014. The service industry should maintain this momentum in 2017. Industrial output rose to 1.9% from -0.9% in 4Q.

Kenya's first quarter 2017 GDP growth slows to 4.7 percent. Kenya's economy expanded 4.7 percent in the first quarter of this year, down from 5.9 percent in the same period of 2016, according to the Kenya National Bureau of Statistics. The quarter's growth was negatively impacted on by drought that emanated from failure of the 2016 short rains and delay in the onset of the 2017 long rains. In addition, a slowdown in credit uptake also slowed economic growth during the period under review.

Namibia's economy contracts by 2.7 percent in the first quarter of 2017, compared to a 4.1 percent growth recorded in the corresponding quarter of 2016. The poor performance is mainly attributed to the construction, manufacturing, wholesale and retail trade and hotels and restaurants sectors that contracted by 44.9 percent, 10.7 percent, 7.4 percent and 9.3 percent in real value added, respectively.

Nigeria's Gross Domestic Product (GDP) has contracted by 0.52 percent in the first quarter of 2017, according to the National Bureau of Statistics. The data which is 0.15 per cent higher than the rate recorded in the corresponding quarter of 2016 represents the fifth consecutive quarter of contraction. Oil GDP contracted by -11.64 per cent, while non-oil GDP grew by 0.72 per cent, its best performance in four quarters.

South Africa slips into recession as economy shrinks in first quarter of 2017. South Africa slipped into technical recession for the first time since 2009 after the economy contracted in the first quarter, led by weak manufacturing and trade sectors. Africa's most developed economy contracted by 0.7 percent in the first quarter after shrinking by 0.3 percent in the fourth quarter of last year, the Statistics South Africa stated. Gross domestic product rose 1.0 percent on an unadjusted year-on-year basis in the first quarter, compared with 0.7 percent contraction in the previous three months.

AFRICAN INFLATION RATE IN MAY: IVORY COAST DEFLATED, MORROCO UNCHANGED

Angola's inflation slowed to 32.58 percent year-on-year in May from 34.8 percent in April, according to the national statistics agency. Price increases on a month-on-month basis slowed 1.6 percent in May compared to a 1.8 percent in April.

Botswana's consumer inflation inched up to 3.5 percent year-on-year in May from 3.4 percent in April, according to the Central Office of Statistics. Inflation eased to 0.2 percent month-on-month compared to 0.7 percent previously.

Burundi's inflation rate relaxed to 18.8 percent year-on-year in May from 19.4 percent in April, according to the Institute of Economic Studies and Statistics. Food inflation rose to 27.8 percent in the year to May, down from 30.2 percent in April.

Egypt's price inflation lowered to 30.9 percent year-on-year in May from 32.9 percent in April, according to the Central Agency for Public Mobilization and Statistics. Also, the annual urban inflation slightly fell to 29.7 percent in May from 31.5 percent in April.

Ethiopia's year-on-year inflation rose to 8.7 percent year-on-year in May from 8.6 percent in April, according to the Ethiopian Statistics Agency. Food inflation rose to 12.3 percent in May from 12.2 percent in April. Non-food inflation also rose to 4.7 percent from 4.6 percent in April.

Ghana's price inflation fell to 12.6 percent year-on-year in May from 13.0 percent in April, according to the Ghana Statistical Services. The month-on-month inflation rate was 0.7 percent in May, compared to 1.6 percent in April.

Ivory Coast recorded consumer price deflation of -0.4 percent year-on-year in May, down from 0.1 percent in April, according to the National Statistics Institute. Food and soft drink prices fell 3.7 percent year-on-year, while housing and utilities prices added 1.9 percent and transport costs fell 0.3 percent.

Kenya's inflation rose to 11.70 percent year-on-year in May from 11.48 percent in April, according to the Kenya National Bureau of Statistics. The inflation index increased by 0.75 per cent from 186.24 in April to 187.64 in May and the year-on-year food inflation rose by 21.52 percent in May.

Malawi's consumer inflation slowed to 12.3 percent year-on-year in May from 14.6 percent in April, the National Statistical Office (NSO) stated. Food inflation decelerated from to 11.2 percent while non-food inflation fell to 13.5 percent year-on-year in May.

Morocco's inflation in May was 0.3 percent, unchanged from a month earlier, the planning agency data revealed.

Mozambique annual consumer inflation eased to 20.45 percent in May from 21.27 percent in April, according to the National Statistics Institute. The main goods which contributed to the decline in prices were tomatoes, lettuce, groundnuts, butter beans, charcoal, and petrol.

Namibia's consumer inflation slowed to 6.3 percent year-on-year in May from 6.7 percent in April, according to the Namibia Statistics Agency. Inflation on a month-on-month basis slowed to 0.1 percent in May from 0.3 percent in April.

Nigeria's inflation price index eased to 16.25 percent year-on-year in May from 17.24 percent in April, according to the National Bureau of Statistics report. Food price index showed inflation at 19.27 percent in May, down from 19.30 percent in April. On a month-on-month basis, the inflation index grew by 1.88 percent in May against 1.60 percent in April.

Rwanda's inflation index fell by 6.5 percent year-on-year in May 2017 against 7.3 percent April, according to the National Institute of Statistics of Rwanda. The monthly index decreased by 0.2 percent in May, mainly due to “Food and non-alcoholic beverages” wich decreased by 0.6 percent.

South Africa's headline consumer inflation rose to 5.4 percent year-on-year in May from 5.3 percent in April, according to the Statistics South Africa. On a month-on-month basis, inflation also inched higher, to 0.3 percent in May from 0.1 percent in April.

South Sudan annual inflation rate increased by 333 percent year-on-year in May 2017 compared to 295 percent for May 2016, according to the National Bureau of Statistics.

Sudan's annual rate of inflation edged to 35.52 percent in May from 34.81 percent in April, as food and energy prices continued to increase following subsidy cuts implemented in November, according to the Central Statistics Office.

Tanzania's inflation slowed to 6.1 percent year-on-year in May from 6.4 percent a month earlier, according to the National Bureau of Statistics of Tanzania (NBS). On a monthly basis, inflation rose by 0.2 percent compared to an increase of 0.5 percent in April.

Uganda's inflation rose to 7.2 percent year-on-year in May from 6.8 percent in April, according to the Uganda Bureau of Statistics. On a monthly basis, inflation was 0.6 percent in May from 0.4 percent in April.

Zambian annual consumer inflation slowed to 6.5 percent in May from 6.7 percent in April, according to the Central Statistics Office (CSO). On a month-on-month basis, inflation fell to 0.1 percent from 0.4 percent

Zimbabwe's inflation rate quickened to 0.75 percent year-on-year in May from 0.48 percent in April, according to the Zimbabwe National Statistics Agency (Zimstat). On a month-to-month basis, prices rose by 0.03 percent from 0.05 percent in April.

AFRICAN EQUITY MARKET INDICATORS AS AT 30-JUNE-2017

Country Name	Index Name	Index at 30-June	1-month % Δ	YTD % Δ	1-Year % Δ	1-Year Low	1-Year High	30 Days Volatility %
Botswana	BSE DCI	9,244	-0.01	-0.02	-0.08	9,006	10,081	1.579
BRVM	IC Comp	262	-0.03	-0.10	-0.15	250	305	26.392
Egypt	EGX 30	13,396	0.00	0.09	0.93	6,982	13,693	12.500
Ghana	GSE ALSI	1,965	0.02	0.16	0.10	1,508	1,966	3.303
Kenya	FTSE NSE15	153	0.03	0.15	0.09	120	156	14.809
Malawi	MSE ALSI	15,773	0.01	0.18	0.20	12,856	15,789	2.687
Mauritius	SEMDEX	2,123	0.02	0.17	0.21	1,738	2,132	4.088
Morocco	MORALSI	12,016	0.04	0.03	0.26	9,501	12,951	7.426
Namibia	Local	1,014	-0.04	-0.05	0.04	938	1,144	13.566
Nigeria	NIG ALSI	33,117	0.12	0.23	0.12	24,547	34,385	24.808
Rwanda	RSEASI	125	-0.02	-0.02	-0.04	124	130	6.298
South Africa	JSE ALSI	51,611	-0.04	0.02	-0.01	48,936	54,717	11.617
Swaziland	SSX ALSI	388	0.00	0.02	0.08	358	388	1.316
Tanzania	DAR ALSI	2,217	0.02	0.01	-0.11	1,979	2,830	27.631
Tunisia	TUNIS	6,023	0.06	0.10	0.14	5,313	6,110	5.119
Uganda	USE ALSI	1,678	0.01	0.14	-0.02	1,331	1,701	12.943
Zambia	LuSE ALSI	4,760	0.01	0.13	0.00	4,010	4,776	6.261
Zimbabwe	IDX (USD)	195.97	0.21	0.36	0.94	98	196	10.932

SELECTED AFRICAN CURRENCY EXCHANGE Vs. US DOLLAR AS AT 30-JUNE-2017

Country Name	Currency Name	Index at 30-June	1-month % Δ	YTD % Δ	1-Year % Δ	1-Year Low	1-Year High	30 Days Volatility %
Algeria	Dinar	107.80	0.00	-0.02	-0.02	107.80	112.17	3.543
Angola	Kwanza	165.69	-0.01	-0.02	-0.02	163.78	169.65	8.042
Botswana	Pula	0.10	0.00	0.04	0.04	0.09	0.10	7.708
CFA Franc	CFA Franc	578.66	-0.01	-0.08	-0.08	577.20	636.39	7.646
Egypt	Pounds	18.12	0.00	0.00	0.00	8.77	19.67	5.161
Ethiopia	Birr	23.25	0.00	0.04	0.04	21.64	23.23	11.510
Ghana	Cedi	4.41	0.03	0.04	0.04	3.78	4.82	9.729
Kenya	Shillings	103.69	0.00	0.01	0.01	100.60	104.18	1.075
Malawi	Kwacha	725.19	0.00	0.00	0.00	704.48	730.00	1.862
Mauritius	Rupee	34.48	-0.01	-0.04	-0.04	34.06	36.50	10.943
Morocco	Dirham	9.64	-0.01	-0.05	-0.05	9.23	10.32	4.894
Mozambique	Metical	60.35	0.00	-0.15	-0.15	55.55	79.38	13.853
Nigeria	Naira	322.25	0.01	0.02	0.02	197.00	350.25	19.861
Rwanda	Franc	841.16	0.00	0.02	0.02	777.53	842.33	10.049
South Africa	Rand	13.07	0.00	-0.05	-0.05	12.31	15.74	16.010
Tanzania	Shilling	2,227.00	0.00	0.02	0.02	2,170.05	2,272.50	1.650
Tunisia	Dinar	2.45	0.00	0.06	0.06	2.09	2.58	20.248
Uganda	Shilling	3,602.25	0.00	0.00	0.00	3,340.00	3,655.41	3.359
Zambia	Kwacha	9,142	-0.0104	-0.08	-0.08	9,123	11,265	7.590

SELECTED AFRICAN GOVERNMENT INTERNATIONAL BONDS AS AT 30-JUNE-2017

Country Name	Maturity	Price at 30-June	Mid-Yield at 31-May	1-month Yield Chg (%)	YTD Price Change (%)	Price 1-Year Low	Price 1-Year High	Amount Outstanding (US$ M)
Angola	12-Nov-25	105.414	8.575	0.324	-0.140	86.206	109.254	USD
Cameroon	19-Nov-25	118.160	6.635	0.110	-0.192	100.807	119.358	USD
Congo	30-Jun-29	81.387	8.507	-0.068	-0.245	63.766	81.661	USD
Cameroon	19-Nov-25	118.160	6.635	0.110	-0.192	100.807	119.358	USD
Egypt	30-Apr-40	94.983	7.330	0.027	-0.091	84.653	100.290	USD
Ethiopia	11-Dec-24	99.127	6.775	0.292	-0.142	87.394	101.633	USD
Gabon	16-Jun-25	99.612	7.014	0.363	-0.112	81.889	102.405	USD
Ghana	14-Oct-30	124.099	7.800	0.067	-0.073	105.696	126.194	USD
Kenya	24-Jun-22	102.514	6.421	0.094	-0.174	91.157	103.937	USD
Ivory Coast	31-Dec-32	96.320	6.329	0.101	-0.077	88.498	101.499	USD
Morocco	11-Dec-42	111.256	4.734	0.014	-0.114	100.880	118.426	USD
Namibia	29-Oct-25	102.977	4.810	-0.053	-0.122	98.076	108.052	USD
Nigeria	12-Jul-23	103.252	5.728	0.268	-0.174	89.886	105.025	USD
Rwanda	02-May-23	103.029	5.999	0.099	-0.103	95.826	103.831	USD
Senegal	30-Jul-24	105.630	5.284	0.051	-0.150	95.636	106.652	USD
South Africa	24-Jul-44	97.375	5.564	0.268	0.017	91.188	116.008	USD
Tanzania	09-Mar-20	105.143	5.391	0.322	-0.024	102.391	106.272	USD
Tunisia	19-Sep-27	109.563	6.925	0.031	-0.063	103.481	110.396	USD
Zambia	30-Jul-27	106.590	8.003	0.223	-0.120	87.692	109.092	USD

Compiled by Capital Markets in Africa