# Africa Newsletter

Edition 2, 2020

Hogan Lovells

# Welcome to the second edition of the Hogan Lovells Africa Newsletter for 2020.

Since our last edition, the world has changed dramatically. The global coronavirus pandemic has an impact on businesses in every industry sector. We start this edition with a foreword from our Head of Africa Practice, Andrew Skipper, who shares how we focused on staying present in these challenging times.

We also include three other articles relating to issues around COVID-19. Firstly, Wessel Badenhorst, the Managing Partner of our Johannesburg office, discusses the opportunity presented by the pandemic to push us to look at beneficiation as a key to unlocking wealth. Then, in an article which originally featured in our Germany Africa newsletter, our Frankfurt colleagues look at the implications of COVID-19 on Business Continuity Management. The third article looks at the impact of a delay in the negotiations for implementation of the AfCFTA.

Nigeria is the focus for our next two features. Two Nigerian lawyers based in our London team examine the implications of the Nigerian Finance Act 2019, and then an article written by two lawyers from ACAS-Law in Nigeria discusses the potential of the Nigerian mining sector.

We then have a further article from another of our relationship firms, Bourabiat Associes in Algeria, which asks the question whether Algeria is now back in business following the changes brought in by the new Finance Act passed in June 2020.

Our pro bono activity has continued throughout this COVID-19 period, and we share with you some of the great initiatives we have been involved in.

Last, but by no means least, it is our enormous pleasure each year to welcome African lawyers on secondment to our London office, and we conclude our newsletter with our *View from a Secondee* feature, where we interview two of our recent secondees about their experience with us.

Before you go, don't forget to read about our recent and upcoming events and see some of our recent work on the continent.

We hope you enjoy this edition of the newsletter. As always, please get in touch if you have any questions or comments.

## The Hogan Lovells Africa Team

Andrew Skipper
Partner, Head of Africa practice
T +44 20 7296 2923
andrew.skipper@hoganlovells.com

Alison Diarra
Lawyer - Africa Network Manager
T +44 20 7296 2845
alison.diarra@hoganlovells.com

Abena Poku
Senior Marketing & Business Development Manager - Africa
T +44 20 7296 5538
abena.poku@hoganlovells.com

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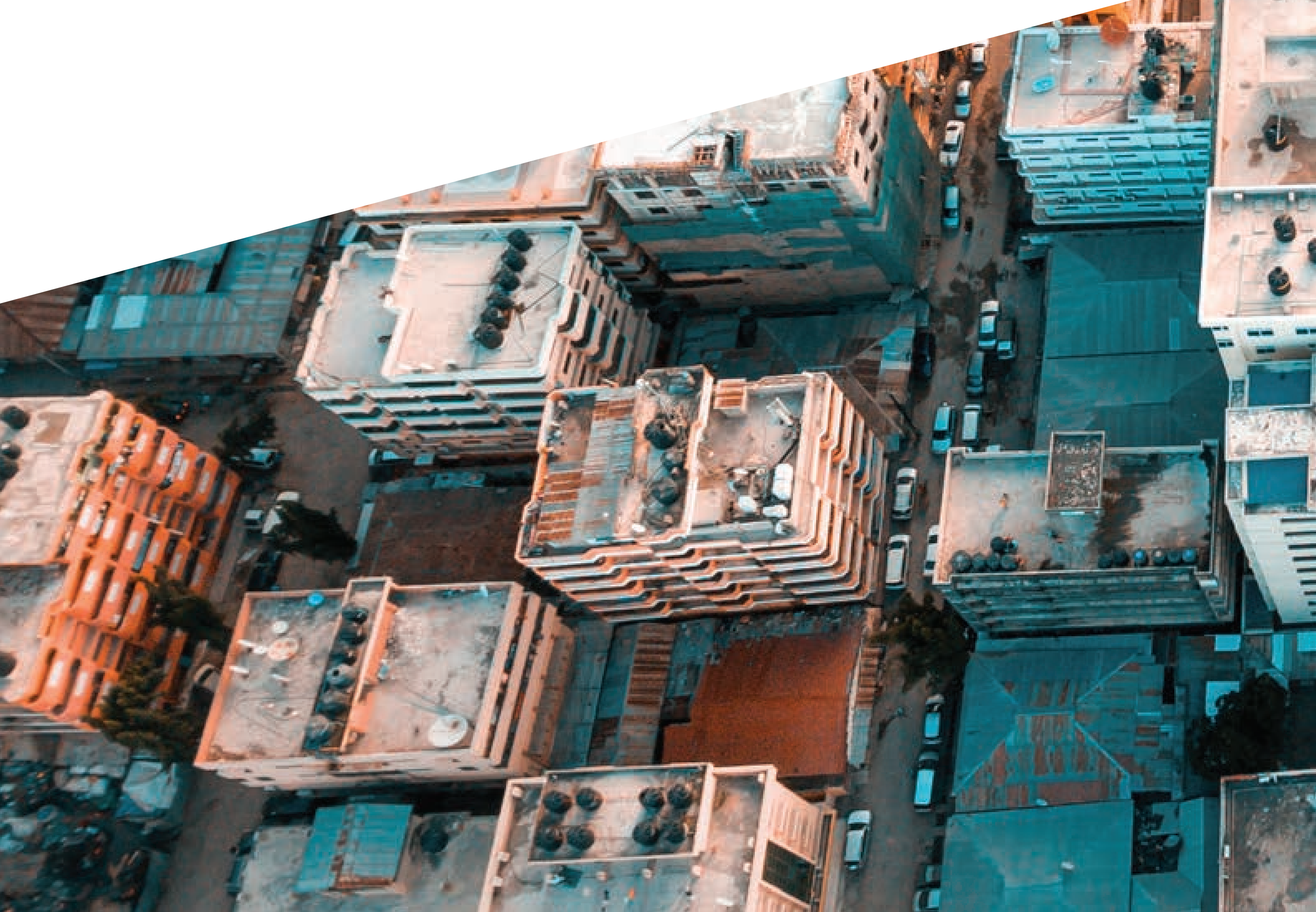


# Staying present in a time of COVID-19

When we sent out our last newsletter at the beginning of March 2020, the world was a very different place. That edition contained an Events Calendar that was full until July. Just a few weeks later, everything changed, and we all went into lockdown – an event none of us could have predicted.

Although we couldn't hold events or travel, we were determined to remain present in a meaningful way to support our clients, contacts and relationship firms across Africa from the seclusion of our homes, surrounded by our families. This has been an uncomfortable and strange time, with an unpredictable future ahead, and everyone is having a slightly different experience. In my case, this has meant being home for longer than any other time in the last 35 years, and to be honest it has been an excellent time for reflection. As we are now all becoming zoomed out, we have pulled together a series of initiatives to ensure we continue to be present with you, even while not physically being able to be there.

Initially there was a big push from international law firms, to send out updates, alerts and articles. We were no different and house our content in an easily accessible Topic Centre on our website (https://www.hoganlovells.com/en/knowledge/topic-centers/covid-19). You will also find information and can sign up for various sector and industry focused webinars. However, in the Africa Practice, we wanted to find innovative ways of continuing to build on the relationships we have with you, and find interesting ways of engaging in conversation on topics of interest to those working on the continent.

One of the first initiatives we started, to ensure that we continued to connect regularly with our partners in the many law firms across the continent that we work with, was to replace in-person meetings with virtual discussion groups. We host these Zoom calls with small groups of people to address particular topics around the impact of COVID-19, and exchange ideas and top tips. This has been enormous fun, highly informative and invaluable for continuing to build our relationships of trust and respect.

Another new experience for me was my first steps into the social media world and hosting podcasts. At the end of April we launched our very first podcast series, The A Perspective Podcast, and I have had the pleasure of interviewing some of Africa's most prominent leaders, representing industry, government, think-tanks and culture. We have focused on investment in Africa and asked whether COVID-19 will have a fundamental impact on the way we do business as governments, industries or individuals in and outside the continent. Most recently I spoke to Gus Caseley-Hayford about the critical importance of culture and art in directing a positive context to the Africa narrative. You can subscribe using the following link: (https://ehoganlovells.com/s/7dceeee76f84c67b20bd9dcced46cef28179a14c).

So life in lockdown has been busy; indeed it can be difficult to keep balance. We have been able to stay present with our friends and contacts in Africa, and are now looking forward to the next step in our virtual experience – our Africa Forum which will be held on 20 July. This will pick up the theme of Africa growing in a sustainable and positive way post COVID-19 and even taking advantage of the disruption in global markets to increase its influence. We look forward to many of you joining us there. In the meantime, keep safe!

Andrew Skipper
Partner, Head of Africa practice
T +44 20 7296 2923
andrew.skipper@hoganlovells.com

# Why post-COVID-19 is a good time to beneficiate

Who makes the best chocolate in the world, the Swiss or the Belgians? Either way, neither of these countries owns vast tracts of cocoa plantations. They import the raw materials to make the chocolate. Yet, we would all agree that the greatest economic value is unlocked when cocoa beans become chocolate. It is sad to say that resource-based economies are not the wealthy ones.

The Scottish economist and philosopher Adam Smith, who published The Wealth of Nations in 1776, is generally regarded as the father of modern economics. He argued for division of labor and famously advocated that if tasks were divided up, workers could collectively improve their productivity. A notion modernized by Henry Ford in the development of the model T production line.

Beneficiation means to take raw material and to transform it to a higher value product. Applying this principle to mineral extraction, the key to unlocking wealth is the beneficiation thereof to the higher value products. For example, take chromium ore and transform it into ferrochrome, then take ferrochrome and use it in the production of stainless steel and then use the stainless steel to make end products. Such a division of labor at a macro-economic level creates wealth.

Almost a decade ago, in June 2011, the Department of Mineral Resources and Energy (DMRE) published a Beneficiation Strategy for the Minerals Industry. South Africa has been a resource economy for more than a century and is in need of a paradigm shift. We must focus on strategic investment in assets to maximize long-term growth beneficiation projects, enhance value exports and increase sources for consumption of local content.

Unsurprisingly, the Beneficiation Strategy identified the lack of infrastructure as one of the barriers to the development of downstream beneficiation. Shortages of critical infrastructure such as rail, water, ports and electricity supply would, according to the DMRE, pose a major threat to future growth.

There is no doubt that once South Africa emerges from the current lockdown, there will be a renewed look at ways in which to restructure businesses, firstly to absorb the negative impact and ensure survival, but secondly, to improve their global competitiveness in a post-COVID-19 2 world. The mining industry will not escape restructure. Many mines were marginal operations to begin with and the economic fall-out will send some mines over the fiscal cliff.

It is perhaps in such calamitous circumstances where the opportunity lies for the DMRE to use its regulatory tools to promote downstream beneficiation and so accelerate the healthy metamorphosis of the mining industry.

Section 23(2) of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA) provides that, when considering an application for a mining right, the Minister of Mineral Resources and Energy may have regard to section 26, which in turn provides that if the Minister, in consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically inside South Africa, then the Minister may promote such beneficiation, subject to any terms and conditions the Minister may determine. The principles of section 23 also apply where applications are made to the Minister to transfer a mining right from one holder to another (as would be the case in a restructure).

However, paying lip-service to the regulatory provisions and encouraging private investors to build downstream beneficiation plants at great cost is not enough. A coordinated approach is needed, which would include the following:

- Tackle the issue of electricity. Unstable and expensive electricity makes the building of processing and refinery plants uneconomical. During the Mining Indaba in February 2020, the Minister announced that he would investigate how mines (and downstream beneficiation plants) could generate their own electricity. A plan is urgently needed to remove the various regulatory barriers to the construction of private power plants, so that they can be owned independently, financed accordingly and then continue to feed into the national grid once the operations they service come to an end. Independent power producers have been lobbying government for decades to get this right – the time to do it is right now.
- Improve the efficiency of the state-owned rail transport network. Beneficiated product will still have to be exported. Business needs a reliable, efficient and stable logistics network to export product. The current over-reliance on road transport is not sustainable. Public money will have to be spent on improving the rail transport network and the management thereof.

Wessel Badenhorst
Office Managing Partner,
Johannesburg
T +27 11 052 6123
wessel.badenhorst@hoganlovells.com

# Business continuity management in Africa - Do’s and Don’ts

Tobias Faber and Camilla Fröhlich from the Frankfurt office virtually interviewed Pete Frielinghaus, Managing Director of ContinuityEastAfrica in Kenya on Business Continuity Management (BCM) in Africa and the implications of COVID-19 on BCM.

**HL: You are a fellow of the Business Continuity Institute and currently advising in the field of Resilience after serving as Managing Director of Continuity East Africa in Kenya and having worked all over Africa for the past 18 years. It's fair to say, you know Africa.**

**Pete Frielinghaus:** No-one can ever say they really know Africa. Africa is an enigma of its own and a continent that continually surprises and amazes me – but yes, I’ve worked in about 27 countries over the last 20 years all over the African continent.

**HL: In a nutshell what is BCM and why should it not be overlooked especially within Africa?**

**Pete Frielinghaus:** BCM is all about continuity of your operations, in the old days we referred to DR, or Disaster Recovery, this is no longer applicable as we don’t always face disasters but encounter plenty of incidents that could disrupt our daily operations (business and technology) – so it’s about continuity management and more importantly, about general or holistic resilience. Africa in particular, needs and invokes BCM on a far higher average than Europe or any other first world country – the classic examples are the highly unreliable utilities we find prevalent all over Africa – power, water, infrastructure etc.

**HL: You have been quoted as saying that we live in a VUCA world (volatile, uncertain, complex and ambiguous). Recent events make this acronym more applicable than ever. However, preparation is vital and could mean the difference between a business surviving a disaster or succumbing to it. Would you agree that BCM is vital for all businesses?**

**Pete Frielinghaus:** Absolutely, all you need to do is turn on any news channel at any time of the day and you’ll see examples of VUCA being very much alive and well in all sectors. This is the essence of BCM – maintaining your organization’s resilience and continuity of critical processes, irrespective of the type of interruption.

**HL: Have you noticed a growing trend towards foreign investors in Africa focusing on putting BCM measures in place or would you say this is still one of the things overlooked to an extent?**

**Pete Frielinghaus:** Foreign investors that do their due diligence properly should insist on it – more than often, the organizations’ they represent would have a duty to maintain their governance and compliance obligations as prescribed by their local governing bodies.

**HL: We cannot avoid addressing the COVID-19 pandemic. Is this something you have prepared businesses for? Especially in Africa outbreaks are not uncommon and surely businesses too are not immune to the effects. Can you briefly touch on what BCM in times of a pandemic looks like?**

**Pete Frielinghaus:** This pandemic has completely revolutionized BCM and the need for proper preparedness – we have put pandemic plans in place for a number of years now, but the extent of this outbreak has tested them all to the limit. The first real deployments came about with Ebola in West Africa and Bird Flu in the East – all of these proved their value at the time.

**HL: How has the response to COVID-19 been different to other outbreaks, such as Ebola, in Africa?**

**Pete Frielinghaus:** Besides the sheer scale of the pandemic, the biggest difference was the fact that for the first time ever, we all experienced a complete lockdown and as such, all our workers had to test their remote working capabilities. For those unprepared, this was a complete game stopper.

**HL: You have seen and been an active part of BCM solutions being stressed-tested in real situations such as the terror attacks in Kenya in recent years. Are there any so-called "lessons learned" that came out of the wake of those attacks by observing businesses implementing BCM solutions and operating from recovery sites that you could share?**

**Pete Frielinghaus:** Yes, unfortunately you are right, I've had first-hand experience in this in Nigeria, South Sudan and more recently in Kenya.

Without going into too much detail, the biggest lesson learnt was testing, testing and testing! Organizations that test their resilience strategies regularly, are far more prepared and able to recover more quickly than those that have not exercised their responses.

**HL: Let's assume that a business in Africa has BCM solutions in place, how important is it to "dry run" such a plan to ensure that all employees, management and clients know how things will play out if and when the need arises? Is this something you recommend to clients? If so, how is this implemented as we assume it's far more than your average fire drill in a downtown office location.**

**Pete Frielinghaus:** As I've alluded to in the previous point, testing is absolutely critical. A full testing strategy should be put in place and planned over a number of months and even years as the testing becomes more mature – these strategies would start with basic desk-top testing of plans and responses, to far more detailed and complex tests (or exercises, as it's mostly not based on a pass or fail concept) which include a number of different elements such as ICT recovery, Business Process recovery, Crisis Management and strategic leadership. Most importantly, the communication and relationship between all these elements are vital for a successful recovery.

**HL: They say education is key so following on from the above question, how can our clients embarking on projects within Africa and setting up satellite locations or local offices gain better awareness and understanding of BCM? We really emphasize the importance of a local partner to our clients in almost all Africa-related interactions – BCM is also something our clients should be discussing with their local partners too.**

**Pete Frielinghaus:** Having worked all over Africa, I learnt really early on that what works in your head office or home country, will most certainly not work in the same way in-country. When you are operating in a foreign environment, my best advice would be listen to the locals, ask a lot of questions and be respectful of their responses and cultures – cultural difference have a huge impact on an easy landing into new ventures - local knowledge is key. I can give you some great examples of things going wrong purely on cultural differences, that's a topic for another discussion.

**HL: Pete, thank you very much for shining a light on BCM and its importance especially in the current climate.**

**This article previously appeared in the Hogan Lovells Germany Africa Newsletter, which can be viewed* here ([https://ehoganlovells.com/rv/ff0063613544bc39827c87a74f4786e5f9402fe4](https://ehoganlovells.com/rv/ff0063613544bc39827c87a74f4786e5f9402fe4))*

Dr. Tobias Faber
Partner, Frankfurt
T +49 69 962 36 161
tobias.faber@hoganlovells.com

Camilla Froehlich
Attorney (South Africa) and registered Foreign Lawyer (Germany, Frankfurt)
T +49 69 9623 6355
camilla.froehlich@hoganlovells.com

# Debate over AfCFTA's COVID-19 delays exemplifies the challenges behind this ambitious project

In late April, the African Union announced the postponement of the implementation of the world's biggest trade area, the African Continental Free Trade Agreement (referred to as "AfCFTA"), by at least six months, citing the challenges posed by COVID-19. Whilst the AfCFTA entered into its operational phase on 7 July 2019 – only three years after the African Union started the negotiation process – the last few months have highlighted difficulties in agreeing the detail of such an ambitious project. However, the delay caused a strong reaction: influential business leaders urged the heads of state to push ahead with trading and further negotiations, in an attempt to avoid further delay in the AfCFTA's full implementation.

For a project that was already suffering delays in the detailed phase 2 negotiations, COVID-19 presents obvious further difficulties. COVID-19 continues to be an impediment to the implementation of AfCFTA, but the strong reaction to the delay shows that the political and economic desire behind this free trade zone remains strong. Indeed, in an interview in early June Dr Benedict Okey Oramah, president of the African Export–Import Bank asserted that the "*delay is not due to any lack of political will or deficit of commitment*." There will be further tests of this desire to come, but while there may be further delays, the reality of a united trade zone across the continent remains closer than ever.

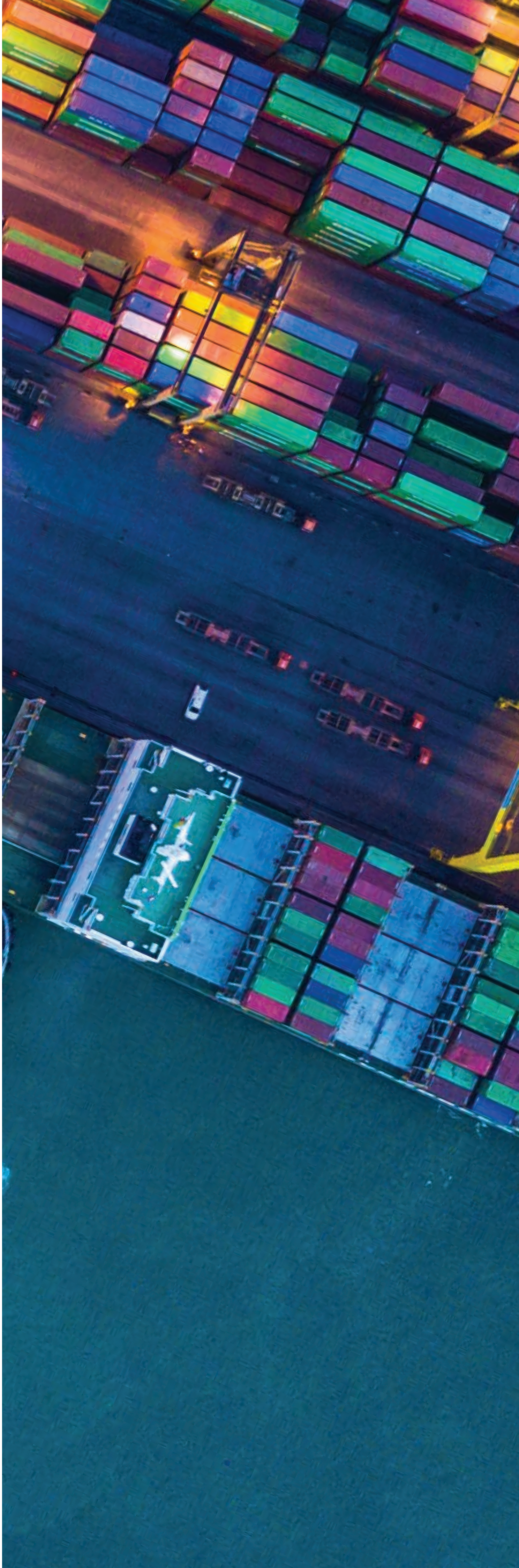
AfCFTA will be a key driver of the African Union's new "paradigm" for Africa post COVID-19, which they recently called for. This dictates fundamental changes to traditional global supply chain models. In this paradigm Africa must focus on adding value in Africa for Africa, increasing intra-African trade and replacing or at least challenging China as the major source of global supply. COVID-19, with closed borders and damaged economies clearly presents a serious challenge to intra-Africa trade in the short and possibly medium term. Indeed, African exports are expected to decline from 53% in 2019 to less than 30% this year as a result of COVID-19 related travel restrictions. It is hardly surprising that the champions of intra-African trade are concerned about any delay to AfCFTA in what is bound to be a very long process. But the prize for success is immense and current global disruption opens new opportunities for breaking the status quo.

Hogan Lovells has been monitoring closely all developments on the AfCFTA, including through a dedicated report and website (https://www.hoganlovells.com/en/knowledge/topic-centers/hogan-lovells-afcfta). Andrew Skipper, the head of Hogan Lovells Africa Practice has been speaking to a range of senior African commentators in the series of "A Perspective" podcasts. There is a clear focus on building trade in Africa for Africa post-COVID-19, and this simply highlights the need for progress to be made.

## Our Commentary:

The AfCFTA is widely recognised for the impressive ambition behind its objectives, seeking to unite 1.2 billion people in a $3.5 trillion economic area. Yet, in spite of the mammoth task of negotiating the AfCFTA, the agreements which set up the foundations of the free trade zone were reached at a remarkable pace. On 30 May 2019, the AfCFTA came into force, only three years after the African Union first began negotiations. Indeed, this impressively strong political will not only meant that an agreement was finalised at an unprecedented speed, but, while there was initial hesitation from major economies like Nigeria, within a relatively short period of time every country on the African continent but one (Eritrea) signed up to the Agreement.

As such, it is perhaps unsurprising that there was resistance to the announcement from Wamkele Mene, Secretary- General of the AfCFTA secretariat, that the implementation of the AfCFTA would be delayed from the planned start date of 1 July 2020, until the start of January, due to disruptions caused by the global pandemic. Further, the AU summit scheduled to encourage trade negotiators to conclude their bargaining on service schedules, tariff reductions and rules of origin was postponed from May to December 2020. Reaction was strong: over 25 representatives of influential businesses and organisations on the continent, representing various sectors of the economic community (including the African Airlines Association, Orascom, Pharco, Ecobank...) published an open letter to the continent's political leaders urging the Union to push ahead with the implementation of the AfCFTA during this difficult period. Trade should still start in July, they argued, and negotiations should continue, even if the full AfCFTA trading might be delayed thereafter. They further argued that the AfCFTA was in many ways a cure for the COVID-19 situation, allowing free trade in essential items such as pharmaceuticals, and that there was in fact a "silver lining" to the COVID-19 situation, which "opened the door for industrialization". It would be a mistake to pass up these opportunities, they point out.



Whilst trade is not due to start in July as requested, Mr Mene has confirmed in an interview at the Bloomberg Invest Global virtual conference on 23 June 2020, that an African free-trade agreement is unlikely to face further delays even if a second wave of coronavirus hits the region. Therefore, while no new due date has been officially announced for negotiations to recommence it is anticipated that the start of trading under the AfCFTA will not be unduly delayed.

One factor behind the strong desire to avoid any further delay might be the comparatively limited impact of COVID-19 as an illness in Africa so far.

Whilst COVID-19 has of course had a catastrophic global impact, this has not so far been as devastating in terms of health (albeit that global economic contagion has been great) as many feared on the African continent, with many giving credit to the swift action taken across Africa to contain COVID-19. As of 24 June, there are around 325,000 confirmed cases across the continent (just 3.5% of the global total), with a comparatively low 8,621 confirmed deaths. It is in this context that the representatives of the business community recently argued that it would be a shame to waste the opportunity and head down a path of delays.

While COVID-19 clearly presents issues in implementing the agreement and concluding the negotiations, there had already been warning signs that delay in the final agreement and application of the AfCFTA regime could be inevitable. As some warned when the treaty, which set out the broad principles of the free trade area but left many specifics for a second phase of negotiations, the devil can often be in the detail. Even before COVID-19, the challenges of achieving consensus were apparent and delays had crept into the tight schedule of implementation. The Phase II negotiations relating to the investment protocol, for example, had already slipped from January to June 2020 and then again to January 2021. This is perhaps unsurprising – the investment protocol, as with the intellectual property and competition protocols currently in negotiation, poses difficult questions to which African States have in recent years adopted different approaches. In terms of investment protection, for example, while some States have been actively signing bilateral investment treaties ("**BITs**") in recent years (for instance, Morocco, Congo, Gambia and Burkina Faso), others have taken a different approach (Tanzania for instance terminated its BIT with the Netherlands in 2019, following similar activity from South Africa). Finding a consensus to all these questions is clearly a challenging process, and, beyond the publicly declared delays, there is very little information currently available about the progress of the ongoing negotiations.

It will, therefore, be interesting to monitor how the African Union finds a balance to the current challenges. The decision in early May indicated that at least six further months for negotiations will be needed, but even beyond that there still remains uncertainty. This is perhaps the first time that the powerful drive behind the AfCFTA in recent years has faced a serious setback. On the one hand, certain diplomats of the African Union and business leaders are clearly concerned to take advantage of all the opportunities that the AfCFTA will bring, even taking advantage of the 'silver lining' opportunities that may arise from the impact of COVID-19. On the other hand, other diplomats of the African Union will be anxious to avoid a rushed-through application of the treaty. An incomplete set of policies could lead to similar criticisms as have been levelled against the difficult practical application of certain regional cooperation agreements on the continent. Wherever the balance is struck, the potential of the AfCFTA remains enormous. Those behind the AfCFTA will therefore hope that these are temporary teething issues and that the ambition of the largest free trade zone in the world will become an effective and practical reality.

Andrew Skipper
Partner, Head of Africa practice
T +44 20 7296 2923
andrew.skipper@hoganlovells.com

Thomas Kendra
Partner, Paris
T +33 1 53 67 18 26
thomas.kendra@hoganlovells.com

# Implications of the Nigerian Finance Act 2019

On 13 January 2020, the President of the Federal Republic of Nigeria signed the Finance Bill 2019 into law (the '**Finance Act**' or the '**Act**'). The Act was designed to, among other objectives, amend the various tax laws in Nigeria, support the implementation of the 2020 National Budget, promote fiscal equity by introducing tax incentives for investment in infrastructure and capital markets, and mitigate instances of regressive taxation.

This article highlights key provisions in the Finance Act in light of its intended impact on the economy and investment activities in Nigeria.

## 1. The act supports the diversification of the Nigerian economy

As part of ongoing efforts to support the Nigerian Government's drive to diversify the Nigerian economy, the Act introduces a number of sector- and industry-focused measures to encourage growth and investment into hitherto underperforming sectors in Nigeria.

For example, the Act grants tax exemptions to companies engaged in agricultural production for five years, extendable for another three years subject to the satisfactory performance of such companies. With less than 50% of the over 34 million hectares of arable land in Nigeria still uncultivated, agriculture remains a relatively untapped investment opportunity in Nigeria. The exemptions being offered are expected to encourage investment into agriculture and by implication ease the high level of unemployment in Nigeria. Indeed, active investment into agriculture will impact on employment and provide income to the nearly a quarter of the Nigerian population that is out of work.

The Act also introduces a cap on the withholding tax rate applicable to roads, bridges, building and power construction contracts up to a maximum 2.5%. This is expected to encourage foreign companies to get involved in the infrastructure and construction industry.

The Finance Act allows all companies, including insurance companies, to carry forward their losses indefinitely. Under the previous regimes, insurance companies had a four-year time restriction beyond which they were not permitted to carry forward their business losses to determine their companies' income tax liabilities. Allowing insurance companies to carry forward their losses indefinitely will no doubt strengthen foreign investment incentives and encourage the growth of the very promising insurance sector in Nigeria.

## 2. Taxation of foreign businesses

Prior to the introduction of the Finance Act, a non-resident company was only subject to the tax regime in Nigeria if it had a physical presence in Nigeria. Under the new Act, non-resident companies who are engaged in the provision of digital, technical, management, consultancy or professional services to a person resident in Nigeria, will now be liable to tax in Nigeria based on the significant economic presence principle. Such tax will be to the extent that the company has a significant economic presence in Nigeria and profit can be attributed to such activity.

The aim of this provision is to bring foreign companies deriving economic value from Nigeria within the Nigerian tax net, despite not having any actual presence in Nigeria.

While the Act is silent on what amounts to a "significant economic presence", in February 2020, the Honourable Minister of Finance, Budget and National Planning, in exercise of powers bestowed upon her by the Companies Income Tax Act, clarified that a company other than a Nigerian company will be regarded as having a significant economic presence in Nigeria, in an accounting year, where such company (or in aggregate with the activities of connected persons to such company):

a) derives a gross turnover or income of more than N25 million (approx. US$65,000) or its equivalent in that year, from the provision of digital services or other goods and services through a digital platform to any person in Nigeria;

b) uses a Nigerian domain name (.ng) or registers a website address in Nigeria; or

c) has targeted or sustained interactions with persons in Nigeria, including reflecting its prices in Nigerian currency or providing billing or payment options in Nigerian currency.

Also, a non-Nigerian company carrying on a business comprising technical, management, consultancy or professional services will be regarded as having a significant economic presence, if it earns an income or receives payment from a person resident in Nigeria or a fixed base or agent in Nigeria, other than a Nigerian company.

## 3. Tax on dividend and interim distribution

Under the old regime, companies were taxed at the rate of 30% on their dividend distributions, where distributed dividends surpass the taxable earnings for the year.

The Finance Act has now excluded certain profits from the rule. These profits include franked investment income, after-tax profits and distributions made by Real Estate Investment Companies. The Act also repealed the provision which required companies liable to tax under the Nigerian Companies Income Tax Act to make an advance payment of its company income tax before paying interim dividends.

It is expected that these amendments would help reduce double taxation of dividends.

## 4. Increase in VAT rate

The Finance Act increases the VAT rate from 5% to 7.5%. In a bid to cushion the effect of the 50% increase on small- and middle-scaled businesses, the Act exempts companies with an annual turnover of N25 million (approx. US$65,000) or less from paying VAT.

The Act also includes in the VAT tax net: services provided outside Nigeria, provided the place of supply for those services is Nigeria; services provided by a person physically present in Nigeria at the time the service was provided; or services made to a person in Nigeria, even where the services were rendered outside Nigeria. However, exported service remains zero-rated for VAT. The Act also exempts basic food items from VAT.

## 5. Provisions relating to the oil and gas

The Finance Act revokes the withholding tax exemption on profits distributed out of after-tax petroleum profits, which means that 10% withholding tax exemption will now apply to dividends paid out of petroleum profits. It also removes the requirement to obtain approval from the Minister of Finance before claiming interest expense as a deductible expense.

The Act prevents companies enjoying gas utilisation incentives in respect of their qualifying capital expenditure from enjoying any other tax incentive such as the Pioneer Status Incentive on the same project or assets.

## 6. Minimum tax

The Finance Act introduced a new system for computing minimum tax, which is a base rate of 0.5% of the qualifying company's turnover excluding franked investment income.
The effect of this innovation is to shift the impact of minimum tax from a capital basis to a purely revenue-based approach.

The Finance Act also deleted the exemption for companies with at least 25% imported equity capital and included a new exemption from minimum tax, for new (less than four calendar years), small companies with an annual gross turnover of less than N25 million (approx. US$65,000) or companies carrying on an agricultural trade or business. Hence, foreign companies who were initially exempted under the Nigerian Companies Income Tax Act will lose the exemption, unless their annual gross turnover is less than N25 million (approx. US$65,000). This is to support new, small or agricultural companies whilst increasing tax collectibles from other companies.

## 7. Introduction of a progressive Companies Income Tax system

Under the previous regime, manufacturing and agricultural businesses in their first five to seven years were allowed to pay tax at a reduced rate of 20% (as against 30%, which is the Companies Income Tax rate in Nigeria). The Finance Act has now extended the incentive, by introducing a new progressive Companies Income Tax rate regime. Under the revised regime:

- start-ups and small enterprises with annual gross turnover of not more than N25 million (approx. US$65,000) would be completely exempted from paying Companies Income Tax, subject to timely filing of their Companies Income Tax returns;
- medium-sized companies whose turnover exceeds N25 million (approx. US$65,000) but is less than N100 million (approx. US$258,000) will be subject to Companies Income Tax at 20%; and
- other companies with annual gross turnover of N100 million (approx. US$258,000) and above will pay tax at the standard Companies Income Tax rate of 30%.

## 8. Change to the condition for the tax-exemption of export profits

The Nigerian Companies Income Tax Act exempts the profits made by a Nigerian company from exports from tax, if such profits are returned to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts. The Act has now removed the requirement to return profits to Nigeria and companies are only required to show that the profits were used to acquire raw materials, plant, equipment and spare parts. This is also an incentive for foreign participation in the Nigerian economy. Foreign companies can therefore return capital abroad and still benefit from the tax exemption provided raw materials, plant, equipment and/or spare parts equivalent to the exemption claimed are imported into the country.

## 9. Modification of tax deductibility rules

Initially, companies were permitted to deduct expenses incurred to generate both tax-exempt income and non-exempt income from their profits, thereby reducing the profits available for tax by a large expense deduction. The Finance Act now permits companies to only take a tax deduction for expenses incurred in the generation of non-exempt income.

Expenses incurred in the generation of tax-exempt income would no longer be deducted. This provision is also targeted at increasing tax collectibles from companies.

## 10. Early tax payment

The Finance Act:

- requires companies filing self-assessment to pay their taxes in full on, or before, the due date of filing;
- offers a tax credit equal to 1% (2% for medium-sized companies) of the amount of tax paid, where a company pays its taxes 90 days before its due date for filing;
- increases the applicable penalties and interests for late payment of taxes; and
- increases the applicable penalties for late filing of tax returns to N50,000 in the first month and N25,000 subsequently.

## 11. Introduction of Thin Capitalisation Rules

By virtue of this rule, interests on loans advanced by a foreign company to a Nigerian affiliate will only be deductible where such interest does not exceed 30% of the earnings before interest, tax, depreciation and amortisation (EBITDA) of the Nigerian company in the relevant accounting period. Where the interest has not been fully deducted from income in a particular tax year, such interest can be carried forward and deducted from future income for a maximum of five years. Whilst this is bad news to highly leveraged companies, it will encourage foreign companies to push more borrowed capital into Nigeria with the assurance that the interest will remain deductible for a period of five years even if the company does not make sufficient income immediately.

It should be noted that this rule does not apply to subsidiaries of foreign companies engaged in the business of banking or insurance.

## 12. Intragroup transactions

The Finance Act introduces a minimum holding requirement for related party group restructuring or reorganisation. A company would be recognised as part of a group if such company has been a member of such a group for a minimum of 365 days before the date of the reorganisation or restructuring. The Act also specifies that any exemption provided shall be withdrawn where the acquiring company fails to hold the underlying assets transferred for less than 365 days after the date of the transaction.

Furthermore, assets transferred in the course of a related-party business reorganisation will not give rise to capital gains tax or VAT provided the 365-day holding period requirement is met.

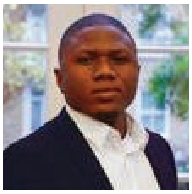
## Conclusion

The Act evidences positive efforts by the Nigerian Government to develop the business environment through attempts at eliminating multiple taxation and changing obsolete tax laws. The introduction of various tax incentives is also laudable and expected to attract more investment into the country.

There are, however, drawbacks for investors. For instance, a potential impact of the thin capitalisation rules is that companies that are highly leveraged will be unable to offset their excess interest against available profits and will ultimately have to absorb such interest as an expense, where they have been unable to offset it within five years. Similarly, the disapplication of exemption for withholding tax on dividends from petroleum profit may result in investor fatigue.

However, despite the downsides, it is expected that the Act will go a long way in attracting investors through its tax incentives, stimulating economic activities within Nigeria and indeed inspiring investors' confidence.

Ademola Bamgbose
Associate, London
T +44 20 7296 2881
ademola.bamgbose@hoganlovells.com



Bodunde Ajenifuja
Trainee Solicitor, London
T +44 20 7296 5955
bodunde.ajenifuja@hoganlovells.com

# Nigeria's untapped treasures: Growth and investment potential

With the recent uncertainties brought on by the global COVID-19 pandemic ("Pandemic") and the further collapse of oil prices leading to deep global economic recession and related consequences, it is not surprising that the Federal Government of Nigeria ("FGN") continues to see the need to diversify the revenue base of the Nigerian economy by reducing the overdependence on oil as a major source of foreign exchange. Therefore, and in addition to developing its other sectors, it is becoming clearer that the FGN is focusing on tapping into the infinite potential of the Nigerian mining sector (the "Industry").

## Background

There is no doubt that Nigeria is richly endowed with vast reserves of solid minerals. In fact, the Ministry of Mines and Steel Development ("MMSD") has identified different mineral deposits in commercial quantities across the country comprising limestone, laterite, gold, coal, bitumen, tin, iron ore, tantalite/columbite, lead/zinc sulphides, barytes, cassiterite, gemstones, talc, feldspar, and marble.

Despite its large proven mineral deposits and intrinsic potential, the Industry remains largely unharnessed and although mining contributed significantly to Nigeria's economic growth and development with its exportation of tin, columbite and coal in the early 1960's, the oil boom of the 1970's brought about a gradual neglect of the Industry and, consequently, the general decline in the exploitation of Nigeria's solid minerals.

## Legal and Regulatory Framework

Prior to Nigeria's return to democratic rule in 1999, the Industry was largely neglected and lacked investor-interest, especially in the absence of a clear and unambiguous legal and regulatory framework. It was governed by many pieces of legislation with overlapping provisions and lacked proper administration. In a bid to revamp the Industry, these were repealed and replaced with the Minerals and Mining Act Decree no. 34 of 1999, which in turn was replaced in 2007 by the Nigerian Minerals and Mining Act. Other ancillary pieces of legislation were also enacted including the Mineral and Mining Regulations of 2011.

The Industry has since received more focused attempts by the FGN to bolster investment and harness its potential. The core principle is simple – a transparent licensing regime with mineral titles issued on a first come, first serve basis. Also, with the introduction of a modern mining cadastre system, up-to-date data and information are now available and easily accessible on mining titles. These investor-friendly measures have provided some level of transparency and stability within the Industry and essentially, a lot more comfort for foreign investors.

## Challenges

The Nigerian economy has not benefitted fully from the mining potential. Arguably, this has largely been due to the country's impermeable fixation on its oil, which has inadvertently led to the disregard of the rest of the mining sector. This disregard has, in turn, allowed for corruption to fester on various levels which has further hindered the Industry from reaching its full potential. Issues of illegal mining operations have been commonplace, which do not favour investor perception.

Other challenges that the Industry has experienced include poor safety measures, inadequate infrastructure, as well as training and development of Artisanal and Small-Scale Miners ("ASM") who form about 90% of the workers.

In addition to the existing challenges, the Pandemic introduced an additional layer of complications. Restrictions on gatherings and commuting delayed and/or suspended the execution of mining projects. On a global scale, there are reports of a downward spiral in the share prices of listed companies and a significant drop in prices of minerals.

Remarkably, the FGN has taken steps to mitigate the economic impact of the Pandemic. These steps include setting-up a Presidential Task Force on COVID-19 to coordinate the country's efforts in dealing with the Pandemic, submission of an Emergency Economic Stimulus Bill for consideration by the National Assembly and an announcement of the fiscal stimulus package which comprises various measures in response to the Pandemic. Relevant agencies of government at Federal and State levels have also announced various measures. However, it remains to be seen the extent to which these measures will mitigate the economic impact of the Pandemic on the Industry.

## Opportunities

Notwithstanding the above, the Industry has demonstrated resilience and a readiness to survive the challenges it has faced. In March 2016, an effort to revamp the Industry was made by the creation of a multi-stakeholder committee to develop a plan for the strategic and sustainable transformation of the Industry. This committee developed a roadmap, aimed at the rejuvenation of the Industry. The Mining Implementation and Strategy Team (MIST) was inaugurated in December 2016 to operate as the central coordinating team for the roadmap and to essentially be responsible for leading its execution.

Despite reports of slow implementation of this roadmap, the Industry has witnessed some activity in recent times with the issuance of mineral titles to new investors. Incentives, such as capital allowance, exemption from import duties, and tax relief, have also been put in place to encourage investment.

Other steps are also being taken by the FGN in a bid to return the Industry to its glory days. In 2017, the MMSD signed an MOU with the Bank of Industry for the management of a N5bn (approx. USD13.9m) fund in support of the ASMs. This fund was designed to play a catalytic role by stimulating interest in ASMs who may lack the funds to commence operations.

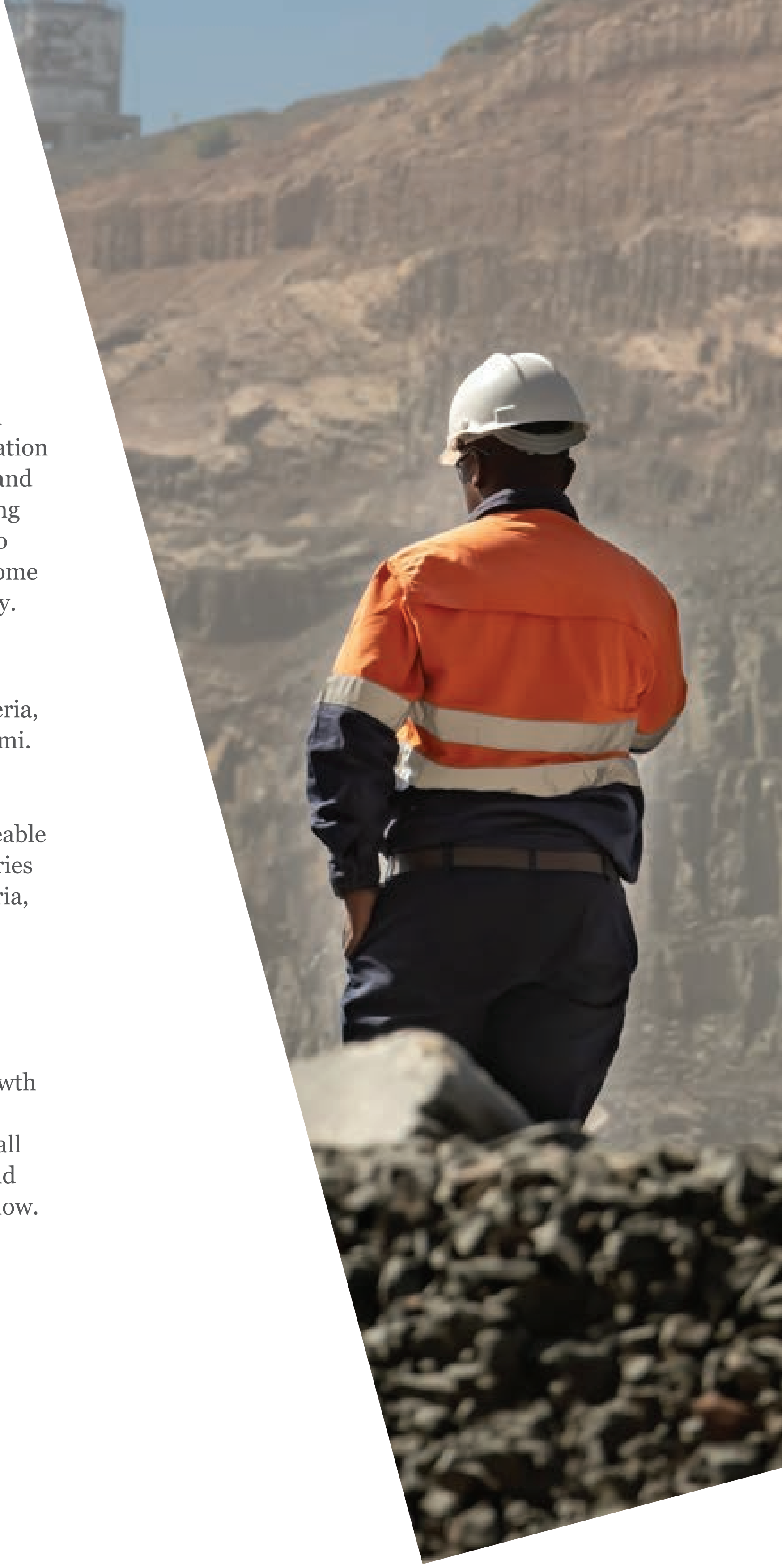
In May 2019, the Small Scale and Artisanal Miners Association was formed, with the main objective of working with the Industry to address challenges faced by ASMs, who form the majority of the workers.

As recently as October 2019, the Minister of Mines and Steel Development, signed an MOU with the Ministry of Trade and Investment of the Russian Federation for scientific and technical cooperation in the field of geosciences between both countries. In addition, Nigeria and South Africa entered into a bilateral agreement relating mostly to the development of solid minerals. A two-year implementation plan was proposed in respect of minerals and metals value addition, advancement of geo-scientific knowledge generation, regulatory framework and policy, and investment promotion.

Also, in 2019, the Minister assured the House of Representatives Committee on Mines and the House Committee on Steel that the FGN will leave no stone unturned in its determination to place Nigeria in the rank of globally recognized mining nations. He reiterated the potential of the Industry, which he described as having all it takes to be a global mining player, adding that the current administration is actuating strategies that will fully unlock the potential of the sector to become a major revenue earner for government.

In January 2020, the Minister announced the lifting of the Zamfara State ban within Q1 of 2020. The FGN-imposed ban was instituted in 2019 following a record-high wave of insurgencies, lawlessness and insecurity stemming from illegal mining. However, the FGN has now deployed a surveillance strategy focused on addressing conflict and deterring illegal miners. This move has also been fostered by an increase in genuine investor interest. In this regard, the Minister announced, in January 2020, that the Russian Government and Afreximbank would be investing $1.46bn in the Ajaokuta steel plant.

The Industry has also experienced increased support of Federal to State government collaboration in the development of the Industry as demonstrated by the Kwara and Nassarawa State Governments. This synergy will further embolden State governments to consider the Industry more seriously as a sustainable source of internally generated revenue, thereby, creating more investment prospects.



A more recent step by the FGN was the inauguration, in March 2020, of a Ministerial Technical Committee ("MTC") on the formulation of a framework for sustainable development and growth of the Industry as a part of the on-going diversification efforts. The MTC is expected to further develop a framework and articulate some sustainable programmes to boost the Industry.

It is also interesting to note that women are beginning to make strides in the Industry, as demonstrated by the Women in Mining, Nigeria, led by their President, Hon. Ms. Janet Adeyemi.

## Conclusion

While the Pandemic has thrown up unforeseeable issues globally, it has also forced many countries to review their economic strategies. For Nigeria, there is no doubt that it will accelerate the FGN's diversification plans for the economy. With the efforts of previous administrations, the Industry continues to make substantial improvements which should translate into significant contributions to the economic growth and development of Nigeria and remarkable returns for investors. Therefore, the time for all investors to strongly consider the Industry and take maximum advantage of its potential, is now.

Iyunola Adekanye
Senior Counsel
ACAS-Law, Nigeria
T +234(0)8186016692
iadekanye@acas-law.com

Adeleke Alao
Senior Counsel
ACAS-Law, Nigeria
T +234(0)8035784703
aalao@acas-law.com

# Is Algeria back in business?

According to the United Nations Conference on Trade and Development (UNCTAD) report on World Investment in 2019, during the last decade Algeria experienced a significant decline in foreign direct investments, compared to other neighboring countries.

The revision of Algeria's foreign investment policy started in 2016 with the promulgation of Law No. 16-09 dated 3 August 2016 to improve the investment climate and boost the economic growth and development of the country (the **2016 Investment Law**). The 2016 Investment Law was adopted in a context where the prices of oil started to decrease in June 2014. Despite the country's very favourable demographics, its economy remains almost entirely dependent on oil and natural gas, which account for 95% of total exports. In order to diversify the economy, the Algerian Government had therefore to take urgent measures to open and strengthen the economy; in particular, to boost competition, spur the creation of a digital economy, and restructure the country's state-owned enterprises.

However, the entry into force of the 2016 Investment Law did not manage to attract significant foreign investments due essentially to the following three deterrent measures for foreign investors that were maintained: (i) the 51/49 Rule (as defined below); (ii) the State's pre-emption right; and (iii) the prohibition of foreign financing.

In that context, the Supplementary Finance Law for 2020 (the **2020 Finance Law**) which came into effect on 4 June 2020, provides significant positive changes to the Algerian investment environment.

## 1. Substantial reduction of the scope of the "49/51 Rule"

Since July 2009, foreign investors in Algeria have been constrained by a general rule providing that foreign investments can only be made under the framework of a partnership in which one or more Algerian shareholders must hold at least 51% of an Algerian law company (colloquially known as the **51/49 Rule**).

In other words, in all sectors of activity foreign investors were obliged to set up an Algerian company with a share capital held at least at 51% by one or more Algerian nationals residing in Algeria, which limited foreign investment in an Algerian entity to 49% of its share capital.

The rule, which was initially driven by the Government's wish to limit the transfer of foreign currency abroad, proved detrimental to the Algerian economy, making it unattractive to most foreign investors.

In practice, the 51/49 Rule resulted in a drastic reduction of foreign direct investments (FDI) in Algeria.

As a result of this rule, in many cases the shareholding of foreign investors in the share capital of joint ventures was often limited, notably in the automotive sector. This low participation was characterized by limited investment/involvement of the foreign investors in the management of the JV and in terms of know-how and technological transfer.

In order particularly to mitigate the negative impact of the 51/49 Rule, on 11 December 2019, the Algerian Government adopted the law 19-14, establishing the finance law for 2020 (the **2020 Finance Law**) which partially repealed the 51/49 Rule, except in relation to activities related to "strategic sectors" and to the purchase of goods for resale in the same condition (*achat revente de produits en l'état*).

However, the 51/49 Rule remained in force until the adoption of implementing regulations defining "strategic sectors".

On 4 June 2020, the 2020 Finance Law was enacted and defined, *inter alia*, the following sectors that remain subject to the 51/49 rule:

1. **purchase and resale of goods** (as is) (achat revente de produits en l'état);
2. the exploitation of the **national mining domain** as well as all underground or surface resources relating to an extractive activity, with the exception of quarries and aggregates;

3. the **upstream energy sector** and any other activity governed by the law on hydrocarbons (including downstream activities), as well as the operation of the network for the distribution and transportation of electrical energy by cable, and hydrocarbons (gas and liquid) by underground or overhead pipelines;
4. the **military industry and related activities** under the authority of the Ministry of National Defense;
5. the sectors related to **transportation infrastructures** such as railways, ports and airports; and
6. the **pharmaceutical industry, except** for investments related to the manufacturing of essential innovative, high value-added products, requiring complex and protected technology, intended for the local market and export.

The 2020 Finance Law expressly provides that "*any other activity for the production of goods and services is open to foreign investment without any obligation of association with a local party*".

However, certain specific regulated sectors such as banking or manufacturing of tobacco products, which are not listed amongst the strategic sectors under the 2020 Finance Law, are governed by separate sets of laws and regulations expressly setting out an obligation to set-up a partnership in which one or more Algerian shareholders must hold at least 51% of an Algerian law company.

As a result, all the other sectors, notably, the telecommunications, tourism, services, agriculture, insurance, construction and manufacturing of goods will now be open to a 100% foreign shareholding.

The Algerian government's intention is expressly to encourage foreign direct investments by granting significant more options to foreign investors in terms of seeking and obtaining full or majority control (both of existing and future) Algerian companies.

## 2. Removal of the State's pre-emption right and replacement by a prior approval limited to transfers in strategic activities

Since 2009, the Algerian State and Algerian State-owned companies (*entreprises publiques économiques*) benefited from a pre-emption right with respect to all transfers of shares made by and/or to foreign shareholders (the **State Pre-emption Right**). An implementing decree which has never been published was expected to determine, notably, the applicable timeframe and the pricing mechanism. The entry into force of the 2016 Investment Law did not clarify the legal uncertainty relating to the implementing of the State Pre-emption Right.

The uncertainty on the potential application of the State Pre-emption Right clearly discouraged many foreign investors from investing in Algeria, mainly because of the potential risks when exiting the investment.

The 2020 Finance Law replaced the State Pre-emption Right by a prior approval from the Algerian Government on any transfer by foreign entities to other foreign entities, of shares of an Algerian company **only** if such Algerian law company is operating in one of the strategic sectors listed above. More detailed rules for the application of this prior approval will be established by implementing regulations.

As a result, the share transfers in Algerian law companies that (i) operate in "non-strategic sectors" and (ii) those operating in "strategic sectors" that only involve one foreign party, as buyer or seller, no longer require any prior approval/authorization.

This measure is a major step forward and a response to the concerns of many foreign investors which were not comfortable with the State Pre-emption Right which, in any event, has almost never been exercised.

### 3. Introduction of the right to use foreign financing

Since 2009, Algeria has been one of the very rare countries in the world which strictly prohibited any form of foreign financing.

A first adjustment to this prohibition was made with a decree dated 26 September 2013, which allowed shareholders' loans under certain restrictive conditions.

In 2016, a second relaxation to the prohibition of foreign financing was introduced in article 55 of Law 15-18 of 30 December 2015 on the finance law for 2016 (the **2016 Finance Law**) which maintained the obligation of local financing except for so-called "strategic" projects which could be financed with foreign funds on a case-by-case basis after authorization by the Algerian Government. The implementing legislation that was expected to allow the implementation of this exception has never been enacted and no project, to our knowledge, has been authorized to be financed on this basis since 2016.

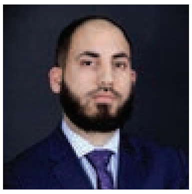
The 2020 Finance Law has expressly repealed article 55 of the 2016 Finance Law and now therefore enables foreign investors to finance their investments in Algeria with facilities provided by foreign lenders.

Before the protectionist measures taken by the Algerian Government in 2009 Algeria attracted a decent FDI flow.

The recent measures adopted by the 2020 Finance Law represent a positive signal to attract and encourage foreign investments. Algeria benefits from many strong points such as the size of its market (the fourth largest economy in Africa), its geographic location as an interface between Europe and Africa and inside the Maghreb, the low cost of energy (gas, fuel and electricity), still relatively large liquidity reserve which lowers its vulnerability to commodity prices, and a very strong potential in many sectors such as in renewable energy, agriculture and tourism.

Although there are still serious obstacles to foreign investment, such as bureaucracy, a weak financial sector and a persistent legal instability, the reform brought by the 2020 Finance Law will significant improve the business climate in Algeria and will undoubtedly increase the volume of FDIs in the coming years.

Foued Bouarbiat
Partner
Bourabiat Associés, Algeria
T +213 (0) 775 388 597
f.bourabiat@bourabiatassocies.com



Steven Aldrich
Associate
Bourabiat Associes, Algeria
T +213 (0) 798 688 527
s.aldrich@bourabiatassocies.com

# Pro Bono highlights

## Innovation to defeat disease

Through the pro bono practice, we are supporting our own home-grown innovator: Dr Marion Palmer, one of the firm's Senior Scientists, who co-designed with Mr Declan Costello FRCS some airways procedures boxes for the protection of medical specialists who are at the frontline doing procedures on patients with COVID-19. They manufactured prototypes for trials in five hospitals in the UK, supported by a crowd-funding initiative, and we assisted by providing pro bono support from the medical devices and commercial teams. The COVID-19 airways screen is now available at no cost to health professionals: https://www.airwayscreen.com

Commenting on the campaign, Dr. Marion Palmer said: "Health workers are on the front line against COVID-19. Unfortunately, many of them are working in stressful work environments and are themselves exposed to infection. With this campaign, we hope we will be able to improve their protection from the virus."

We are also supported social enterprise entrepreneur Marc Koska, founder of ApiJect (https://www.apiject.com), which is a new method of vaccine delivery enabling it to deliver vaccines into low resource settings and low income countries. The firm provided pro bono legal advice to Marc who invented a single-use, prefilled soft syringe that is low cost, easy to use and replaces the need for glass syringes.

The intention has always been that both of these innovations should be available to low income countries. We are currently working with our contacts in the African health community to introduce these ideas, and discuss other initiatives.

## Fair trade chocolate

Thanks to the hard work and diplomatic negotiations of two members of our London team, Divine Chocolate Limited, the leading Fairtrade company set up by a cocoa farmers' co-operative, now has a new majority shareholder. Ludwig Weinrich GmbH & Co. KG (Weinrich), which has manufactured Divine's chocolate since it was established back in 1998, has acquired the majority of the shares in the company. Kuapa Kokoo, the farmers' co-operative in Ghana, that was a founding shareholder, will still own 20% of the shares and continue to have board representation. This means that the Divine brand and the unique business model with farmers at the heart will continue to deliver seriously good chocolate that empowers both producers and consumers.

In addition, our colleagues in the Frankfurt office worked on a contract for Kuapa Kokoo so they can now sell their chocolate to Lidl.

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

# View from a Secondee

At Hogan Lovells, we have the enormous pleasure each year to welcome young lawyers from across Africa, on a three-month secondment to our London office. For us, this is one way in which we can to deepen the relationships we have with the law firms we work with across our network and outside of that, and to share our knowledge and experience of doing international work with them.

Between September and December 2019, we welcomed four new secondees into our London office, and in this interview Alison Diarra, our Africa Network Manager, asked two of them to share some of their experiences and a few top tips. (The other two secondees will feature in our next edition.) Diana Almadi joined us via the ILFA secondment programme, which we have been involved in since it started 12 years ago. She works as legal counsel – Litigation at the Kenya Revenue Authority. Mulopa Ndalameta joined us on a direct secondment from one of our relationship firms in Zambia, Musa Dudhia & Co. He has recently been made a partner in their disputes resolution team.

**AD: Why did you apply for a secondment?**

**DA:** I first knew about the ILFA secondment when I was a pupil in private practice. I slowly developed interest and researched about it. From my reading, it was evident it was something worth trying out for any young and upcoming advocate. My senior colleagues, who had previously taken part, also shared their experiences on how enriching the secondment was to their work and the invaluable networks they had made through it. So, I knew how it would be invaluable to my practice as a tax litigator and I wanted to leverage on that. My personal experience was eye-opening.

**MN:** It really arose from a feeling that I could not see the forest for the trees. Having practiced for several years, I was keen to experience a different perspective of international best practice, and identify from that: what I already do, what I do not do, and what I should do in my work. That was the general motivation. I also had a specific focus on gaining further insight as an arbitration practitioner. It is no secret that London is a hub of commercial law and activity. A lot of the agreements in my work require parties to resolve disputes by resorting to the London Court of International Arbitration or other international arbitral institutions. Being involved in some of this action was the intention.

**AD: Was work in London very different?**

**DA:** Coming from a robust public corporation in Nairobi, my litigation exposure is slightly different from that in a law firm, in terms of how we work and the procedures in place. Getting a placement at Hogan Lovells was phenomenal in terms of work efficiency, processes, management styles, relations and the nature of work. As a litigation Counsel for the Kenya Revenue Authority, my work entails looking at tax disputes and solutions from a Tax Authority's perspective. It was therefore refreshing to be part of a team looking at tax disputes and solutions from a taxpayer's point of view. I was placed in the Transfer Pricing team whose work was completely different from my day-to-day work. The team was mandated to advise and give solutions to clients on varied transfer pricing issues at the transaction stage. My encounter with transfer pricing in my organisation was at the dispute level, after the transaction had been identified to breached transfer pricing policies.

I also worked with the tax team at Hogan Lovells which advises global clients. This was an opportunity for me to apply my knowledge in tax administration that I had acquired during my Masters in Tax and Customs Administration in Kenya. The Kenyan and United Kingdom tax regimes are similar; I was therefore able to confidently participate in offering solutions.

**MN:** I come from a country whose legal profession is fused in the sense that, as an advocate I am both a solicitor and a barrister. The work was different to the extent that the barrister element was missing. The other major difference arose from the procedural rules I had to take into account for the different arbitral institutions. The impact of this for example,

was to affect the details that go into a request for arbitration, or introduce the use of Redfern Schedules. Zambia being a common law jurisdiction, I was familiar with the legal issues involved.

**AD: What did you get most out of your secondment?**

**DA:** It very difficult to pinpoint one thing to talk about in the whole experience; everything is worth writing a book about. The valuable networks and friendships with my fellow cohorts, lawyers, tax and transfer pricing experts is one thing that I really cherish. The legal experience in London has greatly inspired my work and my appreciation of tax and transfer pricing, which are my speciality. The whole experience encapsulates the ideology that life journey is a continuous learning process.

**MN:** Life-long relationships. I worked with an amazing team in international arbitration and the relationships I was able to cultivate are priceless. Friendships were made with a wide variety of people, including partners, associates, trainees and also my three fellow secondees. I have remained in touch with these people and appreciate their continued support.

**AD: Did you enjoy living in London?**

**DA:** Yes. London is an amazing city designed with an architectural eye. The efficient transport network, historical places, the entertainment scene and the atmosphere are all worth mentioning. I had already been warned that it would be cold so I was mentally prepared to embrace the cold weather. I can still imagine my feet walking around and exploring the streets, markets, and museums. The boat ride on River Thames and the visit at the Buckingham Palace were just a few highlights of my London experience. Londoners are polite, hospitable and I would get surprised every time a stranger would be kind to me in the streets or in the Tube. It was a memorable experience. It was like Ubuntu outside Africa.

**MN:** Yes I did. Discovering the city was an interesting experience. Hours and hours of commuting to and from work provided me with extended time to listen to music and gather my thoughts. Trying different routes to work and various combinations of transport became something of a hobby. I spent lunch times eating out and touring my immediate work surrounding. This was made much easier with the help of a close friend from Zambia. Potterford Butchery and the Argentinian stand at the Friday food market were my favourite. It was such an added bonus to catch the sun. There was no shortage of entertainment or recreational activities after work and on weekends.

**AD: Has the secondment changed the way you work?**

**DA:** Yes it has. I have a better appreciation of Transfer Pricing and Tax Law practise. I am constantly cognisant of the global tax laws and case law in my day-to-day practice. I am also constantly on look-out for developmental changes taking place in the global practice of transfer pricing and tax, such as the global discussions on BEPS and in its effects on developing countries like Kenya. My work such as proposing legislative amendments during national budgetary process herein Kenya and my organisation's work have a very important role to play in shaping global conversations and policies in tax, e.g. we are currently working on modalities of taxation of digital economy. The secondment has therefore played an important role in making me the person I am currently, how I am approaching issues at work and during professional engagements on international tax issues.

**MN:** It has in several small ways. I will give an example. In arbitration one of the common things that happens is that a losing party will challenge registration or enforcement of an arbitral award on the basis that something happened during the arbitration which was unfair or demonstrated bias. I attended an arbitration where, at the end of the hearing, the Chairperson of the Tribunal asked the parties for the record, whether they were comfortable with the way the proceedings had been conducted. That question alone, and noting the responses, has changed the way I would approach an arbitration whether as a representative or an arbitrator.

**AD: What advice would you give future secondees?**

**DA:** This is a once in a lifetime experience, where a world class law firm or organisation takes you in like an employee and allows you to take part in all their projects like an insider. Take the opportunity to soak up all the knowledge, make valuable networks, connections and friendships. Above all, be open-minded, enjoy it and have the best time of your life.

**MN:** Be absolutely clear in your mind about what you want to achieve in order for the experience to be meaningful. As part of this process one must appreciate, early on, any differences in the structure of the host organisation from the home set up. In my case, before taking up the secondment I received various requests for information from HL which presented an opportunity to clarify my expectations.

Secondly, I would encourage being open-minded. It is prudent to have your goals set out but it is also exciting to venture into unplanned spaces. There were regular networking events at Atlantic House [HL's London office] that it was a joy to participate in.

Diana Almadi
Legal Counsel
Kenya Revenue Authority
**T** +254 728 995 222
diana.almadi@kra.go.ke

Mulopa Ndalameta
Partner
Musa Dudhia & Co., Zambia
**T** +260 966 726 602
mndalameta@musadudhia.co.zm

# Recent work

Advising the International Finance Corporation, the private-sector arm of the World Bank Group, on its investment in Egyptian company Globaltronics. The company specialises in the design, manufacture and supply of electric energy meters, smart grid and automatic meter reading systems including but not limited to handheld, mobile and network technologies based on telephony platforms, radio frequency or power line transmission.

Providing legal support to a Ghanaian farmers' cooperative, as producers of fair trade cocoa, in their efforts to empower and build up their business and to realize their goal of successfully delivering and selling their produce which will now be widely available at leading chains both in the UK and Germany. This will form part of their sustainable chocolate initiative.

Assisting the national investment commission of a West African country with the proposed amendment to an iron mine development agreement to provide for shared use of the rail and port infrastructure relating to the project. We also advised on the negotiations with the concession holder and other mining companies regarding the terms for shared access.

Providing regulatory advice in respect of the lockdown (due to the COVID-19 outbreak) and the impact thereof at Kleinfontein Colliery, in South Africa.

Assisting an alternative credit financier to finance the export of cocoa for a company that exports farm produce from Nigeria.

Advising a multinational investment bank and financial services company in relation to a guarantee from, and South African legal opinion on, a South African services, trading, and distribution company.

Assisting an American multinational company with an internal investigation into an allegation of sexual assault at a location in South Africa.

**Andrew Skipper**
Partner, Head of Africa practice
T +44 20 7296 2923
andrew.skipper@hoganlovells.com

**Abena Poku**
Senior Marketing & Business Development Manager - Africa
T +44 20 7296 5538
abena.poku@hoganlovells.com

**Alison Diarra**
Lawyer - Africa Network Manager
T +44 20 7296 2845
alison.diarra@hoganlovells.com

# Events calendar

### Invest Africa FMCG seminar
Thursday 18 June 2020
**Webinar**

Africa has a rapidly growing emerging market of middle-class consumers calling for premium retail products – and they have the money to buy them. According to a report published by Fraym, the African data solutions company, consumers across the continent are on track to hit a predicted USD 2.1 trillion in spending by 2025. Yet, what effect has COVID-19 had on supply chains across the continent? How will consumer behaviour be changed? What investments are we likely to see in the e-commerce space?

Andrew Skipper moderated this webinar, with guest speakers including Debbie Law, Coverage Director, Sector Head, Rand Merchant Bank; Carolyn Campbell, COO, Emerging Capital Partners; Stephan Eyeson, CEO & Co-Founder, Survey54; and Tjaart Kruger, CEO, Premier Foods.

### Post COVID-19 – Where to for the Mining Industry?
Thursday 2 July 2020
**Webinar**

A panel discussion on Prohibited Practices and Distressed M&A in the mining industry in a post COVID-19 world.

The panellists were Mr James Hodge (Deputy Competition Commissioner - South Africa) as well as Mr Hans Klopper (National Head at BDO Business Restructuring (Pty) Ltd), Wessel Badenhorst (Office Managing Partner) and Lesley Morphet (Partner). Susan Bright (Regional Managing Partner UK & Africa), moderated the discussion.

### AfricArb/Africa Arbitration Academy - Paris Arbitration Week
Monday 6 July 2020
**Webinar**

International Arbitration in Africa: Perspectives on Virtual Hearings and the Africa Arbitration Academy Protocol.

As part of Paris Arbitration Week 2020, the Africa Arbitration Academy (AAA) and AfricArb held their joint webinar on the AAA Protocol on Virtual Hearings in Africa (Protocol) and perspectives from leading African arbitral institutions on the Protocol, and potential enforcement issues when hearings are held virtually. The webinar was hosted by Hogan Lovells.

### Africa Forum
Monday 20 July 2020
**Virtual event**

This year's Africa Forum comes in the midst of the global pandemic, COVID-19, and to say it has changed the world is an understatement. The immediate and lasting effect of the virus is still reverberating, but it will undoubtedly have a fundamental impact on the way we do business in Africa, from Africa and across Africa.

Looking back to 2019, the adverse impact of climate change around the world had even the most hardened skeptics paying attention. The continent of Africa is one of the most vulnerable to the forces of climate change, although it contributes the least to global warming.

Under the backdrop of these global game changers, we have assembled a roster of exceptional speakers representing key industry trailblazers to delve deep into business critical discussions surrounding Africa's Growth and Sustainability.

### Hogan Lovells Germany-Africa Day
Thursday 24 September:
**Virtual event**

The 2nd Hogan Lovells Germany-Africa day, this year in partnership with Africa Advisors GmbH.

In June 2019 we held a very successful inaugural Hogan Lovells Germany-Africa day in our Frankfurt office. This year we will team up with Africa Advisors GmbH, to being you a virtual Germany-Africa Day with business insights, legal updates and live conversations.

This will be an invitation only event. For more information contact: Tobias Faber at tobias.faber@hoganlovells.com or Camilla Froehlich at camilla.froehlich@hoganlovells.com

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