Africa Newsletter

Edition 3, 2020

Hogan Lovells

Welcome to the third edition of the Hogan Lovells Africa Newsletter for 2020

We are delighted to have recently launched our new Africa Insights Topic centre (www.hoganlovells.com/en/knowledge/topic-centers/africa-insights). This sleek site provides a central location for you to engage with all of our thought leadership. Stay ahead of the curve with our podcasts, newsletters, blogs and Africa Forum content covering hot topics and key issues affecting the continent.

This edition kicks off with two arbitration focused articles. The first, highlights some of the recent developments affecting arbitration law and practice in Africa; while the second, co-authored with one of our former secondees from Musa Dudhia & Co., takes a look at the enforcement of arbitration awards particularly in Zambia.

Indeed, we are pleased to feature a few articles from our relationship firms in this edition. The next one is contributed by FCB Legal and takes a look at recent changes to local content rules in the Angolan oil and gas sector.

There then follow two articles giving us different perspectives on electricity supply issues. We start in Nigeria, with an article written by two young Nigerian lawyers (one based in our London office and the other at Olaniwun Ajayi in Lagos) discussing the effect of a cost-reflective tariff in Nigeria's electricity supply industry. In the second, two of our friends from Engoru, Mutebi Advocates (one a former secondee here at HL) discuss opportunities for investors in Uganda's electricity transmission sector.

The focus then shifts to the renewable energy sector, and our colleague in Frankfurt interviews Ms. Ntombifuthi Ntuli, CEO of South African Wind Energy Association (SAWEA) on South Africa's need for energy reform.

As always it is great to be able to share a couple of regular features. We highlight some of our recent pro bono activity in Africa, and then we share some insights and top tips provided by two of our recent secondees in our View from a Secondee.

We conclude the newsletter with information about some of our recent activities – from our new A Local Perspective blog series, to our first ever virtual Africa Forum and Andrew's A Perspective Podcasts – as well as our usual information about some of our recent work on the continent and our events.

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

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The evolving arbitration practice in Africa and the revised LCIA Arbitration Rules 2020

The last decade witnessed remarkable developments in the law and practice of arbitration in Africa. For example, jurisdictions like Ghana, South Africa and Tanzania enacted new arbitration laws; courts across the African continent showed a general willingness to enforce validly made arbitration agreements and awards; and various arbitration initiatives have sprung to encourage the growth and practice of arbitration on the continent, including the Africa Arbitration Academy, Africa Pledge, Africa Arbitration and the Africa Arbitration Academy. Little wonder that recent reports and statistics released by leading institutions like the London Court of International Arbitration (LCIA) and International Chamber of Commerce International Court of Arbitration show an increase in the number of international arbitrations involving African parties.

On 1 October 2020, the LCIA Arbitration Rules 2020 came into effect, replacing the pre-existing LCIA Arbitration Rules 2014. Drawing from the views and experiences of practitioners and arbitrators, the 2020 Rules incorporate a number of important updates intended to facilitate efficiency in the arbitration process and anticipate future trends in the practice. They also reflect the LCIA's recognition of the increasing role that technology plays in arbitration, a trend that has only been accelerated by the recent COVID-19 pandemic.

A key feature of the 2020 Rules is that they take into account technological advances since 2014 and the LCIA has adopted a very proactive approach in this regard. Key changes include the following:

Electronic communications and signatures – The 2020 Rules reflect the primacy of email and other electronic communications. Gone are references to "post" and "courier". Instead, communications are now required to be sent by email or other electronic means by default (Article 4.2), and (as a further example) an arbitration's commencement date is now specifically tied to the electronic receipt of the Request by the Registrar (Article 1.4). Awards can now be signed electronically and in counterparts (Article 26.2), cutting down the time between an award being finalised and transmitted to the parties. In a world where business communication now occurs via electronic means, this provision is definitely a step in the right direction. With this provision, African parties involved in international arbitration under the 2020 Rules should save substantially on time and costs as documents can be sent cheaply and more efficiently.

Virtual hearings and the new normal – The LCIA is the first major institution to incorporate such flexible, future-proof provisions as to the form of hearings directly into its rules. All hearings (including procedural hearings and emergency arbitrator's hearings) can now be conducted virtually, with broad provision for the use of "other communications technology" between "participants in one or more geographical places" (Article 19.2; see also 9.7 and 14.3). Virtual hearings present the advantage of reducing global travel and the associated time and costs. Given the very nature of international arbitration – with parties, counsel, witnesses and tribunals often spread around the world – the use of technology to conduct virtual hearings (either partly or entirely) can result in tremendous savings for African parties. Of course, there is the issue of access to good internet and audio visual technology but our recent experiences conducting virtual hearings and negotiation meetings with clients and witnesses in Africa show that with proper planning, virtual hearings can be conducted with little or no disruption.

Data protection and cybersecurity – Reflecting the increased importance of electronic communications within the 2020 Rules and of course sweeping changes to privacy and cybersecurity regulations globally since 2014, a new Article 30A requires tribunals to consult with parties on information security measures and personal data at an early stage. It also provides for tribunals and the LCIA itself to issue binding directions to ensure that best practice in these areas is observed. This is particularly important in view of the recent increase in the conduct of virtual hearings and incidences of unscrupulous elements hijacking proceedings.

It's also worth noting that the 2020 Rules contain a number of other important updates relating to procedure, people and costs:

Early determination – Although it is within a tribunal's power under the existing rules to determine disputes on a summary basis, the 2020 Rules expressly provide that tribunals can determine (including by order or award) that any claim or defence is manifestly outside its jurisdiction or is inadmissible or manifestly without merit (Article 22.1(viii)). The new early determination provisions are an important confirmation that such claims will be dealt with swiftly and cost-efficiently in LCIA arbitration.

Consolidation, concurrent conduct and composite Requests and Responses – The 2020 Rules expand on the procedural tools available to parties, tribunals and the LCIA Court for dealing efficiently with the large and complex sets of transaction documents and counterparties that often feature in LCIA arbitrations. For example, tribunals' existing powers of consolidation have been relocated to a new Article 22A, and supplemented with a new power to conduct two or more arbitrations concurrently if all are subject to the LCIA Rules and were commenced under the same or any compatible arbitration agreement(s) (Article 22.7(iii)). The LCIA Court itself gains new limited powers of consolidation in Article 22.8' and it will be possible for claimants to commence multiple arbitrations – against multiple sets of respondents and/or under multiple arbitration agreements – with a single "composite Request", each arbitration proceeding separately (i.e. without consolidation) under the 2020 Rules (Article 1.2). Respondents gain a corresponding ability to respond to a composite Request by way of a "composite Response" (Article 2.2).

Tribunal secretaries – Recognising that tribunal secretaries can play an important part in increasing the administrative and cost efficiency of an arbitration, but also that this is an area of arbitration practice where there are a variety of views, the 2020 Rules include express provisions about the role and appointment of tribunal secretaries in a new Article 14A. The provisions make clear (for example) that a tribunal's decision-making function cannot be delegated (Article 14.8), tribunal secretaries must provide written declarations – and assume a continuing duty – of impartiality and independence (Articles 14.9 and 14.14); and appointments are conditional on party approval of the tribunal secretary's role, the particular person filling that role, their written declarations, and any hourly rate or reimbursement of expenses (Article 14.10). These provisions make the LCIA one of the first arbitral institutions to provide for tribunal secretaries within its rules rather than in separate guidance.

Updated Schedule of Costs – The 2020 Rules include modest adjustments to the LCIA's 2014 fees and rates. It also retains the hourly rate approach to tribunal fees (rather than the ad valorem approach used by some other institutions which calculate arbitrator fees based on the value in dispute) meaning that the LCIA is likely to remain one of the most cost-effective arbitration institutions globally (as recently shown in its 2013-2016 Costs and Duration Report).

The 2020 Rules are definitely a step in the right direction, and will contribute to ongoing efforts by stakeholders to encourage the practice of arbitration in Africa.

This article was first published by ALB on 5 November 2020: https://iclg.com/alb/14983-the-evolving-arbitration-practice-in-africa-and-the-revised-lcia-arbitration-rules-2020, and is reproduced w ith kind permission of the publishers.

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Enforcement of International Arbitration Awards in Africa: The Position in Zambia

With the continued increase in economic growth and population, the huge infrastructural and project opportunities, as well as recent developments in other parts of the world, Africa has received more global attention in recent years. As global business evolves and becomes integrated in Africa, international arbitration has become a popular method of resolving foreign investment disputes, and local courts in Africa have shown increasing willingness to enforce validly made arbitration agreements and awards. For example, the Nigerian Supreme Court in the case of MV Lupex v Nigerian Overseas Chartering and Shipping Ltd reiterated that where parties to a contract have agreed to submit any dispute arising from their contract to arbitration, the court will respect such agreement and stay any court proceedings brought in breach of the arbitration agreement.

One of the major factors that has contributed to the growth of international arbitration across the globe, including in Africa, is the general ease in which an international arbitration award creditor can enforce an international award in a foreign jurisdiction (especially when compared to a foreign court judgement). By way of background, a foreign decision is generally not binding outside of the jurisdiction where it has been made. In order to overcome this, many jurisdictions have entered into treaties in order to aid comity and ease the process of enforcing foreign decisions within their jurisdictions. However, the network of treaties presently in place to aid the recognition and enforcement of foreign court decisions is not as encompassing as the existing frameworks for the enforcement of international arbitration awards – this is one of the major reasons why parties to an international commercial contract would generally prefer to opt for arbitration.

In Africa, there are a number of enforcement regimes in relation to international arbitration. For example, there is the Uniform Act of Arbitration 2017 of the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA), which currently has 17 West and Central African French speaking countries. There is also the Riyadh Arab Agreement on Judicial Cooperation 1985, a Middle Eastern and North African ("MENA") convention, which governs the enforcement of arbitration awards in 20 MENA jurisdictions (including Algeria, Libya, Mauritania, Morocco, Somalia, Sudan and Tunisia). Very importantly, there is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, also known as "New York Convention", which presently has over 40 African contracting states.

This article will focus on the New York Convention and examine the enforcement of international arbitration awards in Africa in the context of the law and practice in Zambia.

Overview of the New York Convention

The New York Convention (the "Convention") is one of the key instruments in international arbitration and has been regarded as the most effective instance of international legislation in the entire history of commercial law. It applies to the recognition and enforcement of international arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards are sought, and arising out of differences between legal persons.

The Convention currently has 166 contracting states cutting across different jurisdictions around the globe, including Africa, with Sierra Leone being the latest jurisdiction to accede to the Convention in October 2020. By implication of the Convention, an award made in any state (including a state which is not a party to the Convention) can be enforced by a state that is party to the Convention, subject to certain basic conditions and reservations stipulated in the Convention. The Convention also sets out the limited grounds on which recognition and enforcement may be refused by the relevant court in a foreign jurisdiction. It is important to note that although the title of the Convention refers to the enforcement of foreign arbitral awards, it also covers the recognition and enforcement of arbitration agreements.

By signing, ratifying and acceding to the Convention, contracting states agree to enforce relevant international arbitration awards. Contracting states also commit to enforcing an international arbitration award in accordance with local procedural rules, and to not impose more onerous conditions for the enforcement of international awards than are imposed in the enforcement of domestic awards.

The position in Zambia

Zambia is one of the many jurisdictions in Africa that has adopted a pro-arbitration stance. The Arbitration Act No 19 of 2000 (the "Arbitration Act"), which governs the practice of arbitration in Zambia, is largely based on the UNCITRAL Model Law 1985. In addition, Zambia is a contracting party to the Convention and enforces foreign arbitral awards irrespective of the country in which the award was made, even if the country is not a party to the Convention. Commenting on the relevance of the UNCITRAL Model Law and New York Convention in Zambia, the Zambian Supreme Court in the case of China Henan International Cooperation Group Company Limited v G and G Nationwide (Z) Limited noted that "the Model Law was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in June 1985 and was introduced onto the international plane for purposes of harmonising arbitration laws and thus providing a law consistent with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention'). The need for harmonizing international arbitration laws stems from the fact that on the international plane arbitration is the preferred choice of dispute resolution in international trade and other relationships, resulting in a need to have a uniform set of rules relating to international arbitration to avoid the uncertainty and inconsistency that arises from conflicting legal regimes, particularly at the point of enforcing an award."

A party seeking to enforce a foreign arbitral award in Zambia must:

a. make an application to the High Court for the registration of the award; and

b. provide a duly authenticated original award and arbitration agreement, or certified copy. (If the award was issued in any other language other than in English, an award creditor will also be expected to supply a duly certified translation thereof in English).

An order giving leave to register an award is granted as a matter of course, and at that point the award creditor would be required to file and serve a notice of the registration of the award on the award debtor. Upon receiving notice, the award debtor has the right to challenge the registration by making an application to the court to set aside the registration on any of the following grounds:

a. that a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties subjected it or, under the law of the country where the award was made;

b. that the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;

c. that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

d. that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or in accordance with the law of the country where the arbitration took place;

e. that the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made;

f. that the subject-matter of the dispute is not capable of settlement by arbitration under the law of Zambia;

g. that the recognition or enforcement of the award would be contrary to public policy; or

h. that the making of the award was induced or affected by fraud, corruption or misrepresentation.

An award creditor may oppose the award debtor's application to set aside the registration. In the event that the award creditor successfully opposes the application to set aside the registration, or in a situation in which the award debtor fails to make an application within the stipulated period which an application ought to have been made, the award creditor may proceed to execute the award by issuing any of the writs of execution available to a successful litigant in the High Court.

Conclusion

At a time when foreign investments into Africa are expected to increase rapidly, many African states have adopted modern arbitration practices. Zambia and a good number of African jurisdictions have closely modelled their arbitration laws on the UNCITRAL Model Law. Many African states are also contracting parties to the New York Convention and local courts across the region have shown increasing willingness to enforce validly made arbitration agreements and awards. Parties investing, operating or trading in Zambia can have the confidence that it has a modern arbitration law and courts which will recognize a Parties choice of arbitration to resolve their disputes. Parties looking to arbitrate in Zambia can have the confidence that arbitral awards made in Zambia will be enforceable under the New York Convention and that Zambian courts will recognize awards issued in other New York Convention states under the procedures summarised above.

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New local content regulation in the Angolan oil & gas sector

Whilst Angola struggles to find its way out of the dreadful impact caused by the COVID-19 pandemic, the government is not willing to lay low on its intentions to protect domestic labour force and entrepreneurship.

With this purpose, and also in an attempt to reduce imports of goods and services in the oil and gas sector and increase internal production, Angola has recently approved the new Local Content Law ("LCL"), published through Presidential Decree no. 271/20 of 20 October 2020. The new LCL repeals and replaces Order no. 127/03 of 25 November 2003 and entered into force immediately upon being published, even though it does not affect the validity or effectiveness of agreements entered prior to such date.

To fully understand this new regulation, it should be firstly noted that the LCL is part of a broader legal framework which includes, among other regulations, the (i) Angolan Petroleum Activities Law and (ii) Presidential Decree no. 86/18 of 2 April 2018, which establishes the rules for the procedure for procurement of goods and services for oil operations in Angola. All provisions in the LCL should, therefore, be analysed in light of said framework.

It should also be highlighted that the rules included in the LCL are applicable to all companies in the oil sector value chain including both oil companies and goods and services suppliers (jointly "Oil Sector Companies"), meaning that, amongst others, most obligations related to the acquisition of local goods and services rely on all entities participating in the Angolan oil industry.

While maintaining the three separate regimes for the acquisition of goods and services (now called exclusivity, preferential and competition), unlike the former regulation, the new LCL does not include the list of goods and services that fall within each regime. Pursuant to the LCL, such lists will be published by the National Oil, Gas and Biofuel's Agency ("ANPG"), in its capacity of National Concessionaire, upon consultation with the Competition Authority, and shall be annually reviewed. In this respect, and although the LCL is already in force, the initial lists have not yet been published.

The LCL, however, already provides that in the exclusivity regime, only Angolan Companies are authorized to provide the services, or supply the goods, to be included in this regime. Unlike the previous regulation, under which Angolan Companies would only have to have a majority (>50%) Angolan holding, the new LCL defines Angolan Companies as companies whose capital is 100% held by Angolan nationals.

In regards to the preferential regime, the LCL establishes that the services and goods to be included therein may only be performed or supplied either by Angolan Companies or by other Angolan Incorporated Companies (which are defined as companies incorporated in Angola, irrespectively of the nationality of their shareholders). Angolan Companies have preference over Angolan Incorporated Companies though, in case they are in an equal footing in terms of quality, technical capacity, price and delivery time.

Notwithstanding, in case it is not possible to acquire the services or goods included in this preferential regime in Angola, Oil Sector Companies may acquire them from foreign companies, not established in the Angolan market, provided that they are capable of evidence to ANPG that it is very difficult or impossible to acquire such goods/services in the domestic market.

Finally, and similarly to the former regulation, services/goods falling in the competition regime can be freely supplied by foreign companies. However, even in this regime, Angolan Companies and Angolan Incorporated Companies, in this order, will have preference in case the price of their services or goods does not exceed by more than 10% the price offered by a foreign company.

For the purposes of implementing its rules, the LCL foresees that all goods / services providers to the oil industry must be certified by ANPG, which, apart from managing the registration and certification process, will also manage the index of implementation of the local content obligations and maintain a database with all relevant Angolan suppliers. This sets the tone for the difference between the roles of ANPG and the Ministry of Mineral Resources, Petroleum and Gas ("MIREMPET"). As ANPG is clearly granted a management role in the entire process of implementation of the LCL, MIREMPET shall act in a supervising role, being responsible for inter alia (i) defining the local content relevant policies, (ii) supervising ANPG and (iii) establishing a methodology for the measurement and certification of local content.

The LCL also includes a number of other obligations and requirements to Oil Sector Companies such as the following:

i. Such companies are required to enter into a Framework Agreement with MIREMPET, which shall define the rules, rights and obligations concerning the recruitment, integration, training and development of the relevant company's human resources, as well as impose an obligation to report on the status of each company's Angolanization process which entails the transfer of know-how from expats to Angolan employees and their progressive replacement. This Framework Agreement shall be executed in different timeframes, depending on whether the counterparty to MIREMPET is an oil company or a services provider.

ii. In addition to, but in the context with, the Framework Agreement, Oil Sector Companies must also submit, by 31 October each year, a Human Resources Development Plan to MIREMPET. Such plan must address each one of the requirements listed in the LCL. Similarly to the Framework Agreement, the purpose of this plan is to detail the recruitment, integration, training, career progression and development of local workforce with the purpose of promoting the participation of Angolan workforce in the management, execution and support to oilfield operations. The balance of the implementation of this plan must subsequently be submitted to MIREMPET by 31 March each year.

iii. Oil Sector Companies must submit a Local Content Plan to the ANPG on an annual basis, with the main purpose of this plan being to establish the proportion of the relevant Oil Sector Company's investments expected to be destined for the acquisition of goods and services from Angolan Incorporated Companies. In this regard, operators must submit a list to the ANPG with the expected acquisitions for each quarter, as well as report all agreements entered into in the previous quarter. All agreements entered into by oil companies must mandatorily include a local content clause.

Another important innovation of this new LCL is the fact that it expressly foresees that all technical assistance and management agreements entered into with foreign entities must foresee detailed training programs, knowledge transfer, technology and improvement of skills of the national labour force and shall be overseen by the ANPG.

Finally, and unlike the 2003 Decree, the LCL establishes different penalties for breach of the rules, with fines between USD 50,000 and USD 300,000, as well as ancillary sanctions including restriction or suspension of activity or restraint to entering into new agreements.

On a separate note, we would also highlight that, a few days after having enacted the LCL, the Angolan Government released an ambitious Local Hydrocarbon Exploration Strategy for the period of 2020-2025, approved by Presidential Decree no. 282/20 of 27 October, with a budget for its implementation of USD 867 million, part of which (USD 679 million) will be supported by foreign investment.

With the main goal of incentivising the replacement of reserves and mitigating the decline of oil and gas production in Angola, this strategy foresees the creation of conditions for the discovery of approximately 40 to 57 BBO (STOOIP) as well as between 17.5 and 27 TCF (GIIP) of natural gas, totalling additional resources in the region of 43.06 – 61.6 BBOE, in order to keep local production above one million barrels per day until 2040.

For such purpose, this five-year strategy is based on the following four fundamental pillars: (i) availability of and accessibility to the areas of the Sedimentary Basins in Angola for exploration purposes; (ii) expansion of geological knowledge and access to oil and natural gas resources, which includes unconventional resources and ultra ultra-deep zones; (iii) ensuring the successful execution of the general strategy for the allocation of oil concessions in Angola; and (iv) intensification of research and evaluation in all concessions and free areas.

The Angolan Government is clearly very engaged in promoting the industry and we are quite confident this strategy will attract the attention of the major players in the sector.

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Service based and cost reflective tariff in the Nigerian electricity supply industry; Halfway to bankability

Access to electricity is a critical factor to sustainable economic development. For any nation, there is a positive correlation between its electricity usage and prosperity. In Nigeria, although concerted efforts have continued towards ensuring its citizens have access to affordable and reliable power supply, the stark reality is that nearly half of its populace lack access to grid electricity; whilst the rest still experience regular power cuts. According to the World Bank; the economic costs of these power shortages in Nigeria is estimated at around $28 billion – equivalent to 2% of its Gross Domestic Product - a bane to her economic growth. Access to electricity is also one of the major constraints of the private sector; a large amount of revenue goes into self-generation of power in the commercial, industrial and residential sectors, thereby cutting down fortunes which might have otherwise been channelled into economic developmental activities.

Whilst it is apparent that the Nigerian electrical power sector requires significant investment and improvement, there are historical bankability issues surrounding investment in the Nigeria Electricity Supply Industry (NESI); the critical concern being the liquidity crisis of the sector. The liquidity crisis in the power sector significantly stems from the lack of a cost reflective tariff by the retail/end-use customers, which then transcends through the value chain to the power generation companies and the suppliers of feedstock for power generation plants. The previous tariffs have always been based on assumptions and parameters outside the control of the distribution companies (DisCos), such as inflation rates, exchange rates and gas prices. This, coupled with the fact that these tariffs are unreviewed as frequently and regularly as possible to reflect inevitable changes in the assumptions and parameters upon which the tariffs were made, causes revenue shortfalls to the DisCos. The revenue shortfall across the value chain impacts on the ability of the DisCos to meet their financial obligations, with long term effects on the market stability of the sector. As a result of this, most DisCos lack the technical and commercial viability to sustainably develop the infrastructure within their given franchise areas, and the high rate of the collections losses further exacerbates illiquidity. Financiers and investors will, therefore, consider the sector not to be safe and secure for investment.

The Multi Year Tariff Order 2020

On 27 August 2020, the Nigerian Electricity Regulatory Commission (NERC), the independent body with the authority for the regulation of the electric power industry in Nigeria, issued the Multi Year Tariff Order 2020 (MYTO 2020 or the Order), to mark the commencement of a "cost reflective" electricity retail tariff in Nigeria. It is intended that the Order will provide a path to transition to fully service-based cost reflective tariffs by July 2021. The MYTO 2020 was issued in response to the extraordinary review applications filed by the DisCos seeking a review of the end user tariffs. The predominant belief is that the successful implementation of the Order provides a financially sustainable NESI, with the concomitant effect of a sharp increase in electricity tariff across the country.

For the avoidance of doubt, the Order seeks, among other things, to: (a) ensure that prices charged by the DisCos are fair to customers and are sufficient to allow the DisCos to fully recover the efficient cost of operation, including a reasonable return on capital; (b) align the tariff paid by end-users with the quality of service enjoyed by them; and (c) ensure sustained improvement in reliability and quality of supply by incentivizing the DisCos to off-take energy in accordance with its Vesting Contract etc.

It is also worth mentioning that under the Order, a DisCo will only be availed the opportunity to earn its revenue requirement after it has fully paid a Minimum Remittance Threshold (MRT) consisting of: (a) its repayment obligations under the Central Bank of Nigeria's Nigerian Electricity Market Stabilization Facility (CBN-NEMS Facility); (b) 100% settlement of the Market Operator's invoice; and (c) the prescribed percentage of The Nigerian Bulk Electricity Trading (NBET) company's monthly invoices, which shall be the MRT going forward. Therefore, there is no certainty that the MYTO 2020 will in fact boost the DisCos' profit at all or in the near future, considering the MRT requirement.

Effect of MYTO 2020

The major criticism against the MYTO 2020 is its timing, as many households have been dealt a massive blow by the pandemic. However, overall the MYTO 2020 is a positive development and a laudable step towards addressing the long standing liquidity challenges in the power sector. This is primarily because it now gives room for the DisCos to increase their service levels in order to benefit from higher tariffs, thereby making them more profitable and self-sustainable. Also, the tariff will reflect the impact of changes in macroeconomic parameters on the DisCos revenue requirement. The MYTO 2020 will hopefully grow and sustain the NESI, whilst balancing the interests of both the end users and the DisCos.

Similarly, the MYTO 2020 may act as a catalyst for adequate industry capitalization to ensure the DisCos have sufficient resources to invest into infrastructural development, to further drive operational improvements.

Also, the tariff adjustment may further incentivise investors and financiers to commit capital to the sector.

Is the Nigeria Electricity Supply Industry there yet?

Although achieving a service reflective tariff is a milestone on the path towards the desired sustainable and bankable NESI, the MYTO 2020 is not a magic bullet for the problems of the NESI. More needs to be done. If Nigeria is to achieve the desired growth in the NESI, changes must be made to the institutional and legal structure of the industry. There is a need to reorganize the governance and regulatory framework towards market-based demand and supply conditions, while simultaneously reducing political influence in the NESI. For instance, over the years, the Nigerian Minister of Power has issued directives to NERC on issues concerning the regulation of the power sector, which are perceived as not only eroding the regulatory

independence of NERC but also interfering with the development framework of the sector - being an independent sector with private investors. This interference undermines the sector and weakens the confidence of investors in NESI. Therefore, an independent and accountable regulatory institution, with clearly defined regulatory authority and limits, needs to be created. This independent regulator will play a vital role in regulating the industry.

There should also be sufficient room for active collaboration with market participants, as well as other stakeholders, on issues that directly affect the regulation of the NESI. Indeed, the incentives of market actors to become informed about, respond to or even explore arbitrage opportunities connected with developments in NESI can be effectively harnessed by the public authorities, as long as there is trust and collaboration between them in ensuring a fair and equitable system for all.

Furthermore, the statutory restrictions on foreign reinsurances, investment caps, that prohibit investors in the NESI from undertaking investment beyond a particular amount should be reviewed to make the sector a more friendly business environment. Similarly, excessive regulatory hurdles (such as regulations restricting the right of the investors to negotiate bipartite tariff model), as well as transaction costs associated with investments into the sector, should now be relics of the past. This should be substituted with a more efficient and flat structure that places the stability of the NESI at the heart of its objectives.

In conclusion, whilst ensuring a cost reflective and service based tariff system will definitely contribute to the bankability of the NESI, it still would not lead to its optimal operation. More needs to be done to attract investors and financiers into the sector. There needs to be a clear, certain and market compatible regulatory environment. Ultimately important strategies must be put in place to make investment in the sector safe and secure.

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Opportunities for Investors in Uganda's Electricity Transmission Sector

The Government of Uganda (GoU) implemented reforms in the Electricity Supply Industry starting in the late 1990s. These reforms culminated into the enactment of the Electricity Act, 1999, Cap 145 (the 'Act'). The Act provided for the creation of three distinct successor companies responsible for generation, transmission and distribution, with these companies being under the regulatory purview of the Electricity Regulatory Authority ("the Authority").

Since then, generation and distribution, the two ends of the sector value chain, have received more attention from policy makers and financiers as they explore new avenues of increasing generation capacity as well as more efficient ways of delivering power to the end consumers.

Over the last ten years, there has been significant investment in the generation segment of the Electricity Supply Industry, supported by the REFIT policy, GETFIT and the development of large hydro power plants, such as the 183MW Isimba power project that has seen Uganda's installed capacity increase to 1,252 MW. Based on the installed capacity of generation plants (including operational, licensed but still under construction and committed plants like the 600MW Karuma), Uganda in the medium-term is expected to experience surplus generation of electricity.

However, there is a risk of the planned generation power plants achieving commercial operations date without the requisite evacuation lines in place, thus creating a need for investment in the transmission backbone to facilitate growth in electricity demand and to avert deemed energy payments that would otherwise affect the financial sustainability of the Electricity Supply Industry. This is also partly on account of previous energy planning in Uganda, which has emphasised supply-side issues such as increasing generation and attracting more private investors, especially for commercial sources of energy and less attention has been paid on the demand-side issues.

In response, the GoU is implementing initiatives aimed at ramping up domestic demand. In addition, through regional cooperation agreements, there will be a substantial increase in cross-border transactions in electricity. Thus, there is urgent need to reciprocate the same investment in transmission and distribution to ensure that the generated power is transmitted and distributed to consumers.

The buyer model

In the current market structure, the transmission segment is based on the single buyer model, with the system operator - **Uganda Electricity Transmission Company limited ('UETCL')** as single buyer and bulk power supplier of electricity. UETCL is a wholly owned Government corporation and holds four licences issued by the Authority, namely (1) Licence for system operation; (2) Licence for bulk power supply; (3) Licence for export & import of electricity; and (4) Licence for construction, ownership and operation of high voltage transmission installations.

Given that UETCL's functions are central to the overall financial sustainability of the electricity supply industry, it is obligated to pay the generators from the sale of electricity to the different distributors. In order to manage the impact of transmission investments on the end user electricity tariffs, the GoU has been providing direct funding for major transmission capital requirements through budgetary allocations, public loans and grant financing. Therefore, unlike the generation and distribution segments, the private sector has not participated in the financing of transmission investments.

Therefore, the transmission tariff for UETCL as determined by ERA has largely been recovering transmission operation and maintenance costs, and limited recovery capital expenditure/investment related costs.

Legal and regulatory framework

Prior to the introduction of power sector reforms, the Ugandan power sector was dominated by a public vertically integrated utility, the Uganda Electricity Board (UEB). In June 1999, the Government initiated a comprehensive restructuring of the power sector which culminated in the enactment of the Electricity Act 1999 Cap 145. The Act governs the regulation and supervision of the electricity sector in Uganda under the auspices of the Authority. As part of its mandate, the Authority is responsible for the issuance and regulation of compliance with licenses, establishment of a tariff structure and approving rates of charges.

The unbundling and the resultant creation of a generation, transmission and distribution utilities has led to a more efficient power supply chain in Uganda and invariably made it more attractive for investment. The transmission utility, UETCL is a bulk buyer and bulk power supplier of electricity under license from the Authority. UETCL is also the single operator and the executor of power purchase agreements with power producers, while distribution was subsequently privatized in 2005 under a 20 year concession granted to a private company, Umeme Limited.

Although Uganda has had a number of successful public private partnerships in the various sectors all of which were procured under different pieces of legislation, the country took the welcome step of passing the Public Private Partnership (PPP) Act in 2015. The PPP Act provides much needed legal certainty around public private partnerships and indeed will play a pivotal role in any attempt to attract private participation in the transmission segment.

In addition to primary legislation of the Electricity Act and the PPP Act, a number of supporting legislations including but not limited to the Land Act cap 227, Registration of Titles Act cap.230, Public Procurement and Disposal of Public Assets, Investment Act 2003, National Environment Act 2019, statutory instruments and guidelines issued by the Authority, Technical Standards applicable to the transmission infrastructure, general tax codes and the Energy Policy (2002) among others do provide a stable legal framework applicable to roll out of transmission projects in Uganda.

We understand that the Authority is conducting a situational analysis of the transmission segment that shall take into account substantial development of cross-border trading and regional power pools. The analysis will culminate into the development of a regulatory framework including guidelines that provide the procedure for private sector investments in the transmission segment. The framework will streamline and point out any conflicts to the legal authorization and procedure for approval and implementation and verification of the proposed investments; the requisite capacity by prospective investors; the relevant tariff

principles for determining costs of investments (if different from existing tariff determination principles) amongst others.

The Authority's approach is welcome as a robust legal and regulatory framework will go a long way in attracting reliable and credible investors in the transmission segment.

Emerging trends and opportunities

Several different business models have been used to attract private investment in transmission. The main models are privatizations, whole grid concessions, independent power transmissions (IPTs). The Chief Executive Officer of the Authority in an article that appeared in the Bloomberg indicated that the Government seeks up to USD 3.5bn private capital for the power transmission segment.

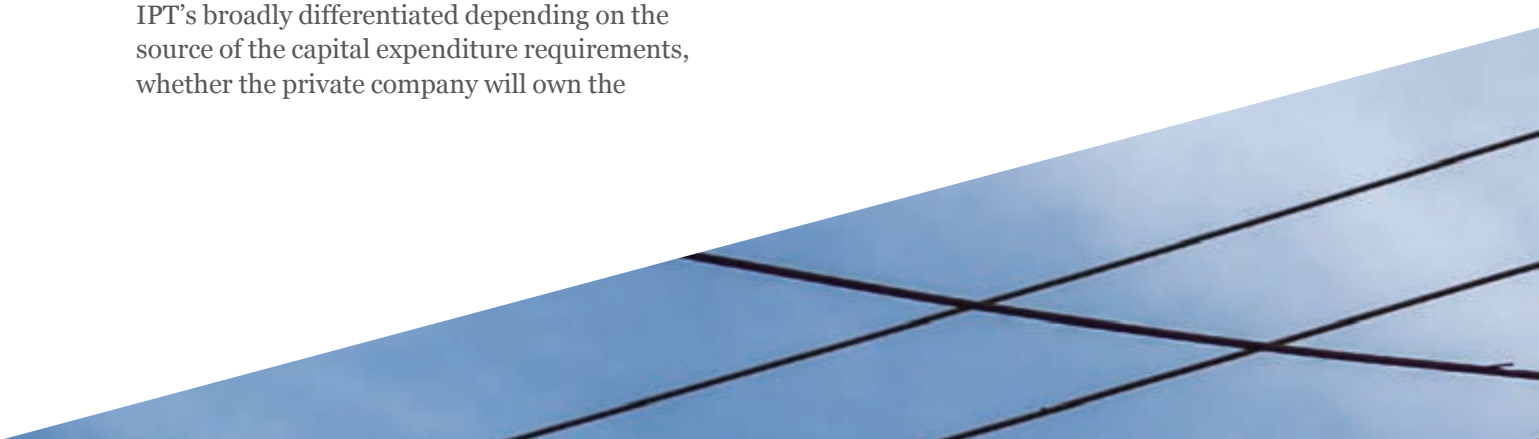
Africa's experience with private sector participation in the private sector has been negligible primarily through whole-of-grid concessions. Though these have not achieved significant investment in transmission they have brought some operational benefits. However Independent Power Transmissions (IPTs) could be the more appropriate business model to involve the private sector in power transmission. They have performed well in other developing countries with a number of IPTs in both middle- and low-income countries leading to substantial private investment in transmission, significant cost saving through tenders, and to contractual agreements that are thus far stable. Furthermore, the risks that IPT investors carry are similar to those that Independent Power Producers (IPPs) investors carry, and the IPP business model has been very successful in Uganda.

There are four main alternatives for structuring IPT's broadly differentiated depending on the source of the capital expenditure requirements, whether the private company will own the transmission assets and whether these will be transferred at the end of the term. The PPP structures IPT contracts may adopt are: (a) a Build, Own, Operate, Transfer (BOOT); (b) Build, Own, Operate (BOO); (c) Build, Transfer, Operate (BTO) or (d) EPC + Finance model.

In addition, the East African Power Pool, of which Uganda is a member, has seen a number of initiatives operationalized and/or approved. The East African Power Pool is a collaborative effort by eleven countries in Eastern Africa to interconnect their electricity grids and take advantage of excess capacity within the network and facilitate trade of electric power between members.

Uganda has commenced/approved the development of a 400Kv high voltage power line between Uganda and South Sudan; a 220Kv high voltage power line between Uganda and DRC; and a 400Kv high voltage power line between Uganda and Kenya amongst others. These projects are part of the regional Power Sharing Protocols of the Nile Equatorial Lakes Subsidiary Action Program and the East African Community which form part of the wider East African Power Pool.

As part of the re-alignment strategy, the Authority has initialized the process of developing a robust framework for private participation in the transmission segment. Under the proposed framework, the investments will be funded through the tariff following a cost benefit analysis. It is anticipated that the benefits of the proposed framework will among others include partly cost-reflective transmission prices, increased electricity consumption, enhanced efficiency in the transmission segment through transfer of managerial, technological and technical skills.



Conclusion

While Uganda has achieved increased electricity generation from 317MW (2002) to 1,252 MW and electrification access from 5% in 2002 to 28% in 2019, the pace of growth is not matching the demand and end user consumption access. For Uganda, there is no doubt that energy access for all will accelerate the country's growth plans. With the efforts of the Authority, we anticipate that the power sector especially the transmission segment will attract substantial investments thereby having massive impact on the economy of Uganda with remarkable returns for investors. The on-going formulation of a robust framework and the large project pipeline presents a remarkable opportunity for investors to take advantage of Uganda's potential.

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Energy Reform in South Africa: Interview with Ntombifuthi Ntuli, CEO of the South African Wind Energy Association

Camilla Froehlich from our German Africa Group in Frankfurt virtually interviewed Ms. Ntombifuthi Ntuli, CEO of South African Wind Energy Association (SAWEA) on South Africa's need for energy reform and what lies on the horizon post COVID-19.

HL: You recently celebrated one year as CEO of SAWEA. In your role as CEO, you have been placed at the helm and given the substantial task of steering the wind energy industry during what is hailed to be South Africa at the cusp of an energy transition. This is no easy task, but you are active and present and seem to have faith in both South Africa and what it can bring to its people and foreign investors. How do you see things developing in the next year?

Ntombifuthi Ntuli: Before I look at the next year, I would like to reflect on the past year of wind energy industry, which, like you said coincides with my first anniversary as CEO of SAWEA. I would label the past 12 months as a year of progress and crisis. In October 2019, the long awaited Integrated Resource Plan (IRP 2019), which allocated a lion's share (14.4 GW) of the new generation capacity to wind energy, was approved by cabinet.

This happened while the country was going through the worst power crisis in history, characterised by load shedding which reached the unprecedented stage 6 by December 2019. At the time we proposed that the independent power producers could feed more power into the grid, if the maximum export capacity condition in their PPAs was reviewed. In February, during the State of the Nation Address, President Cyril Ramaphosa announced a 9 point plan to address the energy crisis in the country. Although COVID-19 happened and the country went into lockdown, resulting in a drastic reduction in energy demand, the crisis was not over. As soon as the economy opened up, we went into load shedding again.

The positive news is that, even though we went through lockdown, we have witnessed a lot of progress on the policy side. The Ministerial Determination for Procurement of 2000 MW emergency power for various technologies as well as the Ministerial Determination on procurement of renewable energy, storage, coal and gas were both gazetted. The Risk Mitigation RFP for procurement of 2000MW emergency power was issued in August, and reports for the Department of Mineral Resources and Energy are that the Bid Window 5 of the Renewable Energy Independent Power Producer Programme will be issued in the first quarter of 2021. This leaves the sector with a lot of optimism that, after 5 years of no procurement, the next bidding round is quite imminent. We therefore expect the next year to be the reawakening of the wind energy sector as 1.6 GW of wind power will be procured annually until 2030 as per IRP.

HL: In a nutshell what does the SAWEA, in its quest to advocate for investment in wind power, offer to, and expect from, its members who are either already in the wind industry or looking to enter it, other than access to a vast network?

Ntombifuthi Ntuli: SAWEA is a platform for the wind industry to organise itself and speak with one voice. The wind industry is driven by government policy and therefore it is important for the sector to engage strategically in the policy dialogue; that is why the biggest role of the industry association is policy advocacy and stakeholder relations. SAWEA therefore facilitates dialogue between the industry and government and other stakeholders. We also promote the industry's economic contribution by highlighting some of the benefits including investments, the low cost of wind power, localisation, socio-economic benefits and jobs. We also provide pertinent information to current and prospective investors seeking to enter the SA wind power market.

HL: We can't hold any kind of discussion in 2020 without touching on COVID-19. We have seen it printed, communicated to role players, and in fact tell our clients who are active in Africa all the time – Africa is no stranger to crises and can use this as a proverbial re-set button and take hold of new opportunities and provide exciting alternative opportunities for foreign investors alike. Would you agree with this statement pertaining specifically to energy transformation opportunities?

Ntombifuthi Ntuli: Yes, definitely, I agree. I think COVID-19 and associated lockdowns actually gave the country an opportunity to plan. For us in the energy sector, it was a crisis on top of another because, like I said before, we were already going through an extended energy crisis in South Africa when COVID-19 hit. There was wide acknowledgement that the reduction in energy demand during lockdown was not an indication of the end of the crisis, therefore government forged ahead with plans to procure emergency power as soon as lockdown conditions eased up.

Now with the ministerial determination published, and further procurement of renewable energy quite imminent, the country has an opportunity to further decarbonise the energy sector, while creating new green jobs, new investment opportunities and improving the economic growth prospects.

HL: Do you believe that there is a general consensus in South African society to transform the energy industry to a more renewable one?

Ntombifuthi Ntuli: South Africa has an approved Integrated Resource Plan; an electricity plan which outlines the new generation capacity from 2020 to 2030. Included in the plan is a plan to decommission more than 11GW of coal power, while adding 23GW of renewable energy in the energy mix. This means that by 2030, renewable energy (wind, solar PV, CSP and Hydro) will constitute 39.6% of the total installed capacity.

This therefore means that from a policy perspective there is an acknowledgement that South Africa needs to decarbonise its power system in order to meet the Paris Agreement commitments. Renewable energy technology also offers this opportunity at the least cost. However, we there is also anti renewable energy lobbying ongoing in the country, that pushes negative narratives about renewables in order to advance arguments for conventional technologies. Energy transition has come up a lot in policy dialogues. The main concern is that transitioning to renewables may take away jobs and economic activity from the parts of the country that are centres of coal mining and coal power generation. So I wouldn't say there is wide consensus; however, we look to policy makers to map the direction for the energy industry transition.

As an industry association we have taken it upon ourselves to educate the public about the benefits of renewable deployment and dispel the myths such as "renewable energy doesn't create significant jobs" and "renewable energy is too expensive".

HL: We note, from your impressive resume, that you are familiar with European investors, having worked for a few years at the embassy of Denmark facilitating business linkages between Danish and South African companies. This experience must be vital to your role at SAWEA. How do you see the balance between encouraging foreign investment, on which South Africa relies, promoting South African local industry and creating jobs for South Africans, all while taking the local renewable energy market forward? In other words ensuring a balance is achieved between attracting global competencies and protecting the Proudly South African brand aspect?

Ntombifuthi Ntuli: That is correct; working for the Embassy of Denmark was the first experience in dealing with foreign investors into the country. At the time, we worked with energy companies like Vestas, Suzlon and Vatenfall, assisting them to set up shop in the country or doing market studies, as it was right at the brink of the renewable energy procurement in South Africa. When I worked for the Department of Trade and Industry, I had the opportunity to meet most foreign companies that wanted to invest in SA's renewable energy sector, as investment promotion was one of the DTI's mandates. At the time, I was responsible for setting local content rules for the renewable energy sector.

The local industry was to be built on the back of the localisation requirements, but we soon learnt that there were a lot of variables at play for localisation to be successful, such as, the need to build local competency before increasing the local content thresholds, through pacing the procurement in a way that allows time to build such competencies. Another variable was continuous and consistent demand in order to sustain the local manufacturing facilities built on the back of the renewable energy procurement programme. Currently, the foreign investment in the Renewable Energy Independent Power Producer Procurement Programme ("REIPPPP") programme is 31% which indicates that almost 70% equity of these projects is sitting in local entities, which has a big impact on the economic growth of the country.

HL: You just referred to the REIPPP, the most recent RfP was recently released which saw more than 6.4 GW of capacity being awarded to over 100 projects across four bid windows in the span of 2011 to 2018. South Africans are no strangers to power issues, having endured rolling blackouts and load shedding schedules. It seems that the REIPPP aims to deliver clean energy timeously but also creating jobs in South African for South Africans and emphasise the local content requirements. By March 2020, we have seen approx. 41 billion in foreign investment in this regard. What are your views looking ahead, and how do you see this latest RfP structure developing?

Ntombifuthi Ntuli: The REIPPPP programme started in 2011 with great momentum of back to back procurement rounds. By 2014, we were at the fourth round of procurement and 27 projects were awarded preferred bidder status. What followed after that was a four year impasse on signing of PPAs between Eskom and IPPs. The impasse was finally resolved in 2018, when the PPAs were signed for the 27 projects (of which 12 were wind) and they began construction. These projects are now reaching commercial operation and will start feeding power to the grid. Up to now, the renewable energy industry has attracted R209 billion in investments (of which R80.6 billion is from the wind energy sector) from 112 Independent Power Producers, for the construction of 6422MW, and this has contributed more than 55 000 jobs by March 2020.

Going forward, we expect these numbers to grow exponentially, as the capacities are much larger in the next procurement rounds. For the wind sector, we have estimated an annual investment of about R40 billion. We have been informed by the DMRE that the RfP can be expected within the first quarter of 2021 and we wait in anticipation. We don't expect drastic changes on the RfP structure and requirements from the round 4 RfP; however, it is difficult to be certain until we have seen the document.

HL: When one takes a look at the SAWEA board, it has a female chair and you as CEO. It's fair to say women are leading the way, driving the policies forward and promoting energy in South Africa. Thank you for your time and we look forward to seeing what develops.

**This article previously appeared in the Hogan Lovells Germany Africa Newsletter, which can be viewed here: https://ehoganlovells.com/rv/ff006ce8ce30ae704402f3b1c142a22bd02c75df*

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Pro Bono Highlights

A Global Symbol of Sustainability

We have been working with the Great Green Wall project which is an African Union-led movement with an epic ambition to grow an 8,000km natural wonder of the world across the entire width of Africa.

In 10 years, 15% is underway and the initiative is already bringing life back to Africa's degraded landscapes at an unprecedented scale, providing food security, jobs and a reason to stay for the millions who live along its path. We assisted the project's implementation partner CIVIC to agree a letter of intent with the African Union to offer expertise relating to supporting social entrepreneurship and social innovation along the wall. The partnership aims to bring together "unlikely allies" to help build the movement through storytelling and collective innovative projects. This letter of intent will now be the basis to agree "living blue prints" for each African nation participating in the GGW project.

We also formalised the arrangements between partners which will raise the profile of the Great Green Wall Documentary, described as "where a Buena Vista Social Club meets Years of Living Dangerously, and renowned Malian singer Inna Modja takes you on a music-driven journey of hope, hardship, and perseverance across Africa's ambitious Great Green Wall" from the creator of City of God and The Constant Gardener, Fernando Meirelles, in association with the United Nations Convention to Combat Desertification.

This documentary recently won its 10th award – for Best Cinematography at the Raindance Film Festival 2020. The trailer can be viewed here: www.youtube.com/watch?v=kB1qK_yBVxU

For more information about the Great Green Wall project, please contact Claire MacPherson

Global Disability Innovation Hub

Another initiative we have been working with is the Global Disability Innovation Hub (www.disabilityinnovation.com), a social enterprise set up which is a research and practice centre driving disability innovation for a fairer world. They are engaged in a partnership to counter the stigma associated with disability and are partnering with the International Paralympic Committee and Loughborough University to deliver activities in Malawi, Ghana and Zambia.

The project has three strands: broadcasting, Para athlete development, and education.

It will create broadcast highlights of the Tokyo 2020 Paralympic Games and broadcast them, for the first time, in African countries. The broadcast content will be grounded by a series of activities to raise awareness and increase Para Sport participation. This project builds on our work for Haitian Paralympic Team to facilitate their participation in the London 2012 Paralympic Games and the televising of their contribution. www.globallegalpost.com/global-view/hogan-lovells-makes-haitis-paralympics-dream-come-true-78504503/

We have been advising on the television rights issues.

For more information about the Global Disability Innovation Hub, please contact Penelope Thornton.

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View from a Secondee

At Hogan Lovells, we have the enormous pleasure each year to welcome young lawyers from across Africa, on a two or 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, two of whom featured in our last newsletter. Alison Diarra, our Africa Network Manager, asked the other two to share some of their experiences and a few top tips. Josephine Udonsak joined us via the ILFA secondment programme, which we have been involved in since it started 12 years ago. She is a Senior Counsel at Adepetun Caxton-Martins Agbor & Segun (ACAS-Law) in Nigeria. Nour El-Deen Al-Senawy joined us on a direct secondment from one of our relationship firms in Egypt, Zulficar & Partners Law Firm, where he is a Senior Associate. They were both seconded to our Infrastructure, Energy, Resources and Projects team.

Why did you apply for a secondment?

Josephine: I applied for several reasons. The primary reason is that I wanted to see cross-border transactions and projects from the perspective of international counsel and gain insight into how lead international counsel/firms manage such transactions and projects. Given that my role as a lawyer in Nigeria typically involves acting as local counsel, my hope was that seeing the international counsel side of legal practice would help me better understand how the services provided by local counsel impacts on cross-border matters, as well as how local counsel can add more value in providing services to international counsel and clients generally. Another reason is that I thought a secondment would give me a good opportunity to expand my professional network and also learn how to sustain a strong professional network. Lastly, I saw it as an avenue to learn more, improve my technical skills, and acquire business development skills.

Nour: I was introduced to lawyers from HL during my work on renewable projects in Egypt. Although we were advising opposing parties, we built a strong professional and personal relationship, which helped us to successfully close the projects. The relationship continued to develop after the projects were closed, which lead to an opportunity to go to London and join the team as a secondee.

Was work in London very different?

Josephine: In some ways. I saw a much more practical approach adopted in carrying out clients' instructions with respect to either advising clients on the requirements of the law (and how these can be interpreted and complied with) specifically or, in a more general sense, being proactive in identifying and taking steps to make things easier for clients. With respect to advising clients on compliance with legal requirements, consideration was given not just to the letter of the law, but also to its objectives and how future developments in government policy or technology may impact the way compliance with its requirements can be demonstrated. I also got a chance to be involved in work relating to projects in jurisdictions outside Nigeria, particularly African jurisdictions.

From a business development point of view, I found the approach taken to business development to be more deliberate or strategic, and systematic. Having said all that, the work itself and the time that had to go in to doing the work were pretty much the same!

Nour: London is the business capital of Europe. The environment in London is thrilling, and the pace is much faster than it is in Cairo. The nature of the work is similar to that I usually work on in Egypt, but working in London offers a unique opportunity to work on a wider range of projects across the globe, which gives a broader view on project finance internationally.

What did you get most out of your secondment?

Josephine: The network and the soft skills required for business development, especially in relation to developing a good professional profile. With respect to the network, I now have a stronger professional network across Africa – which comes with prospects for collaborations.

Nour: The most significant takeaway is learning about the work dynamics of an international law firm. Learning how offices from around the globe come together on cross-border transactions to offer a unique perspective on legal issues and provide practical advise on how to deal with them based on a special understanding of the global markets and the current issues.

Did you enjoy living in London?

Josephine: I did! Maybe what I enjoyed the most was being able to fit networking and other social events into my day to day work schedule or activities. I also enjoyed getting to see plays in theatres quite often.

Nour: Absolutely. London is the capital of business, and also art and culture. It is a truly cosmopolitan city that is filled with diversity. No matter where you come from, you will find your place in London. It is a modern city that has not lost touch with its historical roots, which you will witness everywhere.

Has the secondment changed the way you work?

Josephine: For certain. Beyond thinking about what clients want in terms of output, I now also think about how to make the process of achieving their objectives easier for them. In providing services to clients, I now constantly ask myself "beyond just the work or the client's express instructions, what do I need to do to add more value to the service that I am delivering to this client?" I am also better able to identify business and client development opportunities, as well as how to take advantage of them.

Nour: Yes. Working on the side of an international counsel gave me insights on aspects that I am usually not aware of while serving as local counsel on the project. This helped me better understand and foresee certain risks and accordingly have a more significant input on certain issues that positively influence the course of the project development.

What advice would you give future secondees?

Josephine: It is very important to be clear to yourself about what you are seeking to achieve or gain from participating in a secondment. There are potentially a million and one different benefits and it is possible for everyone involved in the programme, alongside you, to be going for something different. While this, in my view, is not necessarily a bad thing, it may not be realistic to try and "do it all", or to go after all of the same things that everyone else is trying to do or get in the course of the secondment. In attempting to do so, I believe that you not only risk feeling drained or unfulfilled during the programme, but there's also the risk of not being able to identify or properly build on any tangible takeaways going forward. So the key things for me are:

- Pinpoint what you want and what you need to do to get it.
- Have conversations about this with whoever will listen (this will not only help you with reaching your goals but also with building relationships).
- Give your best in trying to meet the objectives/goals you set for yourself.
- Assess yourself regularly to ensure that you are on track.

Finally, the opportunities that the secondment offers continue to unfold even after you complete the programme. So, think also about how to make the most of opportunities that may present themselves in one way or another through your involvement in the secondment.

Nour: Working with HL in London offers a unique opportunity to meet new interesting people and achieved lawyers who will not hesitate to share with you their growth journey. You will make fruitful and lasting relationships that will definitely help you take a step into a more fulfilling career.

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A Local Perspective

In an international meeting of legal minds, Hogan Lovells is working with its African partners to create content with a local perspective. These collaborations with associates are aimed at developing the existing relationships between the firms and ensuring that this extends to the partners of tomorrow.

The initiative is explained in a podcast[1] with Hogan Lovells lawyer, Alison Diarra, who oversees the law firm's relationships across Africa.

Alison said that there are many international law firms working on the continent, but with "very different approaches to how they do business". Hogan Lovells' strategy is not to open more offices but instead to invest in building deep and lasting relationships with leading law firms on the ground; the article series is an example of this.

Hogan Lovells, she explained, bases its Africa practice on four pillars. The firm:

- Operates in Africa – through its office in Johannesburg, and elsewhere by focusing on deep relationships it has with law firms in "almost every other African country";
- Invests in Africa – through training, people and resources;
- Understands Africa – through continuous dialogue, knowledge-sharing and making daily connections based on learning and listening to those on the ground; and
- Respects Africa – by ensuring the relationship is always a partnership. In addition, the Hogan Lovells Africa practice has a special emphasis on respecting and celebrating arts and culture.

The most recent project is titled "A Local Perspective" and is a series of articles produced in partnership with local firms.

"We have brought in the associates because we want the relationship with our partners to be an ongoing one," Alison explained. Through co-authoring the blog posts the law firm teamed each associate in the local firm with one or two associates in the Hogan Lovells Africa practice team.

So far, three articles have been written – co-authored by associates from Ghana, Kenya and Cameroon.

In the first piece, Ashley Connick from Hogan Lovells in Dubai worked with Theodosia Tandoh from Bentsi-Enchill, Letsa & Ankomah in Ghana to look at how the pandemic had impacted food supply chains in Africa.

Ashley said, "I got involved because the issue of food insecurity across the continent is so important and the problems in the supply chain have only been heightened by this year's events. It was great to connect with Theodosia and to write with shared passion for this cause. I hope that we'll be able to write together again, and that we'll each have deals come across our desks which allow us to work together."

Theodosia added, "It was exciting to work with Ashley on our piece. I gained a considerable amount of experience while working on it. Our article did not only create awareness on food security in Africa during the pandemic, but brought more exposure to myself and Bensti-Enchill, Letsa & Ankomah. I look forward to collaborating with Ashley on other interesting areas in future."

To read this piece, go to: www.africa-legal.com/news-detail/food-supply-chains-in-africa-how-the-pandemic-has-impacted/

In the second article, Herbert Mwaura from Kaplan & Stratton Advocates in Kenya worked with Jodie Reindorf from Hogan Lovells in Dubai. They continued the discussion around Africa's supply chains and examined how it was time to shift to a new way of doing things.

Jodie commented, "As a Ghanaian, I have been keen to learn more about the legal and commercial priorities for nations on the continent. This blog post gave me the opportunity to explore topical issues, which I would not have had the opportunity to do in my usual role. I was excited by the opportunity to partner with Herbert, who is Kenyan qualified, in order to benefit from his on-the-ground insights and expertise."

Herbert added, "Contributing to the **A Local Perspective** blog series enabled me to showcase opportunities available for various players from a Kenyan perspective vis-à-vis the ongoing efforts in Africa to facilitate a supply chain that will contribute to Africa's independence from foreign aid. It was also a fantastic experience collaborating with Jodie and the Hogan Lovells team on this project. The knowledge shared while working together was a positive contribution to mine and my firm's legal practice."

To read the article, click here: www.africa-legal.com/news-detail/time-for-a-paradigm-shift-in-africas-supply-chain/

In the most recent collaboration, Brice Tcheuffa from Etah-Nan & Co in Cameroon and Sylvie Simbi Rugabira and Lédéa Sawadogo-Lewis from Hogan Lovells in Paris, discussed the implications of the recent delay in the implementation of AfCFTA, and the potential for Cameroon.

"Although the pandemic has had a negative effect on the implementation of AfCFTA in the immediate, it does paradoxically provide some silver lining in that its postponement is an occasion to fine-tune the national implementation strategy by considering the impact of the crisis and intensifying sensitization of all economic actors."

For Brice, "It was an enriching and valuable experience. Working with the Hogan Lovells team on something else than a transaction was a nice networking opportunity and a good way to tighten the relationship."

Lédéa and Sylvie both agreed, "We personally found this experience rewarding as it enabled us to further strengthen our relationship with local counsel, as well as gain insight into their manner of working. We also thought this was a great profile raising tool for both firms."

To read their thoughts, go to: https://www.africa-legal.com/news-detail/afcfta-delays-to-implementation-an-opportunity-to-fine-tune-cameroon-s-strategy/

As Alison states, despite COVID-19, African law firms and their teams have adapted quickly and well to working in a new way. She adds, "One of the things we have worked hard at is keeping the conversations going...the mutual sharing of both challenges and solutions has been really helpful. For example, we recently spent time with a Kenyan firm to share ideas on a good Return to Office Policy."

It was this kind of open and easy dialogue that enabled everyone to talk through how things could be done; offering different options that suited unique cultural contexts, but always bearing in mind the global picture.

This article first appeared on Africa Legal's website[2] on 6 November 2020.

Contact

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1 You can listen to Alison's podcast on Africa Legal's podcast channels on SoundCloud, Spotify or Apple.

2 https://www.africa-legal.com/news-detail/keeping-the-conversation-going/

A Perspective podcast

We continue to regularly produce our A Perspective podcast, which focuses on investment in Africa. Andrew has interviewed some of Africa's most prominent leaders, representing industry, government, think-tanks and culture. The result? Some interesting and thought provoking conversations, which you can find on our Africa Insights Topic centre www.hoganlovells.com/en/knowledge?searchtext=the%20a%20perspective%20podcast. You can subscribe by following this link: https://ehoganlovells.com/s/7dceeee76f84c67b20bd9dcced46cef28179a14c

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Africa Forum 2020: Growth & sustainability

Our seventh Africa Forum saw 400 online attendees join us last month, as panellists gathered to discuss topics on this year's theme: Growth & Sustainability.

You can now relive the experience and watch the impassioned address delivered by Her Excellency Ellen Johnson Sirleaf, as well as a host of other panel sessions, Straight Talks and speeches. We have a dedicated YouTube playlist featuring our stellar panels, straight talks, and highlights from our discussions.

To view our Africa Forum 2020 YouTube Playlist, visit this site. www.youtube.com/playlist?list=PLb0IwmfG4xp04Ghy2AUnJyxboW_--VxRu

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Recent events

Tuesday 20 October – Friday 23 October 2020:
GTR Africa 2020
Venue: Virtual event

At this year's GTR event, our Johannesburg partner Laurie Hammond participated on a panel discussing whether there is greater pressure on African companies to move up the value chain.

The event was spread over 4 days, combining 3 distinct events into the one extended virtual offering to capture a wider audience. This new format provided the opportunity for more detailed focus on key markets, innovation, trade and commodity flows, infrastructure and the wider implications of global disruption. GTR Africa Virtual in collaboration with Orbitt, also featured their inaugural Digital Deal Room, a bespoke origination and investment matching platform populated with unique opportunities for investors.

Head over to www.gtreview.com/gtrafrica to view the virtual event breakdown..

For more information contact **Anele Ndamase**.
anele.ndamase@hoganlovells.com

Wednesday 17 November 2020:
'Meet the female African arbitrator' series
Venue: Virtual event

Ilham Kabbouri, from our Dubai office, co-moderated the event, and sat down virtually with Dorothy Ufot SAN, FCIArb (UK). Ms Ufot is the founding partner of the leading Nigerian firm Dorothy Ufot & Co, where she heads the international arbitration and litigation departments of the firm. Ms Ufot specialises in international arbitration, litigation and other forms of dispute resolution, including investment treaty arbitration, enforcement of foreign arbitral awards, investment consulting, corporate and commercial law.

Further details regarding Dubai Arbitration Week 2020 can be found here.

For more information contact **Ilham Kabbouri**.
ilham.kabbouri@hoganlovells.com

Wednesday 18 November and Friday 20 November 2020:
Nigerian Institute of Chartered Arbitrators
Venue: Virtual event

Thomas Kendra, a partner in our Paris office, spoke at the Nigerian Institute of Chartered Arbitrators (NICArb) event.

The Nigerian Institute of Chartered Arbitrators (NICArb) in partnership with the Association for the Promotion of Arbitration in Africa (APAA), organized its 41st Annual Conference with the theme: "Making Arbitration (and ADR) Work for Africa". This year's Conference was held virtually, and the focus was largely on issues that advance Arbitration (and other forms of ADR) in Africa, and how we stand considering the global development in the dispute resolution community.

For more information contact **Ledea Sawadogo-Lewis**.
ledea.sawadogo-lewis@hoganlovells.com

Wednesday 25 November 2020:
2020 CIArb Nigeria Branch Annual Conference
Venue: Virtual event

Dr. Ademola Bamgbose, from our London office, moderated a panel at the 2020 CIArb Nigeria Branch Annual Conference. This year's event was virtual and his panel focused on investment arbitration and the role of ADR practitioners.

This year's theme was Arbitration & ADR in a free trade regime: Assessing Africa's Readiness. There were various topics discussed by eminent panellists and several opportunities to network with colleagues and friends.

For more information contact **Ademola Bamgbose**
ademola.bamgbose@hoganlovells.com

Friday 27 November 2020: Pro Bono Lawyers in Africa
Venue: Virtual event

Yasmin Waljee, our International Pro Bono Director, spoke on a panel with other leading women discussing the importance of pro-bono legal work on the continent.

The topic covered was Community Economic Development: The Place For Corporate And Transactional Pro Bono Lawyers In Africa. Corporate and transactional pro bono plays a critical role in community and economic development especially in a continent like Africa with a large number of social enterprises, as well as Micro, Small and Medium Scale Enterprises, whose contributions to economic development are invaluable.

For more information contact **Yasmin Waljee**.
yasmin.waljee@hoganlovells.com

Tuesday 1 December 2020: UK Virtual Trade Mission
Venue: Virtual event

Andrew Skipper hosted a panel discussion about UK and Africa beyond Covid-19 - collaboration and partnership between UK and African legal professionals, at the first ever UK-Africa Virtual Trade Mission event.

The Department for International Trade and Ministry of Justice are delighted to hold the first ever virtual UK-Africa Legal Services Trade Mission to Nigeria, Ghana, Kenya and South Africa. During the prestigious three-day 'UK-Africa Collaboration and Opportunity in Legal Services' event participants heard from top industry insiders and were able to plug into a range of networking opportunities to help them to build and expand their global footprint.

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Recent work

Advising United States International Development Finance Corporation, formally Overseas Private Investment Corporation, in relation to a US$100m corporate financing for Africell Holding Limited, for the expansion of its mobile network operations in the Democratic Republic of the Congo, Sierra Leone, Uganda, and The Gambia.

Advising a Moroccan company that provides processing technologies and services for metals and mining, industrial water treatment, alternative energy and other chemical industries, on the delivery of a sulfuric acid plant for fertilizer production.

A US university has engaged the firm to guide its efforts to establish a degree-granting campus location in Egypt.

Acted for South 32 Limited in a private arbitration, providing legal advice regarding the application of the South African Arbitration Act and the governing law provisions. We are currently preparing for the appeal.

Assisting a company that specializes in the implementation, technical training, support, and strategic consulting solutions with the acquisition of assets from a South African entity.

Advising Citicorp International Limited, as trustee and security trustee, in relation to an issue of secured bonds by a globally diversified natural resources company in Mauritius.

Assisting a blended finance solutions company with their capital investment into an SPV of an industrial platform in Togo.

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