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Contents

Introduction 2

Corruption in Africa: Doom and Gloom, but there are Glimmers of Hope 3

Launch of the Casablanca International Mediation and Arbitration Centre in Morocco 8

Two years of the Kigali International Arbitration Centre: successes to date and challenges ahead 10

Oil and gas in Uganda and Ghana 13

Financial Assistance Rules in Nigeria: time for change? 19

Criminal Liability for Bank Directors? A look at the United Kingdom and South Africa 23

Pari Passu Clauses: A continuing controversy and how it has impacted on the drafting of recent African sovereign bond issues 27

HL advises Farm Africa 30

Hogan Lovells Africa Forum 2015 31

Introduction

Welcome to the April 2015 edition of the Hogan Lovells Africa newsletter.

We start this edition with an article about this year's issue of our Global Bribery and Corruption Review.

We then turn our thoughts to arbitration, and we include two articles about African arbitration centres. In the first of these articles, we consider the launch of the Casablanca International Mediation and Arbitration Centre in Morocco. The second article looks at two years of the Kigali International Arbitration Centre and examines the successes to date and the challenges ahead.

We have the privilege of currently hosting some African lawyers on secondment in our London offices, and the next two articles are provided by three of these secondees. The first of these articles compares the oil and gas industries in Ghana and Uganda. The second article compares financial assistance rules in Nigeria and England.

We continue with another joint article written by associates in our London and Johannesburg offices, comparing criminal liability for Bank Directors in the UK and South Africa. We then take a look at Pari Passu clauses and see how the continuing controversy has impacted on the drafting of recent African sovereign bond issues.

To end this edition we include an article about our work for Sidai, the social enterprise arm of Farm Africa, and then details about the Hogan Lovells Africa Forum to be held in our London office on 22 April 2015.

We hope you enjoy this newsletter, and as always, please get in touch with any questions.

Best wishes

The Hogan Lovells Africa team

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Corruption in Africa: Doom and Gloom, but there are Glimmers of Hope

It is no secret that many African countries are plagued by corruption, which has slowed development, deterred investment and led to widespread distrust of government institutions. What is less well known, however, is that corruption, like almost everything else about Africa, is not nearly as uniform as those of us outside Africa tend to assume.

It is true that, of the 10 countries scored as most highly corrupt in Transparency International's 2014 Corruption Perceptions Index, five are in Africa. Yet it is also true that Botswana, which has had a stable representative democracy since its independence in 1966, has a CPI score similar to that of Portugal, Spain, Israel and Taiwan. Levels of perceived corruption in Rwanda, Namibia and Lesotho are comparable to those in the Czech Republic and Saudi Arabia. Ghana, South Africa and Senegal are all ranked well above the world's second-largest economy, the People's Republic of China. Indeed, 34 African countries were ranked as less corrupt than Russia.

Tackling supply and demand

Africa benefits from a growing number of organizations focused on combating corruption, ranging from NGOs such as Corruption Watch in South Africa to pan-African institutions like the African Development Bank, which set up a Business Integrity and Anti-bribery Initiative with the OECD in 2008. Many initiatives, such as the African Parliamentarians' Network Against Corruption, focus on combating the demand for bribes by promoting accountability, transparency and public participation. There have also been efforts to tackle the supply side of corruption through the introduction of tougher legislation. However, with some notable exceptions, many an anti-bribery law both inside and outside Africa remains a dead letter for want of enforcement.

Africa has been the setting some significant US and UK enforcement actions in recent years:

- **The "Bonny Island" project, Nigeria.** Between 1995 and 2004, a four-company joint venture consisting of Technip SA, Snamprogetti Netherlands BV, Kellogg Brown & Root LLC ("KBR"), and JGC Corp was awarded engineering, procurement and construction contracts valued at over US$6 billion to build liquefied natural gas facilities on Bonny Island, which lies just off the coast of southern Nigeria in the Niger Delta. In a series of FCPA enforcement actions between 2009 and 2012 by the DOJ and SEC against the four joint venture partners, KBR's former and current parent companies Halliburton Company and KBR Inc, as well as Marubeni, the DOJ and SEC secured settlements totaling approximately US$1.3 billion and US$400 million, respectively. To put those fines in perspective, of the 10 largest FCPA enforcement actions of all time, four relate to the Bonny Island project.
- **Weatherford International.** This Swiss-headquartered oilfield services company, with substantial operations in Houston, allegedly employed an agent in Angola who insisted that an FCPA clause be omitted from his consultancy agreement. The agent used bogus work orders and invoices to conceal bribes that secured the renewal of a lucrative oil services contract for Weatherford in Angola. Weatherford agreed to pay US$65.6 million to the SEC and US$87 million to the DOJ.
- **Layne Christensen Company.** A Texas-headquartered global water management, construction, and drilling company settled charges that it made payments to officials in Mali, Guinea, and the Democratic Republic of the Congo (DRC) to reduce its tax liability. It also allegedly made payments to customs officials in Burkina Faso and the DRC to avoid paying customs duties and obtain clearance to import and export its equipment.
- **BAE Systems plc.** As part of its 1999 contract to supply the Tanzanian government with a radar defense system for Dar-es-Salaam International Airport, BAE paid around US$12.4 million to two companies owned by a local businessman, admitting it was aware that this money would likely be used to influence local officials on BAE's behalf. BAE was only fined £500,000, but that was in light of its agreement to make an *ex gratia* payment for the benefit of the people of Tanzania of £30 million, less the fine. In sentencing BAE, the judge also had regard to the fact that the Group had committed itself to a process of change following a report produced by a committee led by Lord Woolf, a senior former judge. It is worth taking into account that BAE also agreed to pay a US$400 million fine to the DOJ for its criminal conduct in Saudi Arabia and several European countries.

- **Oxford University Press.** Between 2007 and 2010, two subsidiaries of OUP made payments to government officials for contracts to supply school textbooks in Kenya and Tanzania. The bribes were uncovered as part of a World Bank investigation, as two of the contracts in question had been financed by the World Bank. Following a High Court action brought by the SFO, OUP was ordered in 2012 to pay £1.9 million under a civil recovery order. The company also agreed to contribute £2 million to not-for-profit organizations for teacher training and other educational purposes in sub-Saharan Africa.

A mixed picture
Given the variations in how anti-bribery and corruption enforcement is carried out across the continent, we focus below on six countries that are currently on the business radar in most multinational corporations. We have drawn on both the expertise of our lawyers with active practices in Africa, as well as the assistance of local law firms with whom we work closely, including FB Attorneys in Tanzania, Aluko & Oyebode in Nigeria, AB & David in Ghana, and Hamilton Harrison & Mathews (incorporating Oraro & Co) in Kenya.

South Africa
South Africa has an elaborate framework of policies, laws and mechanisms intended to ensure that bribery and corruption are dealt with as effectively as possible. Key pieces of legislation include the Prevention and Combating of Corrupt Activities Act and the Prevention of Organized Crime Act. These criminalize both public and private sector bribery inside the country, as well as bribery of foreign officials by South African persons outside the country. South Africa has a tough corporate liability regime. There is also ancillary legislation such as the Asset Forfeiture Act that provides for the confiscation of the proceeds of crime, and the Protected Disclosures Act that protects "whistleblowers."

Despite a well-developed framework of policies, laws and enforcement agencies, corruption continues to be a significant problem in South Africa. Amongst the reasons for this are:

- non-compliance with the established framework
- the widespread appointment of inexperienced managers and personnel, as well as high staff turnover;
- the legacy of apartheid;
- the absence of coordination of the overall anti-corruption effort; and
- fragmentation of anti-corruption efforts.

An extensive range of entities are tasked with dealing with allegations of bribery and corruption in what has been referred to as the "Multi-agency Anti-corruption system." These include the South African Police Service's Directorate for Priority Crimes Investigations, the Asset Forfeiture Unit and the Financial Intelligence Centre. A key role is also played by the Office of the Public Protector, currently under the leadership of Advocate Madonsela. In March 2014, Advocate Madonsela published a report chastising the president, Jacob Zuma. She has received widespread international recognition for her efforts in fighting bribery and corruption, including Transparency International's 2014 award for integrity.

Given the challenges presented by corruption in South Africa, it is highly recommended that any businesses intending to conduct business in South Africa, or enter into any third-party relationships with entities in South Africa, obtain prior legal advice from suitably qualified and experienced local lawyers.

Tanzania
The core legislation dealing with corruption issues in Tanzania is the Prevention and Combating of Corruption Act, 2007 (PCCA). The PCCA was enacted to implement the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption. It also seeks to bring together anti-corruption institutions, expand the range of corruption offenses and address private corruption in the private sector. Under the PCCA, corruption is designated as an economic offense. Economic crimes are punishable by imprisonment, and corruptly acquired assets are subject to confiscation.

The Prevention and Combating of Corruption Bureau (PCCB), a body established by the PCCA, is the lead enforcement agency. Most cases investigated by the PCCB concern low to mid-level government officials. Senior government officials have only rarely been targeted. The number of prosecutions and convictions has been rising steadily over the past decade, as has the value of asset seizures which totaled nearly 38 billion Tanzanian shilingi (approximately US$22 million) in the first half of 2014, more than in the previous five years combined.

In late 2008, Tanzania saw the first ever major court cases on corruption, with prosecutions of individuals whose companies allegedly siphoned funds from the Central Bank of Tanzania (BOT), along with several Bank employees. Two former ministers also faced corruption charges. In May 2010, the former BOT Director of Personnel and Administration, Amatus Liyumba, was sentenced to serve two years in prison for abuse of office in connection with construction of the BOT headquarters. This conviction marked the first in the grand corruption cases.

According to "The Report of the Presidential Commission of Inquiry Against Corruption of 1996", commonly known as "The Warioba Report", government procurement of goods and services, allocation of permits for hunting and mining, and large public contracts particularly in road-building and public construction are sectors particularly prone to corruption. Other areas identified by the 2013 "Investment Climate Statement-Tanzania" by the Bureau of Economic and Business Affairs include privatization, taxation, energy generation and customs clearance. Corruption in taxation is a serious issue with major taxpayers claiming that other large companies with poor governance are left untaxed.

Nigeria

Nigeria has multiple statutes containing anti-corruption provisions and/or establishing institutions tasked with investigating and prosecuting relevant offenses. Key anti-bribery statutes include the Penal Code and the Criminal Code Act, which apply to the Northern States and the remainder of Nigeria, respectively, and the Corrupt Practices and Other Related Offenses Act. The Economic and Financial Crimes Commission Act and the Money Laundering (Prohibition) Act set out related offenses relating to money laundering and fraud.

Both individuals and companies used as conduits for criminal conduct can be prosecuted. Nigerian law does not differentiate between facilitation payments and other forms of bribery.

The two principal agencies tasked with combating corruption are the Independent Corrupt Practices Commission (the "ICPC") and the Economic and Financial Crimes Commission (the "EFCC"), of which the EFCC is the more active. In 2013, the EFCC prosecuted 533 cases and secured 177 convictions for offenses ranging from money laundering and conspiracy to commit economic and financial crimes to abuse of office.

The EFCC has had difficulties in pursuing individuals with political connections. In 2007, during

a money-laundering investigation into James Ibori, the former governor of Delta State, the then head of the EFCC, Mallam Nuhi Ribadu, alleged that Mr Ibori had offered the EFCC a large sum of money to drop the investigation. Shortly afterwards, Mr Ribadu was removed as head of the EFCC. Mr Ribadu's successor, Farida Waziri, left the post in December 2011 after describing corruption as the biggest threat to Nigeria's economy and national security. EFCC prosecutions are often frustrated, or at least considerably delayed, by the tactics of defense attorneys who commonly make preliminary applications to stay proceedings.

The ICPC has prosecuted a number of cases involving former governors, ministers, high court judges and other top public officers. Some have been unsuccessful despite overwhelming evidence indicating corrupt practices. The ICPC has also not successfully prosecuted any private sector entities or organizations. The EFCC, on the other hand, has had success in prosecuting organizations in the private sector.

Senegal

Senegalese law criminalizes bribery of local public officials, but does not currently criminalize the bribery of foreign public officials. Senegalese law does not provide for the criminal responsibility of legal persons for corruption offenses.

Senegal has a solid institutional framework designed to combat misconduct in public office.

The Court for the Suppression of Illicit Enrichment (*Cour de répression de l'enrichissement illicite*), comprised of a specialized prosecutor, investigating judges, and a trial chamber, was set up in 1981 to exercise exclusive jurisdiction over cases of illicit enrichment and related corruption offenses in the public sector. The Court's Prosecutor can require individuals suspected of illicit enrichment to demonstrate the lawful origin of their income. If the person concerned fails to do so, the case is forwarded to the Commission of Investigation, which may decide to bring charges.

The National Office for the Fight against Fraud and Corruption (*Office national de lutte contre la fraude et la corruption*), an administrative body established in December 2012 and tasked, *inter alia*, with investigating and referring corruption cases to the judiciary for the purpose of prosecution, is now fully staffed and took up its first case in July 2014.

Senegal's government has taken significant steps to tackle corruption in the public sector. Proceedings have been initiated before the Court for the Suppression of Illicit Enrichment against Karim Wade, a former government minister and the son of former President Abdoulaye Wade. The Court is also seised of a complaint by society representatives against Mariéme Faye Sall, the wife of incumbent President Macky Sall, concerning allegations of bribery by a Moroccan bank.

Ghana

Anti-corruption provisions are scattered across several pieces of legislation. Most laws focus on corruption and economic crime in the public sector. The Criminal Offences Act 1960 sets out the offenses of active and passive bribery of public officers. The Economic and Organized Crime Act 2010 established the Economic and Organized Crime Office (the "EOCO"), a specialized government agency mandated to monitor, investigate and, on the authority of the Attorney-General, prosecute any offense involving serious financial or economic loss to the state. Pursuant to the Anti-Money Laundering Act, the Financial Intelligence Centre is responsible for monitoring and detecting suspicious financial transactions.

The government has recently published a Code of Ethics for Ministers & Political Appointees. Under the Code, gifts exchanged during an official visit are to be deemed as gifts to the office and not the government official. Gifts may only be retained by the official if the value is not more than GH 200 (US$60) and any gift exceeding GH 500 (US$151) must be relinquished when leaving office.

The Constitution mandates the Commission on Human Rights and Administrative Justice (the "CHRAJ") to investigate complaints of corruption and abuse of power by public officers. The CHRAJ has investigated a number of high-level cases that have been successfully prosecuted in the courts.

The Criminal Investigation Department of the Ghana Police Service has the mandate to carry out investigations based on complaints/allegations made by the public, which are forwarded to the office of the Attorney General for prosecution. In recent times, EOCO has also carried out investigations and prosecuted offenses in the courts involving serious financial and economic loss to the state.

Kenya
The principal statute establishing the Kenyan legal regime on corruption and bribery is the Anti-Corruption and Economic Crimes Act, 2003 (the "ACECA"). The ACECA provides for the prevention, investigation and punishment of corruption, economic crimes and related offenses.

The Ethics and Anti-Corruption Commission Act, 2011 establishes the Ethics and Anti-Corruption Commission (the "EACC") whose function is to investigate corruption and economic crimes. The EACC also has the power to institute and conduct proceedings in court for purposes of the recovery or protection of public property.

Another important piece of legislation in this context is the Proceeds of Crime and Anti-Money Laundering Act, 2009. This introduces measures against the transmission and use of the proceeds of crime. It provides a framework for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime.

Under the Public Officer Ethics Act, a public officer may only accept a gift if it is a non-monetary gift that does not exceed the value prescribed by regulation, which is currently 20,000 Kenya Shillings (US$220). Gifts from relatives and friends may be accepted if given on a special occasion recognized by custom.

Over the past five years, there has been increased enforcement action culminating in civil and criminal proceedings against public officials. This has demonstrated the increasing public pressure exerted on the executive branch to demonstrate that it is taking a tough stand against corruption.

However, the only notable prosecution that has resulted in a conviction is that of a former permanent secretary in the Ministry for Tourism and Wildlife in September 2012 for conspiracy to defraud the ministry of 8.9 million Kenya Shillings (US$100,000). She was sentenced to four years' imprisonment. The former managing director of a related para-statal organization was also convicted on similar charges and sentenced to three years' imprisonment.

Putting anti-corruption compliance into practice in Africa: understanding the lingo is key
As is true elsewhere in the world, corruption in African countries has its own slang. The terminology used is frequently ambiguous, with the result that the corrupt nature of the transaction may be disguised, the practice legitimized, or its corrupt nature overlooked.

In some languages used in Africa, the size and significance of a payment may be deliberately downplayed. In Egypt, one might offer "*ashaan ad-dukhaan*", literally "something for your cigarettes." In Kenya, the Kiswahili term "*kitu kidogo*" literally translates as "small things." Another common theme is to use words for food or drink. In Angola and Mozambique, the Portuguese word "*gaseoso*" literally means "soft drink". In Nigeria, "*kola*" (i.e. kola nut) should not be confused with the soft drink of which it was once an ingredient. In Francophone Africa, the expression "*tarif de verre*" or "price of a glass" seems similarly innocuous. Even the word "*chai*", literally "tea", can have a less wholesome connotation when used in East Africa.

For multinational companies with a mix of expats and local employees, considerable care needs to be taken to ensure that linguistic and cultural misunderstandings do not lead to legal problems. Managers risk being unaware that subordinates are seeking reimbursement for a bribe, and accountants may misclassify payments. There are a number of simple, practical ways that companies can work around these problems. Compliance policies and training materials should not only be translated, but also incorporate local dialects and idiom. Scenarios used to develop and test employees' understanding of anti-bribery laws should be adjusted to reflect the realities that they will face in their day-to-day interactions. Requiring receipts from local officials may assist in shedding light on the true nature of the payment that is being requested. Finally, should it be necessary to investigate alleged bribery violations, search terms should include local slang terms.

If you would like to read the full Global Bribery and Corruption Review 2014, you can access it by using the following Internet address: http://viewer.zmags.com/publication/8df5c238#/8df5c238/1

Alex Hohl
Senior Associate, London
T +44 20 7296 5957
alex.hohl@hoganlovells.com

Michael Roberts
Partner, London
T +44 20 7296 5387
michael.roberts@hoganlovells.com

Launch of the Casablanca International Mediation and Arbitration Centre in Morocco

The Casablanca International Mediation and Arbitration Centre (CIMAC), officially launched in late 2014, aims to bring a modern and streamlined alternative dispute resolution system to Morocco. Coming in addition to the modernisation of the mining regulations, the centre provides mining investors in the region with a credible and well-supported dispute resolution mechanism which may be used widely as an alternative to the local courts.

With eighty-five per cent of the world's phosphate reserves located in this part of Africa, as well as significant reserves of iron ore and uranium, mining companies are among the region's largest investors. Arbitration is generally viewed as the most appropriate forum for the resolution of disputes arising from these investments. Indeed, the Office National des Hydrocarbures et des Mines, or ONHYM, has standard form templates for mineral exploration and sale which provide for the arbitration of disputes, with Morocco as the venue. The streamlining of arbitration in Morocco can therefore only assist in providing mining investors, through such ONHYM contracts or otherwise, with efficient recourse. As can be seen from high profile disputes elsewhere in Africa, such as the pending arbitrations involving Rio Tinto and Vale's investments in Guinea or Randgold Resources in Mali, there is a material risk of disputes in such investments, and the efficiency of the forum inevitably has a significant impact.

The launch of the CIMAC builds on steps already in progress in Morocco's development towards an efficient arbitral venue. The State has already reformed its legislation and can boast a modern law on international arbitration and mediation, based on widely accepted UNCITRAL model principles. It is also a party to both the New York Convention, facilitating the enforcement of arbitral awards, and the World Bank's ICSID Convention, allowing investors recourse against the State if international investment protection law is not respected. The CIMAC will go one step further in enabling disputes based in Morocco to be run efficiently, while at the same time raising awareness of arbitration and thereby assisting in the reduction of interference by the local courts. The Centre has the capacity to deal with arbitrations in Arabic, English and French, and its gateway location between the EU, Africa and the Middle East may even be significant within the wider region, providing a potentially valuable compromise venue for parties doing business between these regions.

At the CIMAC's launch, the Moroccan Prime Minister Abdelilah Benkirane highlighted the importance of a neutral dispute settlement institution, independent from the court system, particularly in terms of efficiency. As he observed, "the Moroccan court system, like everywhere in the world, is characterised by the slowness of its procedures, something which is not compatible with the exigencies of the business world; hence the importance of a developed arbitral system". Further encouragement to potential users comes from the institution's aim to be fully international, including a substantial number of foreign individuals on its list of arbitrators and even the appointment of a foreign president to its arbitral court.

The launch of the CIMAC is part of the wider plan of King Mohammed VI to make Morocco a regional focal point for business, with the reform of the mining laws and the establishment of the Casablanca Finance City some of the headline projects in the aim of establishing Morocco as an efficient and stable place to do business. Certainly, the launch of the centre, in providing a viable option for the resolution of disputes, may assist all investors in the region, in the mining sector or otherwise.

Laurent Gouiffes
Partner, Paris
T +33 1 5367 2366
laurent.gouifdes@hoganlovells.com

Thomas Kendra
Counsel, Paris
T +33 1 5367 1826
thomas.kendra@hoganlovells.com

Two years of the Kigali International Arbitration Centre: successes to date and challenges ahead

The Kigali International Arbitration Centre (KIAC) was launched in May 2012, aiming to bring a new alternative for dispute resolution in Rwanda, one of the most economically successful countries in Africa, and to become a go-to centre for arbitration in the region. Two years on from the launch, following a recent visit by KIAC Board member Thomas Kendra, we consider the development of the new Centre and its successes, as well as the hurdles which still await the KIAC.

The development of the KIAC

The KIAC has developed quickly over its first two years of operation under the guidance of the Secretariat, headed by the Secretary General, Mrs Bernadette Uwicyeza, and Registrar Thierry Ngoga. It has notably already received a number of cases which are administered both under its own rules, which are applicable in English, French and Kinyarwanda, and the UNCITRAL Rules. The Centre's activities have divided into three main areas.

First, opening in a country with no particular culture of arbitration, the KIAC has focused on initiatives to raise awareness not just of the Centre but of arbitration generally. This has included a broad publicity campaign using all available media, appearing on talk shows and participating in documentaries on Rwandan television, making radio appearances, assisting with newspaper articles and circulating a bi-weekly online newsletter. The Centre has organised a series of industry focused seminars, with individual sessions tailored for representatives of the construction industry, accountants, financial institutions and industrialists. As those likely to be responsible for referring disputes to arbitration, the legal sector also needed bringing on board, and the Centre has arranged a series of symposium style discussion sessions, at which Thomas has spoken, allowing local lawyers and members of the judiciary a forum in which to discuss and raise their own questions.

This profile raising has also spread to the international arbitration community. The KIAC's first two annual international conferences have attracted participants from around the world to Kigali, including renowned figures from the arbitral community.

Secondly, the KIAC has put in place a broad system of training. This was not only a practical necessity as there was a shortage of qualified arbitrators in Rwanda, it also encourages an arbitration culture. The KIAC therefore invested in subsidised training; indeed, rates were so favourable that attendees came from throughout the East African Community and even the USA. From less than a handful at the time of KIAC's launch, Rwanda now boasts 250 Associates of the Chartered Institute of Arbitrators.

Thirdly, all arbitration institutions need a venue, and KIAC has invested time and resources in finding the perfect location for its headquarters. This search is now over, following the purchase in 2014 of a building in the hills of the Kacyiru district of Kigali, where many embassies are located. The building, a local mansion, is currently being refitted, and once completed will provide attractive, purpose designed facilities, with two fully-equipped hearing rooms as well as space for hosting events. These new headquarters provide a real boost for the Centre to build on as it enters its third year.

The success of the KIAC

Thanks to its growth and sustained development, the KIAC has already successfully registered twenty four arbitration cases in the past two years. This is a great success considering the amount of time it takes for arbitration centres to establish themselves, by first being inserted in parties' contracts and then referred to when a dispute arises. A brief review of these cases gives an indication of the principal areas that can be expected to provide the KIAC's business. Three particular trends have so far emerged.

First, while the arbitrations registered have involved disputes in a range of sectors, including for example the fields of energy, mining and pharmaceuticals, over a third have concerned the construction sector. This may well be a trend that continues. The government has publicised its ambitious plans for the development of Kigali, involving heavy investment in transport and infrastructure, the redevelopment of up to 70% of Kigali's homes and a population that is expected to triple by 2040. In these circumstances, construction disputes will continue to arise, and the Centre will have more opportunities to hone its expertise in this area.

Secondly, while the majority of the arbitrations have involved local parties, four have been international arbitrations with a party, or in one case both parties, from outside Rwanda. There have thus been parties from Kenya, Senegal, South Africa, Pakistan and the USA arbitrating before the KIAC. This means that around 20% of the arbitrations are international at this stage and this is likely to increase as the Centre builds its reputation and as Kigali continues developing as a regional hub. Recent measures such as the introduction of free entry visas for all African citizens can only help in this respect.

Thirdly, two-thirds of the KIAC's cases to date involve a Rwandan governmental entity as one of the parties. This is perhaps unsurprising as, at least in this early period, it is often in contracts with governmental entities that the KIAC may arise as a compromise position, between investors wishing to avoid the local courts and obtain an internationally enforceable award, and local institutions wishing to remain local and keep costs down. This too may well continue, as on the one hand the government continues to support the Centre, and on the other hand the Centre is demonstrating its neutrality. Indeed, the outcomes of such cases so far will give encouragement to investors when considering whether to accept a KIAC clause. Of the cases in which an award has been rendered, the majority have not only been decided against the state entity, but have also gone on to be enforced voluntarily.

The efficiency of the proceedings is worth noting. As is usual, many cases have not proceeded all the way to an award, but where awards have been rendered the procedures have taken an average of six months, with one emergency arbitration resulting in an award in less than one month. These statistics all suggest a healthy, successful start to the Centre's case management.

The challenges still ahead

Although the KIAC has overcome many initial hurdles in its first two years, with awareness of arbitration increasing and a caseload developing, the work by the Secretariat and the support from Hogan Lovells is far from over. The KIAC needs to remain competitive and innovative, continuing to persuade stakeholders to use arbitration and establish itself as the choice for dispute resolution in commercial contracts.

One of the principal issues that will continue to be a subject of the Centre's considerations is financing. Various sources of income may contribute towards the KIAC's financial security. First, the gradual increased caseload will assist through the recovery of arbitration costs. Secondly, the purchase of the new headquarters to house the KIAC will not only save money going forward as compared to renting office space, but may also become a source of income as a purpose designed hearing centre as well as for hosting training and conference events. Thirdly, the KIAC will aim to continue benefiting from contributions to training and conferences – its principal source of income at this stage. While these sources of revenue remain in their early stages, however, the team at the KIAC Secretariat continue to have their work cut out on fund raising initiatives.

The KIAC remains in a prime position in prosperous Rwanda. The country is ranked third in Africa by the World Bank for Ease of Doing Business, behind just Mauritius and South Africa, and is amongst the very highest (7th worldwide) for efficiency of government and public institutions, ahead of many western nations. Economic growth continues at levels around 8%, as it has done since the 1990s, with industry growing even more rapidly. This strong and stable economic base, favourable legislative environment and geographical situation at the heart of the East African Community has allowed the KIAC to make the most of the opportunities available and should help support its further development and expansion.

In a country which has undergone a rapid recovery and become a symbol for East African business success, in aiming to develop an arbitration culture basically from scratch the KIAC's offer of a modern dispute resolution forum nevertheless remains an ambitious project. The KIAC has started off on a firm footing, notably with the purchase of a permanent hearing centre and the administration of over twenty arbitrations, but it remains a young venture and challenges remain. Yet, with the Rwandan economy continuing to grow, the future seems bright for the KIAC.

Thomas Kendra
Counsel, Paris
T +33 1 5367 1826
thomas.kendra@hoganlovells.com

Catherine Dunmore
Associate, Paris
T +33 1 5367 3848
catherine.dunmore@hoganlovells.com

Oil and gas in Uganda and Ghana

Interest in Africa as a destination for investment is growing at a fast and steady pace. The excitement over Africa by investors is based on fundamental economic factors that have been trending upwards over the last few years. The discovery of oil and gas in countries like Uganda in East Africa and Ghana in the West African sub regions has attracted a lot of investors into the continent.

This article focuses on the regulatory framework, taxation, business opportunities for foreign investors and local content requirements for both Uganda and Ghana.

Regulatory Framework

Uganda

The oil and gas sector is guided by the National Oil and Gas Policy 2008. In 2013, two laws, namely; the Petroleum (Exploration, Development and Production) Act and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act were enacted to regulate the upstream and midstream sectors respectively.

The principal role of the Petroleum (Exploration, Development and Production) Act, 2013 is to lay a framework for the regulation of petroleum exploration, development and production.

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 provides for the regulation of midstream operations in Uganda and enabling the development of gas conversion, pipelines, transmission pipelines and other midstream storage facilities and promoting state participation and national content in midstream operations. The Ministry of Energy has indicated that the Regulations under the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act), 2013 are being finalized and will be completed by end of August 2015.

Regulatory Bodies

The law establishes the Petroleum Authority of Uganda as the regulatory body and the National Oil Company to hold the state's commercial interests in oil. The Petroleum Authority is in the process of formation as well as the National Oil Company. It is estimated that these two critical entities will be in operation by the end of August 2015.

Ghana

Constitution

The Constitution of Ghana being the fundamental law of the land vests all natural resources including oil and gas resources in the President of the Republic of Ghana for and on behalf of the people of Ghana. Thus, the right for one to explore and develop such resources is subject to agreement or licence granted by the government and approved by Parliament. Parliamentary approval is required because the Constitution requires all petroleum agreements to be ratified by Parliament. Parliament may exempt particular transactions or agreements from ratification subject to a resolution of at least 75 per cent of the members of Parliament.

Regulatory Bodies

The Ghana National Petroleum Corporation Act 1983 (PNDCL 64) established the Ghana National Petroleum Corporation (GNPC) as the national oil company to oversee activities in the upstream oil and gas sector. It is currently a commercial operator and the holder of government interests in petroleum operations in Ghana whilst the Petroleum Commission set up under the Petroleum Commission Act 2011 (Act 821) acts as the regulator of the upstream sector with the object to "regulate and manage the utilization of petroleum resources and to coordinate the policies in relation to them".

Grant of Licence

The Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) regulates the grant of licences for the upstream oil and gas sectors and the exploration and production of petroleum in Ghana. Under this law, and in accordance with the Constitution, any person who intends to engage in the exploration, development and production of petroleum is required to enter into a petroleum agreement with the government of Ghana and the GNPC. However there is currently no specific competitive bidding process in the industry hence current petroleum agreements have been based on proposals submitted by entities interested in such activities. The essential terms for a petroleum agreement are however set out in the law.

Other Laws

The Petroleum Income Tax Law 1987 (PNDCL 188) and the Internal Revenue Act, 2000 (Act 592) as amended regulates the taxation regime for the sector.

The Petroleum (Local Content and Local Participation) Regulations 2013 (L.I. 2204) seeks to promote the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country. The law focuses on ensuring maximum participation of indigenous Ghanaians, increased local capacity and also safeguards the interest of foreign participants.

The Petroleum Revenue Management Act 2011 (Act 851) provides a regime for the collection, allocation and management of petroleum revenue in a transparent, accountable and sustainable manner for the benefit of Ghanaians. The law sets up a Petroleum Holding Fund and provides that there be a direct transfer of monthly revenues generated from the sector to the Fund.

Pending legislation: the Petroleum (Exploration and Production) Bill has been approved by cabinet and is to be presented to Parliament.

Both jurisdictions

In addition to local laws, both Uganda and Ghana are parties to the following international treaties Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other states, and have signed and ratified bilateral investment agreements and double taxation agreements with various countries including the United Kingdom. This is a boost to investor confidence.

Taxation

Uganda

The main laws governing tax in Uganda are; Income Tax Act Cap 340, The Value Added Tax Act Cap 349 and The East African Community Customs Management Act 2004.

The Government of Uganda is planning a major reform of the tax laws in the upcoming budget to incentivise investors in the extractive industry including the oil and gas sector. Some of the proposals expected are removal of VAT on all imports, inputs and supplies by oil and gas companies and their suppliers to create a VAT neutral system for investors in this sector. VAT is currently taxed at a rate of 18%.

Withholding tax is deducted at source on specified payments both to residents and non-residents.

Capital gains tax

This tax is charged when there is a disposal of an asset and the entity that disposes makes a gain. The gain is treated as income which is taxed at 30%.

Tax implications for offshore companies

Offshore companies doing business in Uganda are liable to taxation in Uganda either as residents who for tax purposes are defined as persons resident in Uganda for 180 days or as non-residents.

As residents, the companies pay Corporate Income Tax at 30% on their profit after applying all allowable deductions and as non-residents, the Uganda entity paying them is required to withhold tax at 15% off their gross payment.

There have been on-going tax disputes over the disposal of assets. This would have to be the subject of a further article.

Ghana

Taxation of activities in the upstream oil and gas sector is regulated under the Petroleum Income Tax Act 1987 (PNDCL 188). Under this law, income tax is assessed at 50 per cent of the chargeable income or as provided in the tax payers' petroleum agreement. The prevailing rate in recent petroleum agreements is 35 per cent.

Income tax is calculated net of all expenses that are incurred in the petroleum operations. The allowed deductions include rental fees, royalties, interest on fees and loans , maintenance expenses, repair or alteration of machinery, debts directly incurred in the conduct of petroleum operations, contributions to pension or provident funds approved by the Petroleum Commission, capital allowances (determined by law) and losses from the previous year of assessment. Expenses that are not allowed are provided in the law.

Resident and non- resident companies are required to pay tax on income relating to business and investment derived from, accrued in, brought into or received in Ghana. Thus tax will be payable on gains made on realization of chargeable assets by an offshore company. In terms of capital gains tax, the Internal Revenue Act, 2000 (Act 592) has been amended to make chargeable assets disposed of in petroleum operations taxable at a rate of 15 per cent.

Opportunities for foreign investors

Uganda

Licensing Round 2015

The Government of Uganda announced its first licensing round on February 26th 2015. This licensing round will cover six blocks in the Albertine Graben. There is an estimated 6.5 billion barrels of in place petroleum resources from exploration work in less than 40% in the Albertine Graben. Currently, less than 10% of the Albertine Graben is licensed.

The six blocks are; Ngassa (410 Km2) in Hoima District, Taitai & Karuka (565 Km2) in Buliisa District, Ngaji (895 Km2), Rukungiri & Kanungu Districts, Mvule (344 Km2) in Moyo and Yumbe Districts together with Turaco (425 Km2) and Kanywantaba (344 Km2) in Ntoroko District.

Requests for Qualification (RFQ) for the First Licensing Round for Petroleum Exploration in Uganda are published. The qualified firms from this RFQ will be issued a detailed request for bids together with the Model Production Sharing Agreement (PSA) for the specific blocks. Companies submitting the best evaluated bid for each of the blocks will proceed to negotiations with Government prior to signing production sharing agreements. The licensing round is expected to conclude with the award of licenses by the end of 2015.

Currently, three international oil companies, Tullow Uganda Operations Pty Limited, Total E&P Uganda and China National Offshore Oil Corporation (CNOOC) Uganda Limited are licensed in Uganda's Albertine Graben.

Development of First Greenfield Refinery

In 2012, an advisory team was commissioned to advise the Government of Uganda on the USD 3 billion development and financing of Uganda's first ever oil refinery of 60,000 barrels capacity. Katende, Ssempebwa and Company Advocates was retained as the resident legal expert. RT Global was selected as the Preferred Bidder. The refinery will be developed as a Public Private Partnership, where the Government of Uganda will contribute 40% and the Investor will contribute 60%. The refinery will require engineering, procurement, construction and transport support, technology providers, operation and maintenance support, wholesale off-takers and financial support.

Development of Crude Export Pipeline

In January 2013, the Governments of Uganda and Kenya announced plans to construct a pipeline from the oil rich region in western Uganda to western Kenya. Due to the waxy nature of the oil, the pipeline will be heated and will utilize pump stations along the way. After completion, the pipeline will hold a world record for the longest heated pipeline. Already, the Governments have procured a pre-FEED consultant to advice on routing of the pipeline. A lot of support similar to the support required for the refinery above is also required to develop the pipeline infrastructure.

Infrastructure Development

At the production phase technical support, field service equipment and infrastructure development will be required.

Some of the proposed and ongoing infrastructure developments to promote the oil and gas industry under Public Private Partnerships are; reactivating the main railway system, design and construction of a new Airport in the oil rich region in Hoima, development of storage facilities and petrochemical industries etc.

Ghana

There are various investment opportunities for foreign investors who seek to invest in the oil and gas sector in Ghana especially in the production support services, drilling products and services and in the engineering sector.

Of interest to most foreign investors is the fact that, the GNPC has adopted a model Petroleum Agreement based on international best practice to attract International Oil Companies (IOC's). This has attracted a lot of IOC's to invest in the upstream sector including Kosmos Energy Ghana Limited, Tullow Ghana Limited, Hess Ghana limited and Anadarko. These investments have resulted in deep water offshore exploration activities.

The Ghana Gas Company Limited (GGCL), which is a private company limited by shares also presents another investment opportunity for investors. The company has a mandate to build, own and operate infrastructure required for the gathering, processing, transporting and marketing of natural gas resources in the country. Major investment has been made in

the GGCL by the government of Ghana to ensure the safe and optimal use of natural gas and natural gas liquids (NGL) from Ghana's oil fields since it is estimated that Ghana has about 22.65 billion cubic metres of proven reserves of natural gas. GGCL has entered into a contract with an investor for the development of the Western Corridor Gas Infrastructure Development Project which consists of an offshore and onshore pipeline, a gas processing plant and an NGL's export system.

The Petroleum (Exploration and Production) Bill 2014 (which is yet to be passed by Parliament) seeks to introduce new provisions such as the right of first refusal to Ghana where a contractor intends to dispose of its interest in a block and a minimum of 10 per cent participating interest by government for exploration and development and a reduction of the term of petroleum agreements to 25 years with the option to extend it to 30 years.

Current development

The Tweneboa-Enyenra Ntomme (TEN) Project is the next significant oil find in Ghana. The field is estimated to have approximately 245 million barrels of oil and 365 billion cubic feet of gas and the first oil from the field is expected in the second quarter of 2016.

However, in respect of this Project, Ghana has commenced arbitration proceedings before the International Tribunal on the Law of the Sea against Ivory Coast over water close to oil fields licensed by Tullow Oil. A resolution is crucial for oil and gas exploration since it could end any uncertainty for Tullow Oil which first discovered the TEN Cluster development in Ghana's Deepwater Tano license which is close to the disputed area.

Further considerations for foreign investment

Uganda

State participation in petroleum activities

The law provides that the Uganda Government may participate in petroleum activities through a specified participating interest in a licence or contract and in the joint venture established by a joint operating agreement in accordance with the licence.

The responsible Minister is mandated to specify the maximum Government share when announcing areas for granting of petroleum exploration licences.

Supplies

The law further requires the licensee, its contractors and subcontractors to give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies.

Where the goods and services required by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty eight per cent in the joint venture.

This is a key provision in the law that is already generating comments. Careful legal advice is required in dealing with this provision.

The licensee, its contractors and subcontractors shall ensure that the Ugandan or Joint venture companies must have the capacity to add value to meet the health, safety and environmental standards of the petroleum activities carried out by the licensee.

The law also requires the licensee to make annual reports to the Petroleum Authority of Uganda of its achievements and its contractors and subcontractors' achievement(s) in utilising Ugandan goods and services.

Training, employment and transfer of knowledge to Ugandans

In addition the law requires the licensee to submit an annual report to the above mentioned Authority a detailed programme for recruitment and training of Ugandans.

The said programme is required to provide for the training and recruitment of Ugandans in all phases of petroleum activities and shall take into account gender, equity, persons with disabilities and host communities.

The law provides that the licence shall include clearly defined training programme for the Ugandan employees of the licensee, which may be carried out in or outside Uganda and may include scholarships and other financial support for education.

There must be a commitment by the licensee to maximise knowledge transfer to Ugandans and to establish in Uganda, management and technical capabilities and any necessary facilities for technical work, including the interpretation of data. However, this requirement is a shared responsibility between the Government and the licensee.

Ghana

Capital, Labour and Content Restrictions

As discussed above, the Petroleum (Local Content and Local Participation) Regulations 2013 (L.I. 2204) regulates local content in the upstream sector. The Regulations requires contractors to hire more Ghanaians over time and develop plans for attaining almost 100 per cent indigenous employment within 10 years of petroleum operations.

Ownership

The law requires a minimum of 10 per cent participating interest by government for exploration and development. Another key provision under the Regulations is the requirement of 5 per cent indigenous participation in petroleum agreements.

Supplies

The Regulations provide that foreign companies who intend to provide goods or services to a contractor, subcontractor, licensee or the GNPC must enter into a joint venture with an indigenous company. Thus service providers in the sector must have a minimum of 10 per cent Ghanaian ownership. The minimum of 10 per cent Ghanaian ownership in service providers has to be increased to 50 per cent in five years and 60-90 per cent after 10 years.

Contractors are required to submit a local content plan showing how priority will be given to local goods and services and use of local professionals and a training plan for employment.

There is also the requirement for approval of local content plans which must at the minimum include plans on employment and training, research and development, technology transfer, legal and financial services. In respect of legal services, operators are required to use the services of only Ghanaian lawyers or law firms for legal services required in Ghana.

Establishment of Legal Presence in Ghana

Foreign investors who seek to enter into petroleum agreements are required to incorporate a local entity in Ghana (not a branch office). The entity will be required to open a local bank account and maintain an office in Ghana with a representative with authority to bind the contractor. Entities with foreign ownership are required to register with the Ghana Investment Promotion Centre (GIPC) prior to commencement of operations.

Anti- Corruption

As part of its mandate, the Petroleum Commission of Ghana has put in place measures to improve the public perception about the upstream sector by increasing consultation and transparency in the sector. The Commission therefore monitors compliance with national anti-bribery and corruption laws. Foreign entities are also monitored under foreign anti-corruption legislation that has extra territorial effect such as the Foreign Corrupt Practices Act of the USA and the Bribery Act of UK. Therefore investors are required to conduct due diligence on foreign intermediaries that they deal with to ensure they are compliant with these laws.

A key concern in respect of transparency is the process for the award of petroleum rights since notwithstanding the provision in the law for a competitive bidding process, all petroleum agreements entered into to date have been through direct negotiations. However, the introduction of an anti-corruption warranty clause in four recent petroleum agreements is expected to pave the way for further reforms in transparency in the grant of petroleum rights. The clause requires contracting parties to certify compliance with the anti- corruption laws of Ghana, their countries of incorporation as well as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the FCPA of the United States and the UK Bribery Act.

Alice Namuli Blazevic
Associate Partner, Katende, Ssempebwa & Co., Uganda
(currently on secondment to Hogan Lovells, London)
T +256 774830762
anamuli@kats.co.ug

Vera Owusu Osei
Senior Associate, AB & David, Ghana
(currently on secondment to Hogan Lovells, London)
T +233 20 2110067
vera@abdavid.com

Financial Assistance Rules in Nigeria: time for change?

As the largest economy in Africa, Nigeria has enjoyed its fair share of investment from both global and local market players. Recent media reports, for instance, have stated that local banks have raised approximately US$3 billion (N465 billion) in acquisition finance to fund the privatisation of the power industry in Nigeria.

As the Nigerian government remains keen to promote a business-friendly environment and laws to attract more foreign and local investors, it is now crucial to re-visit Nigerian financial assistance laws and their adverse impact on the availability and cost of acquisition finance.

The Nigerian prohibition
Under Nigerian law, a Nigerian company and any of its Nigerian subsidiaries are prohibited from giving financial assistance directly or indirectly for the purpose of the acquisition of shares in that company. This wide prohibition, contained in Section 159 of the Companies and Allied Matters Act Cap.C20 LFN 2004, relates to both public and private companies and is applicable before, during and after the acquisition of shares of a Nigerian company.

The term "*financial assistance*" is broadly defined to include *"a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company, the net assets of which are thereby reduced to a material extent or which has no net assets"*.

The language used in this definition has a far-reaching effect as, on its face, any guarantee, security or indemnity and any form of advancement or payment made by a Nigerian company in respect of the acquisition of its shares (or the shares of its holding company) is prohibited where the net assets of that company are reduced to a material extent. If the assisting company has no or negative net assets, any such financial assistance at all is simply prohibited.

This definition is not helpful in that it appears that when it was adopted the original language used in the English Companies Act 1948 (Section 54) had been amended overtime to include the net asset reduction test for all purposes. In contrast, the corresponding English law clearly only related to "any other financial assistance" leaving the other heads, such as the giving of guarantees, unqualified. One is, therefore, left with a potential argument that under the Nigerian law

an upstream guarantee could be given by the target since the liability incurred is only contingent and so cannot reduce net assets (unless it would require an immediate accounting provision to be made to reflect a likelihood of it being called) and so can be given with supporting security. In practice, however, this analysis is not adopted and for the purpose of this definition practitioners treat the guarantee/security/indemnity heads without regard to their contingent nature.

In addition, the statute is silent on the required extent of the reduction in net assets of a company to trigger this materiality threshold. Consequently, this is a question on a case-by-case basis for interpretation by the Nigerian court and there is, unfortunately, a lack of case law. Reliance may be placed by Nigerian courts on the precedent of the English courts which are of persuasive rather than binding authority in Nigeria. There is no English case law containing a definitive statement on this meaning but it is generally thought that it would require net assets to be reduced by no more than 0.5%.

Consequences of breach

The consequences of failing to comply with the Nigerian financial assistance rules are serious, as any transaction which represents unlawful financial assistance is void and unenforceable at common law. Furthermore, the company and its officers will be guilty of an offence and liable on conviction to a fine. The statutory penalty is minimal though (not exceeding N500 which is less than £2). It is the common law consequence which is hampering M&A transactions in Nigeria, because an investor (including a purchaser or a purchaser's financiers) is unable to have easy recourse to the cashflows and assets of the target group to help to facilitate the acquisition. Whilst the prevention of "asset stripping" is a laudable and sensible aim, the wide scope of the current legislation prevents some types of transaction which could actually benefit the target group and the Nigerian economy as a whole.

Application to typical acquisition finance transactions

An acquisition finance transaction is usually structured with the investment vehicle being a newly incorporated special purpose vehicle ("**SPV**") which acts as the purchaser and borrows the acquisition finance.
As the SPV has no assets of its own apart from the shares in target it acquires with that debt, the lenders will turn to the assets of the target group, typically requiring upstream guarantees from them of the acquisition finance borrowed by the purchaser and for those guarantees to be secured on the assets and undertaking of each such target group company. For example, in the case of an acquisition of shares in a power plant, receivables due to the target under each power purchase agreement would be a clear source of income for servicing the acquisition debt. However, the financial assistance prohibition means that this is not possible and the lenders will have to rely instead on security given by the purchaser (typically a charge over the shares it acquires in target) or from other third parties, such as the sponsor.

Furthermore, the lenders will need to be confident that the acquisition debt will be able to be serviced solely through the purchaser's dividend income from the target group after completion, as the making of loans by target or other transfers upstream of its income will also constitute unlawful financial assistance.

Mitigation techniques

Nigerian transactions may be structured in the following ways to achieve the same economic effect without breaching the financial assistance rules.

Merger

Under a merger arrangement, the SPV purchaser and borrower of the acquisition finance secures the debt initially on its own assets (being the shares in target). Sometimes third parties are asked to give security too initially. Following the acquisition, the target is merged into the SPV with the SPV being the surviving entity. As a sequel to that merger, the SPV will provide new security to the lenders over its assets which will now include the assets previously held by target. This structure will not be in breach of the statute given the effect of the merger under Nigerian law, which is to extinguish the corporate identities of one or more of the merging entities and have the same subsumed into a new or surviving entity. If the target has subsidiaries they become subsidiaries of the SPV and no longer tainted by financial assistance.

Assets Acquisition

The transaction could instead be structured as a purchase of the assets of the target rather than as a share purchase. The purchased assets may be used freely by the purchaser as security for the acquisition

finance. However, the tax treatment needs to be factored into the decision as to whether to use this route, as do other complexities such as making sure that all assets that are required are identified, bought and transferred.

Two Facilities Structure

Lenders may explore the option of providing two loans: an acquisition facility to the SPV and a working capital facility to the target group. The acquisition facility will be secured on the assets of the purchaser or other third party (such as the sponsor) and the working capital facility secured on the assets of the target group. The rationale to this arrangement is that although the assets of the target may not be used to pay off acquisition debt, it is not unlawful for the target group companies to secure debt borrowed for their own working capital purposes. However, the acquisition debt is likely to be the largest portion of debt so this is not a complete solution.

Foreign subsidiary

In addition, lenders may consider taking guarantees and security from a foreign subsidiary of the Nigerian target company. It is arguable that the restriction on financial assistance in Nigeria has no extra-territorial effect given the definition of a "company" under Nigerian law[1]. However, a case may be made that the target company had procured its foreign subsidiary to provide the security through the exercise of its voting rights or hiving down assets thereby giving prohibited indirect financial assistance. In this regard, the position of the English courts is instructive as the courts have held that an English parent company did not give financial assistance by arranging for a wholly-owned foreign subsidiary to pay the purchase price to the seller for the acquisition of its shares[2]. Furthermore, even if the target were held to have given indirect financial assistance, the Nigerian criminal penalty is negligible and (assuming that the guarantees and security are lawful in the foreign subsidiary's jurisdiction) it is difficult to see how the Nigerian courts could void the transaction.

1 A company is defined under Nigerian law to mean a company formed and registered under the Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of the Act.

2 Arab Bank Plc v Mercantile Holdings Ltd [1996] Ch 71, AMG Global Nominees (Private) Limited v SMM Holdings Limited, THZ Holdings Limited and Africa Resources Limited [2008] EWHC 221 (Ch).

Comparison with English law

Whilst the mitigation techniques outlined above are of some help, it remains the case that the Nigerian financial assistance laws are generally hindering M&A transactions. It is instructive to look at how English law deals with this issue to see what parallels can be drawn and whether Nigerian law could perhaps borrow any English law concepts in order to modernise its financial assistance laws.

Whilst it remains unlawful for an English *public* company to give financial assistance (or for any of its English subsidiaries to give financial assistance for the acquisition of shares in that public company), since Autumn 2008 English law has not prohibited financial assistance being given by English *private* companies, whether the relevant company is itself the target or a subsidiary of the target. This means that acquisition debt for private acquisitions can be guaranteed by, and secured on the assets of, target group companies. English law still protects shareholders and creditors and otherwise guards against "offensive" transactions through its rules on corporate benefit and capital maintenance, but the abolition of the financial assistance prohibition for private companies has made acquisition finance transactions more efficient and less risky, which in turn has helped to make such debt more available and affordable.

Even prior to 2008, whilst English financial assistance rules prohibited financial assistance being given in relation to the acquisition of shares in a private company in a manner not dissimilar to the current Nigerian rules, English law did nevertheless facilitate acquisition finance in a crucial manner with its so called "whitewash procedure".

Under the whitewash procedure, a private company was able to provide financial assistance if the strict statutory whitewash conditions were all met. Broadly, this involved:

- a requirement that the company giving the financial assistance (the "**assisting company**") had net assets which were not reduced by the financial assistance, or if they were reduced, that this reduction was covered by distributable profits. Contingent liabilities (such as those incurred under a guarantee and security) had to be considered (i.e. the directors had to be confident that they would not have to make an accounting provision in respect of such liabilities).

Lenders would usually obtain comfort from the company's auditors that the company actually had net assets through delivery of a so-called "non-statutory report" from the company's auditors. Although this report was not a legal requirement, it was viewed by lenders as being necessary because even if all the documentary whitewash requirements outlined below were met, an absence of net assets or a reduction in net assets would still render the particular financial assistance void;

- all of the directors of the assisting company making a statutory declaration (in prescribed form) approving their company giving the financial assistance and confirming that in the directors' opinion, immediately following the giving of the assistance, there will be no ground on which the company could be found unable to pay its debts and that the company will be able to pay its debts as they fall due within the following 12 months;
- that statutory declaration being accompanied by a statutory auditors' report (in which the auditors confirmed that the directors were not acting unreasonably in reaching the conclusions they did as to the company's solvency in the statutory declaration);
- if the assisting company is not wholly owned at the time the statutory declaration was made, a shareholders special resolution (or written resolution) approving the relevant financial assistance being given; and
- if the assisting company was a subsidiary of the target, a statutory declaration and statutory auditors' report from the target and any other intervening holding company.

The whitewash procedure was complex to use. It involved detailed timetables (there were prescribed timescales in which the assistance had to be given after the date of the statutory resolution and after any required shareholders resolution) and the heavy involvement of the company's auditors and lawyers to prepare the required documentation. Although it facilitated acquisition finance transactions for many years, ultimately its revocation and the full repeal of the financial assistance prohibition for private companies, was predicated on the belief that it would be better to do away with this complexity and to rely on the other existing English law rules mentioned above to guard against truly offensive transactions.

The English law experience could lead Nigeria to one of two solutions:

- should it modify its current financial assistance laws to introduce some form of whitewash procedure similar to the old English whitewash?; or
- should it reform its financial assistance laws more radically and simply abolish the financial assistance prohibition completely for private companies and rely instead on the existing Nigerian laws on directors' fiduciary duties, capital maintenance and corporate benefit? The English government has not regretted its decision to do just that, as the whitewash procedure was a blunt tool and often struck down perfectly sensible transactions as well as making investors incur the time and expense of jumping through the various detailed hoops of the whitewash procedure.

As an alternative, Nigeria might opt to move entirely away from the traditional approach of creditor protection through capital maintenance in favour of a solvency test, as was done in South Africa in 2010. This approach ignores the concept of legal capital and focuses on the ability of a company to meet its obligations from its ordinary business, considering the likely impact of the planned financial assistance.

The Nigerian legislation is, at the very least, crying out for clarification of the application of the net asset reduction test.

Susan Whitehead
Senior Consultant, London
T +44 20 7296 2635
susan.whitehead@hoganlovells.com

Damilola Adetunji
Partner, Odujinrin & Adefulu, Nigeria
T +234 1 271 4962 Ext 104
damilola.adetunji@odujinrinadefulu.com

Olakemi Salau
Associate, Odujinrin & Adefulu, Nigeria
(currently on secondment to
Hogan Lovells, London)
T +234 1 271 4962 Ext 113
olakemi.salau@odujinrinadefulu.com

Criminal Liability for Bank Directors? A look at the United Kingdom and South Africa

Following the financial crisis of 2008 and the global recession, the world has turned its attention towards banks and those responsible for directing them. A range of problems, including misconduct and adverse publicity (such as LIBOR manipulation and the collapse of banks including African Bank in South Africa) have led governments and regulatory agencies to increasingly focus on finding ways to hold banks and their directors to account. The question is, to what extent and how best to achieve these aims?

A consideration of the laws and policies of the UK and South Africa suggests that there is no real consensus as to the form of liability that should be imposed on bank directors and management. However, this article explores how the authorities in the United Kingdom appear to be exploring criminal liability as a potential method of addressing the perceived issues while the authorities in South Africa are taking an approach more focused on civil law.

The United Kingdom

In 2013, after extensive political pressure in the wake of the 2008 financial crisis and later investigations into the manipulation of LIBOR and other benchmarks, the UK government introduced a number of reforms to the manner in which financial institutions (and individuals working in them) were regulated. A key element of this involved the empowerment of the two UK financial services regulators, the Financial Conduct Authority (**"FCA"**) and the Prudential Regulatory Authority (**"PRA"**), to regulate the conduct and prudential standards of banks. The FCA and the PRA set out their proposals to address the perceived weaknesses in regulation in a joint paper in summer 2014. This new regime marks a shift in focus towards the personal responsibility and accountability of individuals within financial institutions.

The proposed offences are not presently in force and indications from the government on when (or indeed if) they will ever become active are unclear. However, the fact that they have been included on the statute book gives a clear feel for the direction of travel that regulators in the United Kingdom will take when approaching these issues. Two new offences aim to extend the scope of liability for senior managers in both their supervisory and decision making roles[1]:

1 "Senior Managers" in this context includes directors, along with more junior staff.

1. Criminal liability for causing a financial institution to fail; and
2. Strict Liability for Senior Managers for regulatory misconduct of staff.

1. Criminal liability for causing a financial institution to fail

This new criminal offence essentially enables regulators to prosecute senior managers for reckless misconduct that results in the failure of a financial institution. Under section 36 of the UK Financial Services (Banking Reform) Act 2013, it is a criminal offence for a senior manager in a financial institution to make a decision that causes that institution, or any other financial institution which is a member of the same group, to fail. In order for a successful prosecution it would be necessary to show:

- the senior manager takes a decision as to the way in which the business of a financial institution is to be carried on, or fails to take steps to prevent such a decision being taken
- at the time of the decision, the senior manager is aware of a risk that implementing that decision may cause the failure of the financial institution
- in taking the decision, the senior manager's conduct falls "*far below what could reasonably be expected*" of a person in his position
- the implementation of the decision causes the failure of the financial institution.

The seriousness of this offence is emphasised by the penalty of up to 7 years imprisonment and an unlimited fine.

How likely is it that directors will be prosecuted under this offence?

In their consultation paper, the FCA and PRA admit that they expect prosecutions under this offence to be rare. In part, this is undoubtedly because significant changes are being made to the overall regulatory structure of financial institutions, with the aim of ensuring that banks and building societies are less likely to fail than they were before the financial crisis.

Aside from this, there are a number of complexities that will make this offence difficult to prosecute. For example, there is no guidance on what constitutes conduct which falls "far" below what might be reasonably be expected of the senior manager. Further, the prosecution must prove a direct causal link between the decision that was made and the failure of the financial institution. In addition, there is the hurdle presented by the subjective test. A prosecutor will need to show that the senior manager appreciated that taking a decision may cause his firm to fail, and that he took the decision anyway.

Will it put people off wanting to be involved in the senior management of a financial institution?

To an extent, the increased regulatory focus on individual accountability within banking, along with the introduction of the criminal offence, has caused concern within the industry that UK banks will struggle to attract and/or retain talented directors; the proposed new regime is tougher than the equivalent in the US and Europe.

In practice, however, the circumstances in which senior managers will be personally liable for the failure of a financial institution will be few and far between. In addition, with proper systems and controls in place, a senior manager should be able to adequately prove that he took steps to prevent misconduct from occurring in his department. Despite the pressure on regulators to take enforcement action against individuals, the FCA and PRA have shown an awareness that there is a need to keep the proposed rules under review, to ensure that non-executives are not put off joining the banking industry.

2. Strict Liability for Senior Managers for regulatory misconduct of staff

The proposed new Senior Managers' Regime focuses on the key decision makers within banks. It requires that firms regularly monitor the fitness and propriety of individuals who carry out senior management functions. From a practical perspective, there is an increased emphasis on responsibility maps, which provide an up-to-date overview of the firm's management and governance arrangements and set out lines of responsibility within the firm. The focus on individual accountability is further demonstrated by the requirement that firms submit a statement of responsibility to the relevant regulator when an individual becomes a senior manager. This statement will provide a record of that manager's role and specific areas of responsibility.

The new rules also propose a reversal of the burden of proof, whereby senior managers are presumed to be culpable if a firm breaches a regulatory requirement in an area for which they are responsible. A senior manager will have a defence if he can prove that he took reasonable steps to prevent the misconduct occurring.

The changes to the regulatory regime are likely to pose a number of new challenges, both for firms and their senior management. Firms will need to ensure that there are clearly defined, transparent reporting lines and robust governance structures in place. Individuals in the business will have to work closely with their colleagues in compliance departments to ensure that adequate systems and controls are in place and that suitable training is provided where necessary. On a personal level, particularly given the strict liability nature of the offence, senior managers will need to have a clear understanding of each of the matters for which they are responsible and take an active role in ensuring that they have adequate levels of information from other areas of the firm. Senior managers will need to be confident that their responsibilities in these areas are being fully discharged.

South Africa

What is South Africa's position towards the conduct of directors of Banks? Are civil or criminal sanctions imposed on banking directors for '*reckless conduct*' – a concept that has been described as amounting to "*gross negligence*"[2] and is expressly prohibited by Section 22(1) of the Companies Act, 2008 ("the Companies Act")?

The conduct of banking directors is governed by both the Companies Act and the Banks Act, 1990 ("the Banks Act") and, accordingly, banking directors are expected to comply with the standards of care, knowledge and skill that are imposed on general corporate directors by Section 76(3)(c) of the Companies Act, as well as the additional requirements stipulated in banking legislation. In this regard, Section 60(1A) of the Banks Act and Regulation 40 of the current banking regulations has defined and imposed a particular level of care, knowledge and skill required of banking directors in the conduct of their duties.

Notwithstanding the particular standard of knowledge and skill required of banking directors, and the negative socio-economic repercussions that could follow if banks and their custodians fail to achieve this standard, or conduct the business of the bank recklessly, it is submitted that the consequences for such are the same as those for general corporate directors.

In this regard, it appears that Section 60(1B) of the Banks Act draws a distinction between banks that are in liquidation/winding up and banks that are not, and provides that the Registrar of the South African Reserve Bank ("the Registrar") may institute action in terms of:

- Section 77 of the Companies Act against a director of a bank that is **not in winding up/liquidation;** or
- Section 424 of the previous Companies Act, 1973 ("the previous Companies Act") against a director of a Bank that is in **winding up/liquidation**. Section 424 of the previous Companies Act continues to apply to banks/companies that are in winding up/liquidation[3].

The application of Section 77 of the Companies Act and Section 424 of the previous Companies Act, and the consequences thereof are, however, inconsistent largely because of the process of decriminalization of directors' misconduct which has been adopted in the current Companies Act. It is submitted that this has created a lacuna in our law, which will only be remedied upon the Minister's determination that the previous Companies Act no longer applies to banks/companies in winding up/liquidation.

Until this ministerial determination, Section 424 of the previous Companies Act provides that any director **knowingly** carrying on business recklessly can be held personally responsible for the debts of the company, or can be found guilty of an offence. Consequently, reckless conduct knowingly perpetrated by directors of companies and banks alike that are in winding up/ liquidation may amount to criminal conduct.

It was in terms of section 424 of the previous Companies Act that the CEO and Chairman of Regal Treasury Private Bank ("Regal Bank"), Mr JI Levenstein, was convicted, in addition to four other counts of fraud.[4] Upon Mr Levenstein's appeal of the

2 FHL Cassim, MF Cassim & R Cassim et al Contempory Company Law, 2 ed (2012) 591.

3 And possibly curatorship. See Section 69A(11)(c) – (d) and (12)(c) of the Banks Act.

4 Neutral citation: Levenstein v The State (890/12) [2013] ZASCA 147 (1 October 2013).

convictions and sentences, the Supreme Court of Appeal, in October 2013, found Mr Levenstein guilty of knowingly "*being a party to the carrying on of Regal's business in a reckless manner*" and confirmed his sentence of 2 years imprisonment. The Supreme Court of Appeal found, *inter alia*, that "*the period of imprisonment imposed is in no way disproportionate to the crime. Indeed it was richly deserved.*"[5]

Notwithstanding the views expressed by the Supreme Court of Appeal in the *Levenstein* matter, the South African legislature has departed from its position to criminalise reckless conduct and has introduced the current Companies Act, which no longer incorporates the criminal sanction as expressed in its former Section 424.

Accordingly, should a banking director fall short of the standard of care, knowledge and skill required of him by the Companies Act and Banks Act (in terms of a bank that is **not** in winding up/liquidation) and/or knowingly carry on the business of the bank in a reckless manner, reliance will now be made on the following, *inter alia*, provisions of the Companies Act:

- Section 77(2)(b), which provides that directors may be civilly liable for the losses or costs sustained by the bank as a consequence of a breach by that director of the 'general' standard of care and skill required in terms of Section 76(3)(c) of the Companies Act;
- Sections 77(3)(b) and 218, which provide that directors may be civilly liable for the loss, damage and costs sustained by the bank if that director **acquiesced** in the carrying on of business recklessly despite knowing that it was prohibited in terms of section 22(1); or liable to any other person for any loss or damage suffered by that person as a result of contravening the Companies Act; and
- Section 20(6), the general catchall provision, providing that each shareholder has a claim for damages against any person who intentionally or due to gross negligence causes the bank to do anything inconsistent with the Act.

While it can be argued that the incorporation of a criminal sanction for reckless conduct perpetrated by banking directors may be justifiable, it is now the trend of the legislature to decriminalize company law sanctions where possible[6] as "*experience under the previous company law regime has shown that criminal sanctions are ineffective as a means of ensuring compliance with the Companies Act, due largely to the failure and reluctance to prosecute for technical offences.*"[7]

Be that as it may, South African banking directors cannot throw caution to the wind because they may no longer face the same criminal risk highlighted in the *Regal* matter, as the current Companies Act imposes a wider range of civil claims which may be brought against banking directors in their personal capacities by a greater number of stakeholders of the bank and the public.

Conclusion

In conclusion, financial institutions (and above all, banks), today face an unprecedented degree of scrutiny. Failings by banks and individuals working for them continue to dominate the headlines, and governments around the world have faced sustained pressure to introduce ever-greater levels of scrutiny and regulation. Such pressure, however, has evidently produced very different regulatory responses in different countries. In the UK, the FCA and the PRA have been empowered to pursue criminal actions against individuals whose activities (or inactivity) result in breaches of the regulatory standards now in force. In South Africa, by contrast, the government has deliberately moved away from criminal sanctions in favour of civil penalties. It remains to be seen whether the threat of prison will form a more potent counter to any wrong-doing than the threat of a fine, or indeed whether such sanctions will prevent a crisis on the scale of 2008 in the future.

Daniel Dodman
Associate, London
T +44 20 7296 5546
daniel.dodman@hoganlovells.com

Ashleigh Graham
Associate, Johannesburg
T +27 11 523 6145
ashleigh.graham@hoganlovells.com

5 Ibid, para 135 of page 48.

6 See the Department of Trade and Industry's Policy Paper on Corporate Law Reform GG 26493 of 23 June 2004.

7 Op cit note 1, p825.

Pari Passu Clauses: A continuing controversy and how it has impacted on the drafting of recent African sovereign bond issues

All finance lawyers are familiar with pari passu clauses although, in the light of recent cases in the US, they may no longer be so sure as to what such clauses mean or the impact that they can have on a borrower in the context of a restructuring.

The controversy centres around the case of NML Capital Ltd v Argentina which is before the US courts and concerns the interpretation of the pari passu clause that was included in the terms and conditions relating to bonds issued by Argentina which bonds were subsequently the subject of an exchange offer under which the bondholders were asked to take a significant "haircut". Some bondholders refused to exchange their holdings, preferring instead to insist upon the enforcement of the terms of the old bonds which included the following clause:

"*The Securities will constitute…direct, unconditional, unsecured and unsubordinated obligations of the Republic and shall at all times rank pari passu without any preference among themselves. The payment obligations of the Republic under the Securities shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness…*"

The general interpretation of such a clause was that it was designed to prevent the borrower incurring obligations to other creditors that ranked legally senior to the bonds then being issued. There were always questions as to whether such a clause was necessary; you could not have involuntary legal subordination; you could not change statutory preferences; and, in any event, the document would probably include a negative pledge provision (the granting of security being the prime cause of subsequent debt being ranked legally senior). It is interesting to observe that the loan terms applied by the World Bank do not include a pari passu covenant but they do include a negative pledge.

Be that as it may, pari passu clauses have been in common use for a number of years and have been included in unsecured, Euromarket, cross-border credits and not just sovereign bond issues.

The novelty of the case brought against Argentina in the US courts lies both in the interpretation applied by the creditors (endorsed by the courts) and the remedy that the courts then went on to grant the creditors.

The interpretation argued for by the creditors was to the effect that, not only did the covenant preclude the borrower from incurring obligations to other creditors that ranked legally senior, but it also required the borrower (in this case the Republic of Argentina) to make rateable payments to equally ranking creditors. This meant that it could not do what it had been doing following the exchange bond issues whereby it made payments to the bond holders who had swapped into the exchange bonds at a discount but not to the holdouts. The US court held that at the time payments were made to the exchange bond holders, rateable payments must also be made to those creditors who continue to hold on to the old bonds. In fact, the point had been argued in an earlier case against Peru and this broad interpretation was upheld by a Brussels court. However, that case did not become such a cause célèbre because Peru caved in and dealt with the holdout bondholders.

The interpretation in itself would have had little consequence (other than being yet another breach of the old bonds) if the US court had not gone on to hold that the holdout creditors could enforce their rights by way of an injunction which applied to non-US entities if their conduct had a substantial effect within the United States (and given that US dollar payments are made through the New York market then this is going to catch intermediaries) and all parties involved, directly or indirectly, in advising upon, preparing, processing or facilitating any payment on the Exchange Bonds (being the bonds which had been issued at a discount and which up until then were being serviced). The net effect of all of this was that Argentina went into default again because it stopped making payments in relation to the Exchange Bonds.

The case had been rumbling on for a number of years and Argentina had, as part of their 2005 exchange offer, passed the so-called "Lock Law" which made it illegal to pay any holdout bondholders. The reason why it suddenly sprang to prominence in the middle of last year was because the US Supreme Court refused to hear an appeal against the decision of the lower courts so that Argentina no longer had the possibility of overturning the interpretation and the injunction ruling.

An important point to note here (particularly given that sovereign bond issues are usually done under the provisions of New York law or English law) is that these decisions of the US courts related to bond issues done under the laws of the State of New York. In the United Kingdom, the Financial Markets Law Committee had issued a paper in 2005 which rejected the US approach as a matter of English law. The conclusions in that paper were reaffirmed by the Committee in a Memorandum issued in 2014 after the US Supreme Court decision. In broad terms, the Committee found that the traditional interpretation of a pari passu clause was supported by the "business common sense" principle of interpretation since to adopt the broad interpretation argued for by the creditors in the Argentina case would effectively bring businesses in a work-out to a halt as they would not be able to manage their debts in a sensible way since creditors would simply contend that they should all be paid pro-rata i.e. a business in difficulties would not be in a position to ensure that it only serviced those creditors whose continuing goodwill was essential for the survival of the business.

Furthermore, the Committee held that the interpretation of the clause as dealing only with ranking in order of priority, gave such clauses their ordinary and natural meaning, and finally, there was the persuasive authority of the case of Kensington International Ltd v Republic of Congo which was decided in the English Courts (although the judge did not need to reach a decision on the particular point).

In the 2014 Memorandum, the Committee also noted that, in its view, English courts would take a different approach to the grant of remedies and in particular were likely to regard the remedy of specific performance as unsuitable.

Lawyers drafting such provisions, or commenting on them on behalf of the borrower, are then left with a number of alternatives for dealing with the US court decisions. First of all, particularly given the pronouncements of the Financial Markets Law Committee (although those pronouncements are opinions and not judgements), select English law as the governing law and the jurisdiction of English Courts. If the draftsman is feeling particularly brave then he might want to remove the clause entirely on the basis that it is not really needed (see above) but such a

stance would run counter to the lemming school of drafting! So if the clause is to stay in it might appear as a representation only (and not a covenant) so that the only consequence is acceleration of the debt. More radically (and probably more prudently) would be to disavow the rateable payment interpretation even though that may give rise to a negative inference in respect of earlier bond issues which had used the clause in its unamended form. Another way of dealing with this would be to not adjust the clause itself but, in any offering memorandum, make it clear what the interpretation of the clause should be so that the borrower is in a position to argue that it was clear at the outset to all parties how the clause should be interpreted and that was therefore part of the bargain that had been struck.

Over the past 24 months, there have been a slew of sovereign bond issues coming out of Africa and it is interesting to note that in the issues of Zambia (April 2014), Morocco (June 2014), Kenya (June 2014), Cote d'Ivoire (July 2014) and Senegal (July 2014), pari passu clauses were incorporated in to the terms and conditions in their "classic" form and without any further wording being added to counter the broad interpretation successfully argued for in the Argentina case. However, all of those issues were done under English law and the formulation of the pari passu clause did not use the same formulation as was used in the old Argentina bonds which not only made the statement that the bonds were to constitute direct, general and unconditional obligations of the issuer which would rank pari passu with all other present and future unsecured obligations (basically the formulation used in all of the African issues referred to) but went on to expressly deal with payment obligations stating that they too would at all times rank at least equally with all other present and future, unsecured and unsubordinated external indebtedness.

Nevertheless, in the bond issues of Ghana (September 2014), Ethiopia (December 2014) and Tunisia (January 2015), additional language was added to the effect that nothing in the pari passu clause should be construed so as to impose upon the issuer an obligation to effect equal or rateable payments with respect to any other external indebtedness and, in particular, no obligation to pay other external indebtedness at the same time was a condition of paying sums due on the notes and vice versa. Again, all three issues were done under English Law. Interestingly, the Ethiopian issue did include a reference within the core pari passu clause to ranking at least pari passu in right of payment i.e. using a formulation that was closer to the formulation that had caused Argentina problems.

Therefore, it seems clear which way the market is moving in terms of the drafting of pari passu clauses in sovereign bond issues (whether they be African issues or otherwise). It remains to be seen whether, in the event of any future debt rescheduling, bond issues with the old style terms will be subject to the same kind of attack as occurred in relation to Peru and Argentina and, insofar as the terms and conditions are governed by English Law, whether an English court will take the same approach as the US courts or adopt the line suggested by the Financial Markets Law Committee.

For lawyers advising borrowers in sovereign bond issues, the course is clear i.e. make sure that the pari passu language is modified in the way it appears in the most recent bond issues. Even in cases outside the sovereign debt sphere, thought should be given as to whether the use of pari passu clauses in non-sovereign issues or loan agreements might give rise to similar problems in interpretation thereby meriting adjustment of their terms as well.

Andrew Gamble
Consultant, London
T +44 20 7296 5205
andrew.gamble@hoganlovells.com

HL advises Farm Africa

Sidai, the social enterprise arm of Farm Africa, aims to deliver high quality and affordable veterinary and other livestock services through a network of 150 branded franchises in Kenya. Each franchise is owned and staffed by qualified veterinarians, livestock technicians and other professionals. In Africa 25% of livestock die each year because of preventable animal diseases. 70% of people living on less than US$1 a day are dependent on animals for their income and food security, so improving livestock health is critically linked to increasing the income and welfare of Kenyan livestock keepers.

Sidai offers a package of support to franchisees to ensure business success and quality of services delivered to farmers. Until now, rural pastoralist communities and their herds have been neglected by commercial suppliers of livestock services, who have concentrated on the traditionally profitable commercial dairy and poultry sectors.

This investment and support has had a very positive impact and is greatly appreciated by the local community. One farmer from Kibirichia in Meru said, "Since I started dealing exclusively with Sidai, I have noted a marked improvement in my livestock health. Their advice has been very helpful and I now have access to quality and affordable products."

Hogan Lovells has had a long term relationship with Farm Africa and provided corporate, IP and tax advice to Farm Africa on the reorganisation of the Farm Africa group, in particular the establishment of Sidai. We advised on the different ways to lock in the social mission of the business enabling Farm Africa to retain sufficient control to safeguard that mission. We have also advised on investment into Sidai.

Yasmin Waljee
International Pro Bono Director, London
T +44 20 7296 2962
yasmin.waljee@hoganlovells.com

Fenella Chambers
Social Enterprise Associate, London
T +44 20 7296 5757
fenella.chambers@hoganlovells.com

Hogan Lovells Africa Forum 2015

On Wednesday 22 April 2015, the London office of Hogan Lovells will be holding an Africa Forum: Doing Business in Africa. The all-day event will include a series of five panel discussions, which will cover some of the most topical and important issues facing businesses in, or looking to invest in, Africa today. These panel discussions are:

1. The Economic Outlook for Africa
2. The Regulatory Environment: Healthcare and Insurance
3. The Key Challenges Facing the Mining Industry
4. Private Equity and DFIs
5. Power: The Growth of Distributed Generation

Further events in our Doing Business in Africa series are currently planned for Tokyo and Dubai, with other locations to be announced later in the year.

Notes

Notes

The artwork used throughout these materials has been licensed from Tony Cyizanye, an artist based in Rwanda.

About the artist

Tony Cyizanye was born in Bujumbura, Burundi, and later moved to Rwanda. He comes from a family of artists, with a musician as a father. His inspiration comes from his family as he was growing up, he saw his uncle, Adolphe Bigirimana painting and making music, his aunt is a fashion designer, and another uncle is a musician.

Being surrounded by the art and music inspired his passion and dedication to his art. In 2010 he exhibited in FESPAD in Rwanda, in the University of Colombia, New York, at the UN day in the Milles Collines Hotel Kigali Rwanda, and for the launch of the Ivuka magazine 'Rwanda Art' at the Novotel Hotel, Kigali, Rwanda.

In 2011 he has exhibited in the 'Survival' exhibition in Kigali, Rwanda and in Belgium, he has painted with street children in the Nyamirambo market, Kigali, Rwanda.

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