Africa Newsletter

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Introduction

Welcome to the October 2013 edition of the Hogan Lovells Africa newsletter.

In this edition of the newsletter, we discuss the impact of the renewal of The African Growth and Opportunity Act (AGOA) and examine the progress of Post-Gaddafi Libya. We consider the advances being made to the electric power sector in Nigeria, and also include an article assessing financial market integration in Central Africa. Further articles include a review of Rwanda and how the country has made a big impact in recent years, and we provide further information following The Democratic Republic of Congo's announcement that they will become the 150th state and 33rd African country to adhere to the New York Convention.

In a roundup of our work in Africa, we summarise some of our recent African transactions, including our U.S. led pro bono work and provide an insight into life at Hogan Lovells by an African lawyer who was a member of our secondment programme.

We will host our first Africa Agribusiness Seminar on 13 November 2013. This evening event will be led by Gary Kushner, the practice area leader of the Hogan Lovells Food and Agriculture Practice. Confirmed speakers include the CEO of the World Cocoa Foundation and the Aid-for-Trade coordinator of the World Trade Organization. To receive an invitation for this event, please register your interest by emailing africadesk@hoganlovells.com

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

The Hogan Lovells Africa team

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Discussions underway regarding renewal of African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA)[1], which permits the duty-free import into the United States of thousands of types of goods produced in sub-Saharan Africa, is set to expire on September 30, 2015. Discussions are already underway regarding the renewal and possible expansion of AGOA. President Barack Obama and Michael Froman, the U.S. Trade Representative (USTR), have committed themselves to ensuring a "seamless" renewal of AGOA, though the U.S. is also likely to push for better access to African markets.

AGOA was enacted in May 2000 under President Bill Clinton and was subsequently expanded by a series of amendments signed by President George W. Bush in 2002, 2004 and 2006 (sometimes referred to as AGOA II, AGOA III and AGOA IV, respectively). AGOA permits the 39 eligible sub-Saharan African countries to export more than 6,400 products to the United States duty-free. AGOA has substantially eased access to U.S. markets for exports from eligible countries, which have more than quadrupled since the enactment of AGOA to nearly $35 billion in 2012.

Under AGOA, the President has the authority to determine which countries are eligible to export products to the U.S. duty-free based on an annual evaluation of each country's movement toward a market-based economy, rule of law, poverty reduction, labor rights and anti-corruption efforts. AGOA also authorizes the President to permit the duty-free import from an eligible country of any goods that the USTR and the U.S. International Trade Commission (USITC) determine are not sensitive. The trade preferences provided by AGOA, together with the U.S. Generalized System of Preferences (GSP) for duty-free import into the United States that apply more broadly to developing countries, permit nearly all types of goods exported from sub-Saharan Africa to be imported duty-free into the United States. At present, petroleum products represent 86% of exports to the U.S. under AGOA. Textiles, which would not otherwise benefit from duty-free treatment under GSP, also represent a significant portion of the goods imported to the U.S. duty-free under AGOA.

Some have argued that AGOA is largely a U.S.-led initiative that was adopted with little input from African countries, although this appears to be changing. AGOA requires the President to convene an annual U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum, also known as the AGOA Forum, to discuss the implementation of AGOA and the expansion of trade and investment relations between the U.S. and sub-Saharan Africa. The AGOA Forum alternates each year between the U.S. and Africa. The 12th annual AGOA Forum, held August 9-13, 2013 in Addis Ababa, Ethiopia, provided a platform for discussion of the pending renewal of AGOA.

Many African countries are pressing for AGOA to be renewed for at least 10 years. While renewal seems likely, the Obama administration has not indicated whether it is prepared to agree to an extension of that length. However, AGOA has become increasingly important to the U.S. as China has displaced the U.S. to become Africa's top trading partner, a shift due in large part to China's imports of crude oil from Nigeria and Angola.

Because AGOA is a unilateral trade preference program, it will ultimately be up to the U.S. Congress to extend AGOA. Congress is expected to focus its evaluation of AGOA not only on the interests of sub-Saharan Africa, but also on the benefits of AGOA to the U.S. In particular, Congress will look to the extent to which African countries that benefit from AGOA open their markets to U.S. exports. This will likely involve a comparison between the trade terms offered by African states to the U.S. and those offered to the European Union, which has negotiated Economic Partnership Agreements that include reciprocal tariff reductions with a number of African states. U.S. legislators may also seek to vary the benefits provided by AGOA, or require reciprocity, with respect to more developed African countries, such as South Africa. On the other side, African states are expected to look to expand AGOA to other products, notably those in the agricultural sector, where there are significant opportunities for

[1] Full text of AGOA and additional information about country and product eligibility are available at http://trade.gov/agoa/

development across sub-Saharan Africa. It remains to be seen how much influence African leaders will have on a renewed AGOA.

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Down but not out – working towards legal reform in post-Gaddafi Libya

The transition inherent in moving on from Muammar Gaddafi's all-embracing autocracy in Libya towards an inclusive democracy, which inspired the 17 February 2011 revolution, has served simply to reveal the true extent of his political, economic and social legacy.

On the positive side, Libya now has a democratically elected parliament and a new interim Government, which are, despite the inevitable controversies, attempting to deliver a nationally accepted constitution and permanent system of Government.

Yet while they do their difficult work, Libya's problems are being compounded by increasing regional instability and conflicts prompted by the void left by the former regime. These destabilising factors have fuelled an increasingly – and usually self-serving – political and ideological polarisation, which plays out on the streets in Libya from time to time.

Finding its way

So while Libya strives to find its way, what has become of the post-2011 'buzz' that brought with it the promise that the country would finally realise its enormous potential? In February 2012, I wrote an article for Legal Week that listed some of the issues Libya had to address to capitalise on this buzz and begin the long and arduous road towards development and prosperity.

Among these issues was the need to resolve the status of the estimated $180bn (£115bn) of contracts inherited from the previous regime, particularly those entered into in relation to the Libyan development programme, all of which have been at a standstill since the outbreak of the revolution.

The so-called '20 Committee', made up of Libyan academics and jurists, and established by the interim Government between October 2011 and July 2012, was promising but has so far had little impact on initiatives to restart contracts. The committee concluded its legal analysis by classifying the events of 2011 as force majeure, but did not go as far as to formulate any practical strategy that would allow the Libyan Government to address contractor concerns and claims, leading to the commencement of work.

As a result, the Libyan Government's approach to the development programme has so far been piecemeal. Direct negotiations with a number of contractors and foreign states about government-to-government deals are on-going but are yet to yield much. This may be caused partly by the multiplicity of stakeholders in the Libyan development programme, which complicates decision-making, and the post-Gaddafi desire for consensus-based Government.

The Ministry of Transport, the Public Projects Authority and the Housing and Infrastructure Board (HIB), to name a few, all have a say in the development programme. Navigating these various stakeholders and trying to reach consensus has taken time.

But some progress seems to be on the horizon. In June this year, at an infrastructure conference in Tripoli, engineering company AECOM said it had reached an agreement with the HIB to resume work on the development programme.

AECOM, a Fortune 500 company, was appointed by HIB as manager of the $60bn (£38.4bn) housing and infrastructure programme in 2007. This project seeks to deliver up to 500,000 housing units and full and partial infrastructure across Libya.

It is estimated to have directly and indirectly employed 70,000 Libyans and hundreds of local and international contractors and construction managers. The return of AECOM is the strongest sign yet from Libya's Government that things are getting back on track.

Legal reform

Among the other issues listed in my previous article was the need for legal reform. Libyan laws relating to the commercial, property, banking and finance sectors are in need of reform to move away from the monopolistic policies of Gaddafi's socialist state and help create a new market economy underpinned by legal certainty and transparency. Progress with such reforms has been slow because any action could be seen to pre-empt the outcome of the constitutional debate.

The General National Congress (GNC), Libya's first democratically elected legislature in more than 40 years, has struggled to get to grips with such matters.

This can be blamed in part on the need to prioritise security and stability, and in part on the apparent confusion about the GNC's constitutional role and mandate. There does not seem to be a clear agreement about whether it is a law-making body exercising the normal functions of a legislature or whether its remit is limited to presenting the nation with a constitution and managing the transition to a permanent form of Government.

This has left it a somewhat reactive body, with no clear sense of purpose. This can, in part, be seen in the most notable piece of legal reform to date: the law passed earlier this year banning and criminalising the charging of interest on loans.

The GNC later agreed to delay the law's implementation until 2015, following complaints from Libyan banks that they could not implement the changes within such a short period. It soon became clear that more thought was required before introducing such far-reaching reform.

So while this law may never reach the statute books, it has highlighted the fact that Libya needs a comprehensive and considered long-term policy for legal reform, which is perhaps best left to a permanent legislature.

Desire for progress

Nevertheless, one encouraging sign is the growing willingness of the Libyan Government to engage with international advisers. Under the Gaddafi regime, they were used rarely and limited to a certain number of state entities

The playing field has widened in the new Libya as the Government seeks to apply a 'best practice' approach to its problems. As the country stabilises, the benefits should start to trickle down to contractors and ultimately help get the economy moving again with creative solutions to old problems and developing new models.

Libya might still be down, therefore, but she is certainly not out. Political transition can be a slow and at times frustrating business, but the rewards for the country will be significant once it is complete.

Stability is now a regional problem rather than a local one, and given that economic justice and development are high on the list of people's demands – and are the most likely ways that the country will achieve lasting stability – real traction can be expected in the not too distant future.

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Nigeria advances privatization of NIPP gas-fired power plants

In the second of a series of broad public initiatives designed to bolster the electric power sector in Nigeria, the Federal Government of Nigeria (Government) recently announced it would privatize ten gas-fired power plants under development by the Niger Delta Power Holding Company Limited (NDPHC). The power plants in question were developed with government funds pursuant to the National Integrated Power Project (NIPP), a program launched in 2004 by then President Obasanjo in order to urgently address serious shortfalls in Nigeria's electric generating capacity and leverage the country's tremendous natural gas reserves. After receiving over 100 expressions of interest for the NIPP power plants in July, the NDPHC and the Bureau of Public Enterprises (BPE) published the list of prequalified bidders on August 19. There are between 28 and 45 prequalified bidders for each power plant, comprising a mix of Nigerian and international investors and consortia.

While the privatization of the NIPP power plants offers industry participants a unique investment opportunity that is presently unrivalled in scale in any other developing market, the manner in which the privatization has been structured introduces a number of risks and challenges to traditional investors in independent power.

Privatization process

The privatization of the NIPP power plants has been structured as the sale of an 80% ownership interest in each of ten generating companies, or "GenCos," each of which is a special purpose Nigerian company formed to own and operate one of the ten NIPP power plants. The NDPHC will hold the remaining 20% interest in each of the GenCos following privatization. All of the power plants, most of which are open-cycle but capable of conversion to combined-cycle, will be completed prior to closing of the acquisition. Once completed, the NIPP power plants will collectively add over 5,000 MW of gas-fired generating capacity to the Nigerian grid, nearly doubling the existing installed capacity.

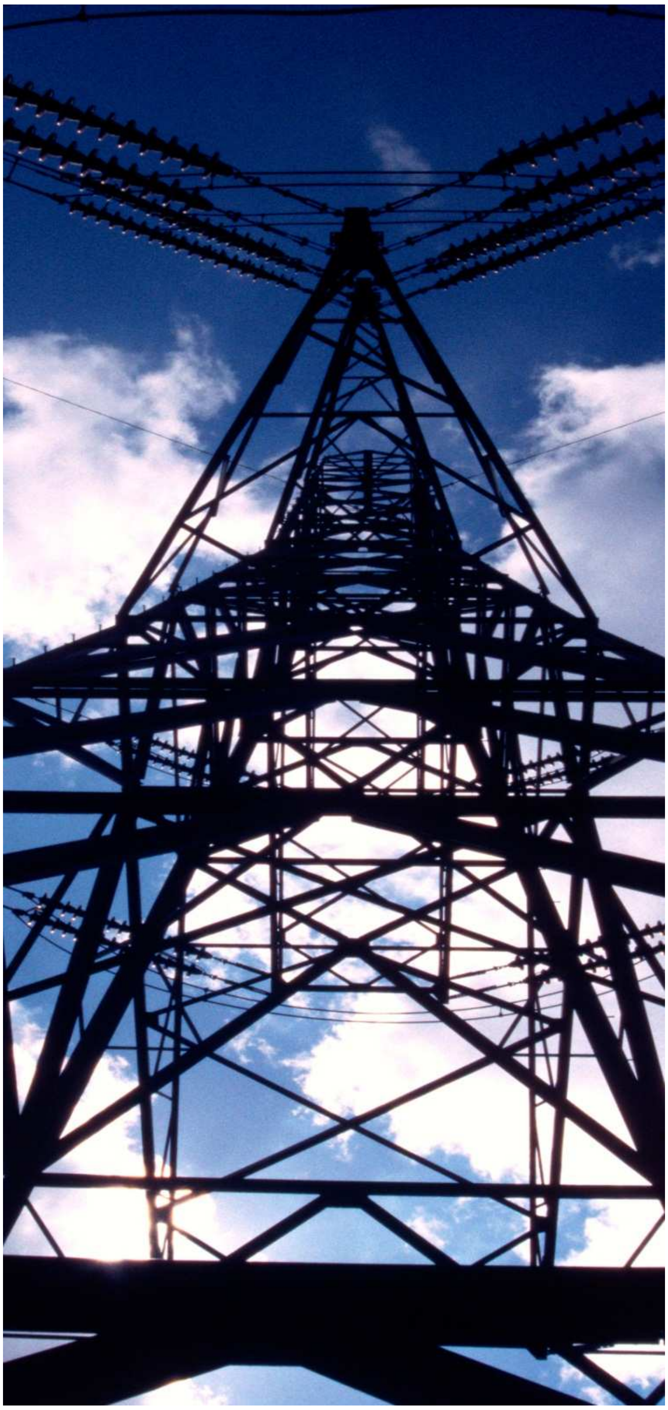

Table 1 below lists the NIPP power plants and their relevant details

Generation Company	Plant	State	Capacity (MW)	Status
Alaoji Generation Company Nigeria Limited	Alaoji	Abia	831.3 (of 1,131)	Partially operating
Benin Generation Company Limited	Ihovbor	Edo	507.6	In construction
Calabar Generation Company Limited	Calabar	Cross River	634.5	In construction
Egbema Generation Company Limited	Egbema	Imo	380.7	In construction
Gbarain Generation Company Limited	Gbarain	Bayelsa	253.8	In construction
Geregu Generation Company Limited	Geregu II	Kogi	506.1	In construction
Ogorode Generation Company Limited	Sapele II	Delta	507.6	In commercial operations
Olorunsogo Generation Company Limited	Olorunsogo II	Ogun	754.0	Partially operating
Omoku Generation Company Limited	Omoku II	Rivers	264.7	In construction
Omotosho Generation Company Limited	Omotosho II	Ondo	512.8	In commercial operations

Turn-key opportunity

Dismissing the customary approach followed by developing countries of courting international sponsors to develop, finance, and construct independent power projects, the NDPHC is completing, and selling majority ownership of, ten fully operational and contracted power plants in Nigeria, complete with contractor warranties and fully agreed long-term power purchase, gas supply, interconnection, and other project agreements. According to the NDPHC, "bidders will receive a new, commissioned power plant along with all necessary contractual structures. This will avoid the need to wait to have all contractual structures in place and avoid the risks of construction and commissioning."

The NDPHC has clarified that all of the NIPP power plants must be commissioned and completed prior to sale. Each of the plants has been or is presently being constructed by international EPC contractors using proven technology and established OEMs, and will benefit from warranties following construction (although some of the warranties on already-completed plants have expired). Certain NIPP power plants have long term service agreements in place with an original term of ten years of which the initial five years is fully funded. Following the initial five year period, bidders will be free to continue with the existing contract or replace it.

Each GenCo will, pursuant to a 20-year power purchase agreement, sell the electric power generated at its power plant to Nigerian Bulk Electricity Trading PLC (NBET), a special purpose company formed by the Government in 2010 to act as an intermediary between generation companies and the recently-privatized distribution companies. The power tariff will reflect the rates set forth in the most recent Multi-year Tariff Order (effective from June 1, 2012 until May 31, 2017). NBET will make monthly capacity payments reflecting capital, equity return, and fixed operation and maintenance costs plus monthly energy payments reflecting a pass-through of fuel costs and variable operation and maintenance expenses in respect of energy delivered. Payments will be made in Naira although a portion of the payment obligations will be indexed to U.S. dollars. All of the NIPP power plants will be connected to the national grid.

Each GenCo will procure its gas supply pursuant to a long-term gas supply agreement with the Gas Aggregation Company of Nigeria Limited (GACN). GACN was organized on January 5, 2010 and is owned by the upstream joint ventures formed between NNPC and one or more of the international oil companies operating in Nigeria. However, the GenCos will be permitted to enter into separate gas supply agreements with other gas suppliers for any additional gas needs to cover future expansion as well as to back-stop the supply obligations of the GACN. Gas transportation services will be provided by the state-owned Nigerian Gas Company Limited.

In terms of credit support, the Government has taken the responsibility to fund NBET to guarantee liquidity of the system in the event that, for example, NBET does not receive payment from a distribution company in respect of electricity delivered to NBET by a GenCo. However, the Government has also said it will only guarantee termination payments under the power purchase agreement — calculated as a buyout amount covering capital invested and a negotiated rate of return. A bidder may therefore encounter a situation where it is forced to terminate the power purchase agreement and exit the project in order to recover its investment.

A new direction?

The Government deserves credit for implementing a program and designing a tender process that both addresses the lack of reliable generating capacity and facilitates the private ownership of power generation in Nigeria. In addition, there is some merit to the approach of offering investors completed, fully contracted projects, as the NIPP power plants have a higher value (and financing should be easier to obtain) once construction is completed, and the Government can ensure that offtake and fuel supply contract terms are relatively uniform across the sector. For the Government, it is much easier and far less time consuming to evaluate bids for fully developed assets than it is to negotiate power purchase agreements for undeveloped projects. For an investor, the NIPP privatization offers a unique opportunity to enter the power sector in Nigeria without committing the time and capital required to develop a new project.

The build-and-privatize model seems likely to continue. In fact, the NDPHC has announced that the proceeds from the sale of the GenCos will be reinvested primarily in the power sector, including in certain hydropower projects which, like the NIPP power plants, will likely be privatized in whole or in part once developed. However, while the NIPP power plants or future NDPHC plants may be fully structured, they are not free from risk.

First, political risk remains high, as localized ethnic violence has led numerous energy companies to exit Nigeria or focus on more remote offshore areas. Although power projects are generally perceived to be less susceptible to political violence — insofar as local communities that benefit directly from increased access to electricity are less inclined to disrupt it — gas-fired power generation is inextricably linked to the oil and gas sector in Nigeria, and gas supply infrastructure remains a key target of those seeking to attack foreign oil companies. As evidence of this, electricity generation has fallen 40% from its peak of 4,500 MW in December 2012 to 2,628 MW in August 2013, primarily due to interruptions in gas supply resulting from pipeline damage or sabotage. An astonishing 624 MW of this shortage is attributable to one of Nigeria's newest gas-fired power plants — the Afam VI power plant near Port Harcourt — which has no reliable gas supply due to crude oil theft related leaks on its main supply pipeline. Project agreements for the NIPP power plants will not be financeable if they do not properly take into account political risk and offer adequate protections to the GenCos against such risk, including continued payment for power generating capacity that may not be available due to such risk.

More importantly, the NIPP power plants are exposed to Nigerian government risk from almost every angle. All of the counterparties to the project agreements (other than the EPC contracts) are relatively new organizations that are part of or largely controlled by the Government, and some of them have almost no record of operating performance. Complicating matters further, the co-ownership of the GenCos by the NDPHC introduces a number of additional uncertainties. For instance, it is difficult to predict how the NDPHC, which is itself owned by a vast consortium of federal, state, and local governments, will administer its ownership interest in the GenCos, or whether it has the resources to do so. The NDPHC has clarified that it expects to have a position on each GenCo's board of directors and be required to fund all capital calls or else risk dilution of its interest. However, issues regarding board composition, minority control rights, deadlock resolution, restrictions of transfer of shares and indemnification claims under the share sale agreement can significantly affect the value of the bidder's 80% interest and therefore require substantial analysis, discussion, and negotiation.

Ultimately, the critical question is whether the Government has properly allocated the foregoing risks, and prepared a suite of enforceable project agreements which effectuate that risk allocation, in a manner that will attract debt capital and entice the class of investors who have the risk appetite to pursue power generation opportunities in Nigeria to submit bids. If it has not, investors who are adept at assembling and structuring successful projects in developing markets may not be able to establish a reliable valuation of the NIPP power plants, particularly in an environment where rapidly changing expectations about long-term natural gas prices makes it increasingly difficult to value natural gas-fired projects. For all of its foresight in structuring the NIPP privatization, the NDPHC may discover that it has only succeeded in further discouraging investment by international independent power companies and utilities.

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Financial market integration in Central Africa

The issue of long-term funding arose in Central Africa as in other developing regions. The African banking sector, which shows promising signs, certainly has a significant role to play in the development of local companies as it is still the main liquidity provider. But the provision of funding by this sector remains insufficient. The provision of long-term capital and equities that is missing in the subregion companies should be undertaken by the stock exchange. The issue of an integrated financial market in the CEMAC zone has proven to be less simple to resolve than expected, particularly in face of Cameroon's determination to maintain its leadership and economic power within the zone.

Two financial centres for such a small market…

To understand the difficulties of the financial market in Central Africa, one must go back to the 1990s and to the two great crises that rocked the economies of the CEMAC zone. At that time it became obvious, on one hand, that the banks were incapable of financing the productive sector in a sustainable way with resources constituted essentially of short-term deposits, and on the other hand, that it was necessary to complete the bank financing with long-term funding tools. It is in this context that the CEMAC's political authorities assigned to the Central Bank the project of supervising a feasibility study of the creation of a regional financial market. In 1999, this study concluded that the project of the creation of a financial market in Central Africa was viable. Subsequently the establishment of this financial market has been carried out progressively, particularly from the year 2000 with the establishment of the head office of the Central Africa stock exchange (BVMAC) in Libreville (Gabon), followed in 2001 by the creation of the Supervisory Commission of the Central Africa Financial Market (COSUMAF) the head office of which is also based in Libreville.

However, as deplored by the COSUMAF in its report of September 2009, the establishment of a regional financial market was carried out in defiance of the general position set out in the feasibility study. Instead of an integrated market, as recommended by the study, a fragmented financial market has been established in which two stock exchanges coexist. Indeed, alongside the creation of the BVMAC, Cameroon also founded a financial market in 1999, managed by the Douala Stock Exchange (DSX).

Mixed results

The results of the activities of the BVMAC and DSX are clearly mitigated. Regarding the BVMAC, the market capitalisation of the bonds compartment to December 31, 2012 was approximately 219 billion FCFA and the equities section has remained inactive to date, other than the recent case of SIAT Gabon in this market[1]. Such a fundraising seems insignificant given companies' financing needs and the budget surplus of the states of the CEMAC zone, which could create opportunities for increasing financial resources. As to the DSX, the market capitalisation of the six companies which are quoted is approximately 118 billion FCFA, for three registered operations on the equities compartment.

[1] This very much demonstrates the whole absurdity which can result from the competition between Douala and Libreville on this issue. However, it seems that SIAT Gabon will be in position to quote 5.5% of its shares by 3 September 2013.

The insufficient depth of this market and the weak market culture of the zone represent some of the main challenges to overcome, in addition to what remains to be done in terms of the market's infrastructures. Financial and accounting information remains the Achilles' heel of most local companies. For example in Cameroon, the general inventory published in 2013 by the National Statistical Institute revealed that 57.7% of the 93,963 Cameroonian companies do not keep written accounts. Among the minority of companies which do keep written accounts, only 31.1% (approximately 13% of the overall companies) practise formal accounting which enables them to submit a statistical and tax declaration. Nevertheless, in order for their securities to be quoted on the DSX, the issuers should in particular provide DSX with a statistical and tax declaration as well as certified accounts for the last three fiscal years... As a Cameroonian journalist said "at this point we will still be waiting a long time to see companies knocking down the doors of the DSX". The companies must therefore understand that in any financial market the reliability of the information provided by them is crucial for investors. They should be capable of complying with the required standards of information in order to gain access to the financial market of the sub-region, and consequently, to give that market depth. These companies already benefit from a unified normative framework related to corporate law and accounting standards, to the extent that the member States of the CEMAC are also parties to the OHADA treaty.

The "Coming together" or the "Merger" of the two financial centres?

We could indeed be surprised that the head office of the BVMAC is situated in Libreville, since Cameroon is unquestionably the economic leader of the CEMAC zone. Beyond what could resemble an ego war, attention should be paid to the difficulty encountered by a company in succeeding in its listing on the stock exchange raising important funds in the subregion without the involvement of Cameroonian institutional investors. The recent example of SIAT Gabon might illustrate this point (see JA 2013 n° 2739). But there is also the fact that the two financial markets are coexisting, and that all that is needed now is to find a way to make them more efficient, either by harmonising their functioning and the standards to which they are subject or by merging them. A former Finance Minister of Cameroon noted in this respect that "coming together" had nothing to do with "merger"…Of course! Clearly this situation creates disadvantages in terms of attractiveness and efficiency, particularly due to the superposition of standards and of regulatory authorities, the lack of economies of scale and the duplication of costs, which appears to be absurd for a market of this size.

In order to overcome these obstacles, multiple solutions exist. The first one has been very well described by the COSUMAF in its 2009 report. It is a question of harmonisation which should lead to unification of the regulatory framework and of the regulator. In concrete terms, this will start by the harmonisation of the regulatory framework of the two markets, followed by the development of a cooperation framework between the two regulatory authorities, then of the establishment of a "CEMAC passport" that will constitute in fact a common model of a prospectus for any initial public offering within the zone. Finally, the cooperation between the regulatory authorities would make it possible to harmonise the market rules and requirements for admission to the list established by the market companies. This work of harmonisation and unification should be taken into account in relation to other central structures of markets, central depository and settlement banks. Even with achieving the merger in the long-term, this does not guarantee the end of the dissension, as it is possible that Cameroon will require that the BVMAC or the regulatory authority be located in its territory.

The process of specialisation

The political authorities of the CEMAC could also more seriously consider engaging one of the two financial centres in a process of specialisation. In Western Africa for example, on the fringe of the Regional Stock Exchange of the Economic and Monetary Union of West Africa, Ivory Coast has managed to develop a coffee-cocoa stock exchange to put in place a mechanism of guaranteed income and remunerative price for the producers, as well as the promotion of Ivorian cocoa in the international market. In light of the huge agricultural potential of Cameroon and the challenges faced by its producers, it appears to be the royal road that could use the Douala Stock Exchange, for example, in favour of the banana industry…

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The extraordinary case of Rwanda - or how a small country can take giant steps

For the last few years, no Africa conference has taken place without a praising reference to Rwanda. I was asked by some African friends why this small country (which is smaller than the state of Massachusetts and not much bigger than the size of Wales) is having so much impact. Here are the ten key reasons why Rwanda is becoming a leading force on the international scene:

Zero tolerance to corruption

Corruption is a key hurdle in many countries. Since the start of the financial crisis, corruption has rippled across the world. The last report published by Transparency International indicates that 53% of the people surveyed found that corruption has worsened, including in western countries such as Germany, United Kingdom, France and United States. But Rwanda's trend is going the other way. Rwanda was ranked the least corrupt country in Africa in terms of bribes. This is only the result of strong political will with a zero tolerance to corruption which has been enacted in appropriate reforms, such as the establishment of the Ombudsman since 2003. Last year alone, the Ombudsman Office received over 6,600 corruption cases.

Legal revolution and the switch to common law

After the 1994 genocide, which cost the lives of 800,000 people, Rwanda switched from a civil legal system (inherited from Belgium) to a common law system which is more suited to the business world. It is the first time a country voluntarily adopted common law. Rwanda also joined the East African Community in 2007 and became the second country not to have been colonised by England to join the Commonwealth of Nations in 2009. These changes were part of a deep reform to attract private investment.

Creation of a vibrant private sector

In the last six years, Rwanda has reduced many unnecessary regulations and administrative burdens to help better facilitate business. As a result it has become the second most improved business environment in the world over that period (according to the World Bank). For example, it now takes one day to start a business in Rwanda (compared to a 45-days average for Africa).

According to the World Bank, Rwanda is the 8th easiest country to start a business in the world (United States occupies the 13th position and United Kingdom the 19th) and the 3rd easiest to do business in Africa after Mauritius and South Africa. And the reforms are continuing. At the start of September, Rwanda launched its electronic land title processing system, which will make land registration more efficient, cost effective and transparent. This reform is also crucial for investors who will be able to raise debt more easily by using their land as collateral.

Recognition of foreigners' rights: the creation of an arbitration centre

Rwanda introduced commercial courts in 2008 which reduced the backlog of pending litigation and improved the speed for the resolution of commercial disputes. The same year, Rwanda ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. To further improve its judiciary system, Rwanda developed alternative dispute resolution mechanics which led to the creation of the Kigali International Arbitration Centre ("KIAC") last year. By using international rules and procedures and having a list of internationally recognised arbitrators, KIAC is on the right track to become a leading regional arbitration centre.

Solid growth and poverty eradication

Whereas most western countries see their sovereign rating being downgraded, Fitch has just revised Rwanda's credit outlook to positive from stable. With an average of 8.3% GDP growth since 2005 (according to the World Bank and the International Monetary Fund), Rwanda is one of the fastest growing economies in Africa, but that's not enough, the government is targeting a double digit growth of 11.5% to reduce poverty by 15% in the next five years. Poverty in Rwanda has already dropped by 11.8% since 2006, child mortality has been slashed by two thirds in less than two decades and malaria deaths have declined by 75% between 2005 and 2011.

Successful Eurobond issue

Rwanda is one of the few African countries to have tapped the international bond market, with tremendous success: $400m was issued on the Irish Stock Exchange with an issuance coupon rate of 6.625%. To meet its target to become a middle income country by 2018, Rwanda is using all its available tools. Investors gave it the thumbs up as the 10-year bond was eight times oversubscribed. Indeed, Rwanda offers a good investment alternative to the other - oil-producing - African issuers who are more likely to be affected by a drop in commodity prices.

Infrastructure development: the heart of the success

A good infrastructure is key to developing private investment and efforts have doubled to develop it in all sectors (energy, transport, water, healthcare and education). The KivuWatt project which simultaneously produced a 25 MW power plant and extracted harmful gases from the lake won the Euromoney energy project of the year in 2011. The development of the $300m convention centre and the $635m Bugesera airport are at the heart of making Rwanda a hub for East Africa (which makes sense as Kigali is one of the safest capitals in Africa). Rwanda is also one of the leading forces with East Africa and the $4.7bn Isaka-Kigali railway between Tanzania and Rwanda is a good example of infrastructure projects making Rwanda a key East Africa player.

At the forefront of innovation

Rwanda is landlocked with few natural resources and is the most densely populated country in Africa. To succeed, it decided to innovate. Its investment and commitment to new technologies is impressive. In 2009 it started a $95m project to construct 2,300 km of fibre optic telecommunication network across the country to link undersea cables running along the East African coast. It was revolutionary but not enough for a country determined not to be left behind. A few months ago a deal with KT Corp, one of the South Korean telecom companies, will lead to high speed 4G internet being provided to 95% of the population. According to the International Telecommunication Union, Rwanda is already amongst the top 10 broadband countries in Africa and it estimates that a 95% internet penetration will translate into a 10-13% GDP growth.

Women empowerment

The recognition and empowerment of women in Rwanda should make every western nation blush. Unlike many countries, equality between men and women is visible not just in the constitution. With women holding over 56% of the seats in the last parliament (which is far above the required 30% quota), Rwanda has by far the highest percentage of female MPs anywhere in the world (by comparison, women hold just over 22% of the seats in the United Kingdom and about 18% of the seats in the United States). This makes it the only country in the world with a majority of women at parliament. Women do not only legislate, they also hold senior executive positions by occupying 35% of the cabinet (vs 15% in the United Kingdom and 20% in the United States). Senior positions are occupied by women such as the minister of Foreign Affairs and Cooperation, the head of the Rwandan Development Board and the head of the Ombudsman Office.

Education: number one priority to empower a nation

The statistics in the last UNICEF report are clear: with 96.5% enrolment rate last year, Rwanda has the highest primary school rate in the whole of Africa. Gender parity for education has also been achieved for primary and secondary education. Such success led Rwanda to win the Commonwealth Education Good Practice Awards 2012. In addition, English was introduced as one of the official languages (instead of French): with 1.8bn people speaking English (vs 180m speaking French) it made sense. The president of Gabon pledged to follow suit after visiting Rwanda.

Conclusion

Rwanda has a clear ambitious vision and in the last decade, every step has been taken towards its concretisation. Although some may still doubt Rwanda's nickname of "Singapore of Africa", the proof is in the pudding and today Rwanda has already become one of the safest and most sophisticated countries in Africa and a leading example on how a focused government can empower its citizens.

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The Democratic Republic of Congo to ratify the New York Convention 1958

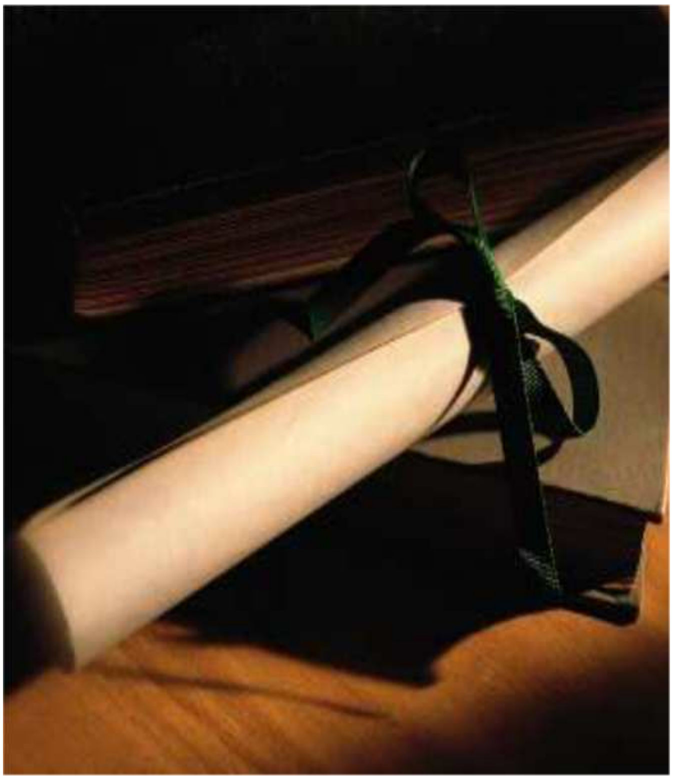
The Democratic Republic of Congo ("DRC") continues to improve its regulatory regime by passing a law authorising the State to ratify the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "NY Convention"). It will become the 150th state and the 33rd African country to adhere to the NY Convention.

First the OHADA Revolution

On 12 September 2012, the DRC acceded to OHADA, an organisation comprising 17 African states which seeks to provide a harmonised legal framework for the conduct of business in Africa by operating a uniform business law regime (based on modern French laws). It was a revolutionary change as overnight the DRC upgraded its 19th century legal system to a modern set of business laws. The OHADA Uniform Acts only cover the core business areas of law such as the formation of companies, the creation and enforcement of security interests, the insolvency regime and local and international arbitration. Indeed, pursuant to the OHADA legislation, international arbitral awards will be recognised and enforced in OHADA states. This was a huge improvement for the DRC. However, as the OHADA regime is less well known outside the OHADA states and may therefore have a limited effect on investor confidence, this is where the NY Convention will help.

Then the adhesion to the New York Convention 1958

As soon as the DRC becomes a party to the NY Convention (90 days after the deposition of the ratified act, which hopefully should take place at the start of 2014), Article 5 of the NY Convention will apply. This brings with it international recognition that the DRC will recognise and enforce foreign arbitral awards. It is another improvement demonstrating the dedication of the government to improve the DRC regime and make it more appealing to foreign investors. The DRC follows other reforming countries in Africa, like Rwanda which adhered to the NY Convention in 2008. However, the NY Convention is not a panacea, it also has some limits, particularly in relation to the DRC whose ratification law has set down various reservations.



Limits

The NY Convention allows signatories to make certain specified reservations upon ratification, and very few countries have signed up without any. Two of these reservations are quite common: (i) non-retro activity (ie the NY Convention will only apply to arbitral awards granted after it is in force in the DRC) and (ii) reciprocity (the NY Convention will only apply to arbitral awards granted in jurisdictions that are also parties to the NY Convention - this reservation is quite usual, applicable for instance in both France and the UK). The third reservation states that the NY Convention will only apply to commercial matters. This is a little more unusual (and for example the OHADA arbitration legislation applies to both private and public matters) but it is not uncommon. Perhaps the most significant reservation is the final one, which excludes real estate matters, particularly as it would appear that mining rights would fall within that category in accordance with DRC law. Only two other countries amongst the 149 already party to the NY Convention have a similar reservation: Norway and Tajikistan. For all these excluded matters, foreign arbitral awards will not be enforceable in the DRC under the NY Convention, and the party seeking enforcement will have to revert to the OHADA regime.

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Hogan Lovells recent work in Africa

Hogan Lovells has recently been involved in the following deals:

Pembroke Capital Limited

Advising Pembroke Capital Limited on the sale and leaseback of ten new Airbus A320-200 aircraft to be leased to South African Airways

African Export Import Bank

Advising African Export Import Bank on a €5.6 million receivables-backed equipment import financing term-loan in favour of SIMAT, Ivory Coast (to finance the importation of equipment for marine and air transit and handling services)

University advice

Advising a university on the establishment of health-oriented projects in Nigeria, Malawi, and South Africa, funded by the United States Agency for International Development (USAID) and the Centers for Disease Control and Prevention (CDC)

Chinese financial institution

Delivering preliminary advice to a Chinese financial institution in relation to regulatory issues for financing a manufacturing facility in Ethiopia

DRC mining company

Advising the majority shareholder of a DRC mining company regarding shareholding issues and the proposed re-start of mining activities in the Eastern DRC

German financial institution

Advising a German financial institution in a debt restructuring of a Cameroonian company specialising in the manufacture of generic pharmaceutical drugs

The African Legal Awards 2013

We are also pleased to announce that Hogan Lovells has been shortlisted by the African Legal Awards 2013, for our work with African Export Import Bank on a financing for Kenya Airways

Pro Bono
Highlights from our U.S. offices

Lawyers in Hogan Lovells' U.S. offices have handled a multitude of pro bono matters involving Africa. Drawing on the experience of professionals around the country, we have handled matters in many African countries and helped clients make a significant impact in the areas of food poverty, public health, energy and natural resources, economic development, and social entrepreneurship, among others. Highlights of our work in the continent include:

Accion International

Accion International fights poverty by providing microcredit, supporting economic and sustainable development, and connecting people to the financial tools they need to improve their lives. The organization helps build microfinance institutions in, among other countries, Cameroon, Ghana, Nigeria and Tanzania. We assisted Accion with a comprehensive term sheet that reflected the major terms and conditions of an investment as well as those of other potential investors, reviewed and negotiated investments in microfinance initiatives in Africa, and assisted with its lead investment in an emerging markets social purpose micro-insurance fund.

The Africa Society of National Summit of Africa

The Africa Society of National Summit of Africa engages and educates Americans about the countries and continent of Africa. Since 1998 we have assisted the Africa Society of the National Summit on Africa in connection with real estate issues, corporate organization and governance matters, and various personnel issues. We also advised on the Africa Investment Incentive Act of 2006, which extended certain critical provisions relating to textiles and apparel and expanded duty-free treatment in ways designed to promote development in the lesser-developed sub-Saharan African countries.

The Darfur Peace and Development Fund (DPDF)

The Darfur Peace and Development Fund (DPDF) works to end conflict in Darfur by advising international organizations on policy towards Sudan, documenting crimes against humanity perpetrated by the Sudanese Government, and promoting transition to peace and economic development. We assisted DPDF with projects relating to crimes committed during the Darfur humanitarian crisis, including helping DPDF obtain a license from the Treasury Department's Office of Foreign Assets Control to import into the United States handicrafts made by displaced refugee women in Darfur. We also assisted DPDF in receiving guidance from the Office of Foreign Assets Control regarding transactions related to the establishment of schools and women's centers in Darfur and provided legal guidance on issues that arose in the course of its operations.

E+Co/Persistent Energy Partners

E+Co/Persistent Energy Partners invests in innovative businesses that provide African households with affordable, renewable energy. We have assisted E+Co in connection with multiple acquisitions, joint ventures, investments, and loan work-outs in Tanzania, Ghana, and South Africa. Most recently, with our assistance, E+Co is negotiating a Memorandum of Understanding with the Government of Ghana, pursuant to which E+Co would receive governmental concessions to install solar powered micro-grid solar to electrify rural villages across Ghana that are not connected, and have no near-term prospect of being connected, to the national electricity grid. Installing solar powered systems that cost rural Ghanaians no more than they are currently paying for kerosene lantern lighting replaces toxic, dangerous indoor pollutants with clean, inexpensive energy. We are also assisting E+Co in connection with the acquisition of a service company whose expertise in this field will provide E+Co with a distribution platform to scale the solar project across sub-Saharan West Africa.

FARM Africa

FARM Africa provides training and support to help African rural communities work themselves out of poverty. We assisted FARM Africa in connection with the establishment of a for-profit entity in Ethiopia and subsequently developed a strategy for continued activities in Ethiopia and compliance with applicable laws. We also reviewed FARM Africa's operations on the ground and developed a comprehensive employment handbook. In addition, we have assisted with alternative corporate structures; provided tax advice; reviewed the organization's donor contracts, policies, procedures, and staff training programs; advised on various agreements and contracts; advised on the technical and content aspects of the organization's Programme Management Tool, a database for employees that categorizes and describes key terms of grants to facilitate compliance; and investigated available legal remedies arising from unauthorized use of an online charitable fundraising site to raise funds purportedly on behalf of Farm Africa.

Advising the Government of Rwanda

We advised the **Government of Rwanda** in multiple rounds of negotiations and drafted and revised one of the two major project agreements for a 35-megawatt power project fuelled by methane to be extracted from Lake Kivu in Rwanda. The transaction involved a new extraction technology and the production and sale of electricity from methane. By tapping the indigenous methane, this project will play a significant role in advancing the country's development and improving its socio-economic prospects.

ImagineNations Group

ImagineNations Group helps young entrepreneurs expand their businesses with help from supporters around the world. We advised ImagineNations Group on use of the name "IMAGINEAFRICA ALLIANCE" and are prosecuting an application for registration of the mark. We also reviewed an agreement to license website technologies for its online portal and provided general advice on U.S. tax implications of its proposed activities.

Liberia's Ministries of Justice, Finance and Health and Social Welfare

Since 2006 we have provided extensive assistance to **Liberia's Ministries of Justice, Finance, and Health and Social Welfare**. Our work has included advising on the negotiation of international investment agreements and policy and law reform in areas from the extractive sector to healthcare. We played an integral role in establishing the Ministry of Health and Social Welfare's General Counsel's office; drafted legislation and regulations to create and implement the Liberia Medicines and Health Products Regulatory Authority; drafted comprehensive mental health and reproductive health legislation; made critical revisions to the country's public health laws; provided advice on the proper calculation of royalty payments, taxation of offshore gains, and applicable Liberian corporate income taxes on iron ore shipments related to major concessions; and reviewed and revised the Special Economic Zone Law Amending the Liberian Industrial Free Zone Authority Act.

Open Capital Advisors

Open Capital Advisors focuses on increasing investment in small and medium enterprises in East Africa. We assisted Open Capital Advisors with research and the preparation of a handbook on Kenyan law regarding corporate governance, minority shareholder rights, and legal procedural requirements — specifically witnesses for contracts, board resolution procedures/forms, and default notice requirements for board meetings.

Réseau Africain de l'Education pour la Santé

Réseau Africain de l'Education pour la Santé is based in Senegal and works in Mali, Guinea, Benin, Burkina-Faso, Niger, and Cameroon. The organization uses media content and mobile and web applications to help communities solve local issues and strengthen education, health, and good citizenship in Africa. We helped the organization set up a U.S. company, including attaining tax-exempt status, qualifying for grants from U.S. donors, and raising money in the United States.

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Being Seconded to Hogan Lovells

Why did you apply for a secondment?

Hogan Lovells is a sponsoring law firm in the International Lawyers for Africa programme (ILFA). In 2012; I was nominated as the ILFA Candidate to be seconded to Hogan Lovells. It was very exciting as the firm has over 30 years' experience in Africa and has done numerous projects, including in raising finance through debt capital markets and private equity on the continent.

Was the work in London very different?

Very much, City law firms in London are extremely big (in terms of size and number of lawyers) and are also highly specialized. On the other hand, legal practice in Uganda is to a larger extent still general. Working at Hogan Lovells therefore gave me a new experience in terms of the high level of specialization in different aspects of the law and business development and the work culture. For example in my last seat I sat with a partner in private equity which was daunting at the start as in Uganda it is rare to share an office with a partner. But with time, it was a great experience - I became more comfortable and learnt a great deal from the partner.

What did you get the most out of your secondment?

I was involved in different securitization projects in the International Debt Capital Markets practice. I undertook different training sessions in capital markets, corporate law and project financing, business development, presentation skills and networking which were very enriching. The contacts made in London have also been very helpful since I have returned to Uganda.

Did you enjoy living in London?

I loved London, there is just so much to do and see. Most memorable was attending a live match at the Wembley stadium for the world cup qualifiers between England and San Marino and meeting football legend John Burns.

Has the secondment changed the way you work?

Absolutely, I now have a greater understanding of different aspects of the law especially in Finance and Commercial law. I have increased my confidence, and have been able to apply the new skills that I have learnt to my daily work. I have also built lasting relationships with many colleagues and clients.

What would your advice be for future secondees?

The secondment is an amazing experience and so future secondees should look to make sure that they get the best out of it. They should also take advantage of the different training sessions held by Hogan Lovells and maintain the contacts they have made on their return to their home countries.

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