Hogan Lovells

Africa Newsletter

JUNE 2013

Contents

Introduction

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

Following our Africa Forum held in March 2013, where we welcomed delegates from across Africa and beyond to a lively series of panel discussions on the various aspects of doing business in Africa, Hogan Lovells has produced a report, named Doing Business in Africa. Further details can be viewed below.

In this edition of the newsletter we discuss political risk in Africa and the impact of the new Cameroonian investment code. We provide an update on the new merger control regime for the Common Market for Eastern and Southern Africa ("COMESA") and an article by ETM Analytics on assessing the opportunities for business in Liberia.

Lastly, we also include law firm Conyers Dill & Pearman's Mauritius reference guide and an article by the Mo Ibrahim Foundation on the importance of governance to doing business in Africa.

In a roundup of our work in Africa, we summarise some of our recent African transactions, including our pro bono work supporting the 2013 Gender Equality SEED Awards and provide an insight into life at Hogan Lovells by African lawyers who have been part of our secondee programme.

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

Best wishes

The Hogan Lovells Africa team

Doing Business in Africa – a Hogan Lovells report

Hogan Lovells' 'Doing Business in Africa' report focuses on the challenges and opportunities facing those investing or operating on the world's second largest continent. Please visit www.hoganlovells.com/Africa to download a copy of the report.

Political risk in Africa

Political risk in Africa tends to excite a degree of unease and caution, however it is often uninformed and without due cause. This article seeks to dispel some myths by considering (i) what we see as the real political risks, (ii) the perception issue, (iii) the improvements of the last decade and (iv) the opportunities.

1. The real political risks

   Africa is not one country but a large continent (it is bigger than the US, China and all of Europe combined) with 54 very different sovereign states. Some African countries are as stable and transparent than some Western jurisdictions. For example, Mauritius is a full democracy according to the Economist Intelligence Unit report, it ranks ahead of France and Italy (which are classified as "flawed democracies" along with Botswana, Namibia, Cape Verde, Mali, Ghana, Lesotho and Benin).

   It is true that some countries in Africa suffer from riots, coups and contested elections. The Arab Spring and most recently instability in Mali, the Central African Republic and Sudan confirm that. It is also true that foreign and local investments are very sensitive to stability, and therefore political risk hinders growth. For example, the Kenyan Investment Authority (KenInvest) blamed the slump on security lapses in the country and Kenya's intervention in Somalia to explain the 61% drop of investments from 2011 to 2012 (which reduced from USD1.84bn to USD712m).

   In the political and social unrest heat map produced in 2011 by RBC in its report entitled "The political and social unrest index - who's next?", most of Africa is bright red indicating the highest level. But so is the Middle East and a large proportion of Asia, hence, political risk is a global issue rather than just uniquely African.

2. The perception issue

   As highlighted in the latest Africa report from Ernst & Young entitled: Building Bridges, there is a perception gap "between those already doing business in Africa who are believers in the emerging Africa growth story, and those who have not yet invested and continue to associate the continent primarily with instability, conflict and corruption". Below are two examples of common misconceptions related to Africa.

   a) There is often insufficient data available on Africa, therefore making it difficult to reach founded conclusions. For instance, as most of the established rating agencies only rate a handful of African countries, the true investment climate is difficult to grasp. For example Botswana's country rating is A- (according to S&P) and A2 (according to Moody's), and in both cases with a stable outlook. This is better than many Western and emerging market countries, including Brazil, Russia, India, Portugal, Ireland, Spain and Italy. Botswana is not rated by Fitch.

   b) Despite the inconsistencies of data, the perception of Africa is slowly changing. Mainstream media such as the Economist and Time Magazine have had cover features focusing on "Africa Rising". Additionally, many major news sites now have Africa-focused pages. However, Africans are not waiting for mainstream media to boost Africa's profile. More Africans are using social media to tell their own stories and reports on Africa and are therefore increasing the neutral as well as Afro-optimistic messages on Africa.

3. Improvements of the last decade

   Although governance challenges remain, there is little doubt that political risk in Africa has reduced in the last decade. Additionally, the rule of law, including transparency and accountability keep improving (in contrast with the general trend highlighted by the Economist Intelligence Unit's title of its last Democracy Index: *Democracy in retreat*).

   As illustrated in the previously mentioned Africa report by Ernst & Young, between 1960 and 1990 there was only one instance of an African leader or ruling party being voting out of office. Since 1990, over 30 ruling parties or leaders have changed through a democratic process. The 2011 elections in Zambia and 2012 elections in Ghana are recent examples of relatively smooth transfers of power.

   Further improvements are visible from the annual World Bank Doing Business survey. In the 2013 report, five African countries rank ahead of Italy and 15 ahead of India. According to this same survey, investor protection is higher in South Africa, Mauritius, Rwanda, Sierra Leone, Tunisia, Botswana, Ghana, Mozambique, Burundi, the Seychelles, Nigeria and Madagascar and Angola than it is in France.

In addition, the rise of instantaneous communications (through the spread of internet) act as deterrent for greedy governments: if one foreign investor is unfairly treated, even if the rule of law is poor, even if a fair trial will not take place, it is very likely that the story will swiftly be known by the entire world. As national brand values increase, naming and shaming will become a significant tool to prevent corruption.

4. The opportunities

   Recent research on productivity published by the Skolkovo Institute for Emerging Markets studies establishes that two key factors trigger exceptional growth: (i) family values and (ii) reduced freedom. According to this report, authoritarian cultures are the best environments for productivity growth. In this research which analyses the most productive states, African countries score high, explaining the 7% GDP growth forecasted by the IMF for 2013.

   The controversial idea that democracy is wrongly associated with growth is not new. Dambisa Moyo, the Zambian born economist and best-selling author famously wrote in Dead Aid that "in a perfect world what poor countries at the lowest rungs of economic development need is not a multi-party democracy, but in fact a decisive benevolent dictator to push through reforms required to get the economy moving". Whether "benevolent" and "dictator" can coincide in one person is another question.

Conclusion – opportunities overcome all risks

According to the Africa report issued by the McKinsey Global Institute entitled Lions on the move, "today the rate of return on foreign investment in Africa is higher than in any other developing region". Because Africa is the last frontier market and the competition in the continent is reduced in comparison to Western countries and the usual BRICS and MIST (Mexico, Indonesia, South Korea, and Turkey) jurisdictions, the few investors who know and understand the market are and will likely continue to do extremely well.

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The new Cameroonian investment code

Cameroon was one of the first African countries to enact an investment code in 1990, confirming basic guarantees to investors such as free repatriation of capital and property ownership and providing various incentives such as tax reductions. However, this act was only good on paper: four years later the tax regime changed, superseding the tax advantages of the investment code. Also high bureaucracy and the arbitrary application of the code provisions often revoked the benefits of the investment law. This resulted in Cameroon ranking amongst the bottom 25 countries when it comes to ease of doing business and even bottom 10 in relation to paying taxes in a World Bank's survey. In order to attract foreign investors, revamping the 1990 investment code had become a priority for President Biya and so the new Cameroonian investment code became law on 18 April 2013.

Key improvements
This new law is very attractive and different to most African investment codes. Firstly, there is no discrimination between local and foreign investors. Secondly, no minimum investment is required (in Angola the investment incentives only kick in with US$1m, in Rwanda with US$250,000). The four criteria considered for the application of the code are (i) the number of local staff employed, (ii) the percentage of exports, (iii) the use of natural resources and (iv) the contribution to value added. Thirdly, there are numerous incentives. During the establishment phase (which≈cannot exceed five years), the new code provides for exemptions from VAT and duties on key services/assets (including an exemption from stamp duty on the lease of immovable property). During the operation phase (which cannot exceed 10 years), further exemptions from or reductions of other taxes (including corporate tax), duties (such as stamp duty on loans) and other fees are granted. However, unlike many other African investment codes, the new law provides for many additional, non-tax related benefits. Examples of these advantages include: the right to open local and foreign currency accounts locally or abroad, the right to freely cash in and keep abroad funds or income, the right to directly pay non-resident suppliers of goods and services abroad. Also facilities will be put in place to facilitate the issuance of visas and work permits, environmental compliance certificates and land titles and long term leases.

The remaining issue of bureaucracy
The new code has, however, not resolved the biggest bureaucracy issue of the previous law. For example, the process to qualify for the various benefits of the investment law still requires three different approvals: the one-stop shop body, the Minister of Finance and the Minister of private investment. Also, during the operation phase, the benefits are not automatic; all import and local purchase requests must obtain the visa of the body in charge of incentives promotion first. Finally, the new law provides for the setting-up of two other authorities: the Control Committee and a Joint Monitoring Committee.

For a sub-regional investment legal framework
Numbers of benefits granted by this law may raise a concern relating to their compatibility with the sub-regional community legislation.

In particular, it should be noted that Cameroon is a member state of the Economic and Monetary Community of Central Africa (EMCCA) and as such, is bound by the EMCCA regulation dated 29 April 2000 relating to the foreign exchange control ("EMCCA Regulation"). The EMCCA Regulation are supra national, i.e. in case of conflict with national laws (such as the new investment act) the EMCCA Regulation would prevail.

This is a key issue as the EMCCA Regulation significantly restricts the impact of the innovative rights granted by the new investment code. Here are two illustrative examples: (1) the new law provides for the right for any investor to open in Cameroon and abroad, a local or foreign currency account and to carry out transactions on such account. However, according to EMCCA Regulation this is subject to the prior authorisation of the Minister of Finance on the basis of an approval issued by the Central Bank. (2) The new investment code also provides for the right for an investor to freely cash in and keep abroad funds acquired or borrowed abroad and freely use them, as well as incomes from its transactions. However, according to EMCCA Regulation, export activities shall be disclosed to the competent authority, and transactions whose value exceeds FCFA 5,000,000 shall be settled through an EMCCA bank.

As such, although the Cameroonian administration will be bound by this new law, in case of a dispute before a Cameroonian court, the EMCCA legislation would prevail. Accordingly, it is questionable whether the new improvements of the investment code can actually be used...

Conclusion

The new investment code of Cameroon is excellent and innovative on papers but it seems that its compatibility with the EMCCA Regulation has been overlooked. This issue reinforces the recent ebullition around regional integration. Although Cameroon's efforts to develop its investment laws are to be praised, the discussions and improvements should be agreed and harmonised at the EMCCA level.

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COMESA – update on new draft merger assessment guidelines

As reported in the previous edition of this newsletter, the new merger control regime for the Common Market for Eastern and Southern Africa ("COMESA") became operational in January 2013. This creates a new supranational merger control regime in Africa which companies will now have to navigate. COMESA's Competition Commission (CCC) has already received two merger filings – from the multinational electronics companies, Philips and Funai, and from the pharmaceutical companies, Cipla India and Cipla Medpro South Africa.

The new regime contains a number of significant issues for dealmakers, including broad jurisdictional thresholds with extensive reach to foreign companies, a potentially long review period, and very high filing fees.

In April 2013, COMESA issued draft merger assessment guidelines. Whilst these have provided some helpful clarifications, they unfortunately confirm that the current jurisdictional thresholds are very broad. The consultation period has recently closed. The International Bar Association has made a detailed submission to the CCC – it is to be hoped that further clarifications will be made in accordance with their recommendations. Other interested parties may also have made submissions.

Nevertheless, as things stand, the key points arising from April's draft guidelines are as follows.

Very broad jurisdictional thresholds

The Regulations provide for the mandatory notification to the CCC of "*the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part*" of a business, where "*both the acquiring firm and target firm or either the acquiring firm or target firm operate in two or more [COMESA] Member State*s" and where the relevant turnover or asset threshold test has been exceeded. The current turnover or asset threshold is set at zero.

The problem with the way the current thresholds are drafted in the Regulations is that even de minimis activities can trigger a notification requirement. Whilst the draft guidelines provide additional detail on the thresholds, they unfortunately provide little comfort for four main reasons:

(i) They provide a broad definition of the term "*operation*". They state that: "*the term operation is construed widely to include not only the physical presence of merging parties but also their turnover derived from the Common Market*" (See Section 1.5). A company does not have to be "*directly domiciled in a Member State but it can have operations through exports, imports, subsidiaries etc in a Member State*" (See Section 3.10)

(ii) They seem to give little weight to the provision in one of the early scoping articles of the Regulations that restricts the regime's jurisdiction to mergers that have "*an appreciable effect on trade between [COMESA] Member States*". Practitioners hope that this clause would be used to prevent the application of the regime to transactions with no obvious effect on competition in COMESA, which would otherwise be caught by the broad jurisdictional thresholds

(iii) They indicate that businesses will have to endure a period of testing before turnover or asset thresholds can be set. They state: "*The reason why the threshold has been currently set at zero is because different Member States are at different levels of economic development and hence a realistic threshold can only be determined after the Regulation has been tested on the market. Therefore, the threshold shall be raised after a period of implementation of the Regulations*" (See Section 1.3)

(iv) They do not address the uncertainty over whether the requirement for a filing to the CCC precludes the need to make filings to any national competition authorities. Opinions differ on this issue in the COMESA Member States. For example, the Kenyan competition authority has stated that it believes it retains primary jurisdiction over mergers in Kenya; the Egyptian competition authority has referred the issue to its Ministry of Justice for guidance; and the Regulations do not currently have force of law in Zimbabwe because they have not been incorporated by Act of Parliament.

Who must notify?

The draft guidelines state that the CCC can accept joint notification or notification from either party. This is a welcome clarification as the merger notification form states that "*all parties to the merger are obliged to individually submit a notification to the CCC with the exception of a hostile bid where only the acquiring party must submit a notification*".

Notification fees
The draft guidelines clarify that the filing fee is equal to the lower of (i) COM$500,000 or (ii) the higher of 0.5% of the parties' combined annual turnover or value of assets in the COMESA Common Market Area. They state that "*COM$500,000 is the maximum fee payable for merger notification*".

Joint ventures
The draft guidelines clarify that the treatment of joint ventures is to be comparable to that under the EU Merger Regulation. The joint venture must "*perform, on a lasting basis, all the functions or an autonomous economic entity*". A joint venture will not meet this definition if it only takes over one specific function within the parent companies' business activities without access to the market.

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Liberia: A Modern Frontier

Pluralist democracy, bloody civil war, peace, economic growth, mass emigration, mass immigration, investment, corruption, debt forgiveness, and oil – 21st Century Liberia has seen it all. This is one of the most fluid places on earth; a true frontier market. Images of boy soldiers wielding machine guns have been replaced by images of large machines trawling Liberia for its considerable mineral riches. Capital is coming back. Business is beginning to trust Liberia again.

In nominal dollar terms the economy has probably grown by about 500% since Charles Taylor was ousted in 2003. A lot of this growth, of course, is catch-up after the destruction of much of what passed for productive activity during the civil war. Liberia's economy is still well below its structural potential, which is a long term positive for business interests in the country provided Liberia's peace dividend lasts. It is possible (the socio-political climate permitting) that the economy will grow by another 200-300% in the coming decade to somewhere around $8 billion from the current ±$2.5 billion.

Part of Liberia's big economic comeback trail is the return of its old glory sector, iron ore and steel. Two major global mining principals, BHP Billiton and ArcelorMittal, have recently reaffirmed their investment commitment to Liberia.

But it is oil that lurks as the big wildcard.

Oil exploration has kicked off in earnest off the Liberian coast with large global firms taking early stakes in the game.

The discovery of a potentially very significant oil resource raises a host of challenges around political stability and civil conflict risk. Oil regions have a penchant for becoming conflict regions if poorly managed. Liberia's historical channels of patronage no doubt will aim to become well entrenched around the oil sector, and it will be a litmus test of Johnson-Sirleaf's government as to how well she can steer mineral wealth in a fair and equitable way through the veins of the Liberian economy.

She needs to do this while maintaining peace and consolidating the democratic gains of recent years. With help from her Western sympathisers this may just be possible, but there are no guarantees.

etm analytics

MAKING SENSE OF IT ALL

Liberia therefore finds itself at an incredibly dynamic crossroads in its development. But with dynamism comes no shortage of risk. Weak state institutions and factionalised elites are a systemic conflict risk flag, at least until the 2017 polls have past. The ability of President Johnson-Sirleaf's liberalising, business-friendly agenda to outlive those elections must not be viewed as a certainty. The lack of state law enforcement capacity remains a further risk to Liberian stability. This inability to project power within the country's borders means that the state remains entirely dependent on the UN peacekeeping deployment to prevent the renewed emergence of rebel forces.

Liberia, like many African countries, suffers from poor institutional design that has failed to foster the kind of socio political development seen in other parts of the world. It has a reform-minded government, but de jure intention and de facto reality are all too often at odds with each other. Reform of the property rights and business regulations regime has been frustratingly slow and the anti-corruption drive of President Johnson-Sirleaf has hit up against resistance in the well-established channels of patronage, retarding further progress in this area for the past few years. Property registration, licencing and permits, and other administrative hassles are still far too onerous in Liberia for the country to be considered even remotely 'business friendly'.

Investor protections are relatively weak, largely because the foreign investment space is poorly defined in a regulatory sense and lacking clarity and certainty. This makes investment vulnerable to arbitrary state dictates. These problems notwithstanding, Liberia has one of the most liberalised capital regimes in the world, operating a managed exchange rate float against the dollar with no official exchange rate distortion, and implementing only one out of five capital controls pertaining to trade in goods and services monitored by the IMF, and an even more impressive one out of 13 controls pertaining to capital account and investment transactions.

This encouraging lack of restriction on money capital flows and rising investment demand may be hampered by a lack of financial sector sophistication, but this implies the scope for increasing banking services and credit intermediation in Liberia is significant. It will require a huge improvement in Liberia's grossly undercapitalised information and communications infrastructure, another opportunity waiting for committed foreign capital.

Risk management in Liberia entails managing a very fluid regulatory environment administered by elites that will tend to resist further encroachment on channels of patronage. Investors have to walk the tightrope of demonstrating clear benefits to elites while avoiding corrupt deals. Companies should be prepared to forge policy with the state and in many instances must be willing and able to provide capacity to state institution-building. Liberia truly is a modern frontier.

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Conyers Dill & Pearman

Mauritius: An International Financial Centre

Mauritius has emerged as a financial hub for global investment involving countries in Africa and jurisdictions such as India due to its noteworthy business and tax benefits. Combining the traditional benefits of an offshore financial centre with the distinct advantage of being a treaty-based jurisdiction, Mauritius features double taxation avoidance ("DTA") agreements with 37 countries and more in development.

Why Mauritius?

- Well-regulated, business-friendly and versatile financial centre, noteworthy for investment holding, private equity, funds, banking, finance and private wealth management
- Sound legal system upholding investor rights, with Privy Council as the ultimate court of appeal
- Sophisticated infrastructure, financing and banking sectors
- No exchange controls and free repatriation of capital
- Beneficial tax regime, including no withholding taxes on dividends, interest and royalties, and no capital gains tax
- Investment Promotion and Protection Agreements ("IPPAs") to minimise risk and safeguard cross-border investment
- Cost-effective business platform with educated, bilingual (English/French) workforce (including accountants, lawyers and other professionals)
- Cultural and commercial ties with Europe, India, China and Africa
- Convenient time zone for business (GMT +4)
- Member of major regional organisations providing preferential access to African and regional markets, including the African Union, Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA) and Indian Ocean Rim Association for Regional Cooperation (IOR-ARC)

Global Business Company Basics

There are two kinds of companies incorporated in Mauritius for the purpose of doing business primarily outside of the jurisdiction: Category 1 Global Business Company ("GBC1") and Category 2 Global Business Company ("GBC2").*

GBC1*	GBC2*
Tax resident in Mauritius **Income tax:** 0 to 3%, depending on availability of credit for underlying tax paid (in the other country	Similar to BVI International Business Companies **Income tax:** nil in Mauritius
Usual benefits from DTA Treaties • Less/no withholding tax payable on dividends, interest and royalties transmitted from a company located in the other treaty jurisdiction • No capital gains tax – when the GBC1 sells shares in a company in another treaty country, no capital gains tax is payable (because capital gains tax would only apply in the country of residence of the seller, but there is no such tax in Mauritius) • For African countries, capital gains savings are up to 35%	Does not benefit from DTA treaties

*Please see Appendix A for further details about the GBC1 and GBC2, and Appendix B for details about specific treaties.

Available Structures

Funds

- Offer flexibility (including DTA tax benefits) and are ideal for accessing buoyant markets in Africa, India and elsewhere
- Two types of funds: Collective Investment Schemes and Closed-End Funds
- A fund may be set up in the form of a company, limited partnership or trust
- There are five kinds of Collective Investment Schemes, which provide for redemption of interests at the holder's request:

1. **Expert** (for sophisticated investors or subject to minimum investment of US$100,000)
2. **Professional** (offered only to sophisticated investors or via a private placement)
3. **Specialised** (investing in real estate, derivatives or commodities)
4. **Regulated Global Scheme** (a fund, with a Category 1 Global Business Licence, not falling into one of the categories above)
5. **Fully-Regulated** (usually offered to the public)

- There are three kinds of Closed-End Funds, which generally have a fixed share capital and no or limited redemption rights:

1. **Non-Reporting Issuers** (typically private equity/venture capital funds)
2. **Reporting Issuers**
3. **Funds Subject to Part V of the Securities Act 2005**

Trusts and Foundations

- Can be used in an array of contexts – estate planning, asset protection, provision for minors, orderly distribution of assets after death
- Can be resident (benefiting from DTA treaties) or non-resident (not taxable in Mauritius)
- Do not need to be registered and are versatile, cost-effective and simple to create and administer
- Foundations may also be registered in Mauritius, having legal personality and undertaking non-charitable and/or charitable activities

Protected Cell Companies

- Single legal entities with 'core' capital (nominal and usually beneficially owned by the PCC's promoters) and 'cellular' capital (held by investors)
- Each cell is "ring-fenced" from any liabilities relating to other cells (no crossover liability)
- Investment activities of a given cell are not affected by the activities of other cells

Network of Double Tax Avoidance Treaties

In Force

Africa		Europe	Asia/Middle East		Rest of the World
Botswana	South Africa	Belgium	Bangladesh	Pakistan	Barbados
Lesotho	Swaziland	Croatia	China	Singapore	
Madagascar	Tunisa	Cyprus	India	Sri Lanka	
Mozambique	Uganda	France	Kuwait	State of Qatar	
Namibia	Zambia	Germany	Malaysia	Thailand	
Rwanda	Zimbabwe	Italy	Nepal	United Arab Emirates	
Senegal		Sweden	Oman		
Seychelles		United Kingdom			
		Luxembourg			

Being Ratified		Awaiting Signature		Being Negotiated	
Africa	**Europe**	**Africa**	**Europe**	**Africa**	**Asia/Middle East**
Republic of Congo	Russia	Egypt	Monaco	Algeria	Iran
Kenya		Gabon		Burkina Faso	Saudi Arabia
Nigeria		Ghana		Tanzania	Vietnam
		Malawi		**Europe**	Yeman
				Czech Republic	**Rest of the World**
				Greece	Canada
				Portugal	St Kitts & Nevis

- Useful in contexts such as asset holding, structured financing, debt repackaging and subordinated debt offerings

Network of Investment Promotion and Protection Agreements

Investment Promotion and Protection Agreements ("IPPAs") are bilateral agreements that promote and protect the interests of investors and reduce risk. For example, IPPAs guarantee against expropriation; provide for free repatriation of capital and investment returns; offer dispute resolution mechanisms; provide most favoured nation status; and ensure compensation for loss due to armed conflict, etc.

IPPAs in Force				
Africa	Asia/Middle East	Europe		Rest of the World
Burundi	China	Belgium/Luxembourg	Portugal	Barbados
Madagascar	India	Czech Republic	Romania	
Mozambique	Indonesia	Finland	Sweden	
Senegal	Pakistan	France	Switzerland	
South Africa	Republic of Korea	Germany	United Kingdom	
Tanzania	Singapore			

In addition, there are a number of IPPAs awaiting ratification.

*Accurate as of June 2013.

Mauritius Benchmarks

- Ranked 19th worldwide (and 1st in Africa) in terms of overall "Ease of Doing Business" by the World Bank's Doing Business report, 2012
- Ranked 1st in the Ibrahim Index of African Governance, 2007 to 2012
- Ranked 8th on the Heritage Foundation and Wall Street Journal's Index of Economic Freedom, 2012

About Conyers Dill & Pearman

Founded in 1928, Conyers Dill & Pearman is a world-class legal services firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 140 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate, company and commercial, litigation, restructuring and insolvency, and trust and private client matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate, secretarial, accounting and management services.

About Codan (Mauritius) Limited

Codan (Mauritius) Limited is licensed to undertake a broad range of trust and company administration services for corporations, private clients and other entities. Codan (Mauritius) Limited forms part of the Codan Trust group of companies (referred to collectively as "Codan Trust"), an international network of licensed trust companies

Codan Trust was established by the international law firm of Conyers Dill & Pearman, and this close affiliation greatly augments the quality of the trust and company administration services provided. Legal advice is readily available and access to Conyers Dill & Pearman's global network of law offices is instant.

This document is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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Appendix A: Global Business Companies

Main Characteristics

Category 1 Global Business Company (GBC1)	Category 2 Global Business Company (GBC2)
As a resident in Mauritius for tax purposes, a GBC1 is liable to pay income tax (at a rate of 15%) in Mauritius. The GBC1 benefits from a presumed tax credit of 80%, causing the effective tax rate to be a mere 3% (or less – possibly zero – depending on the circumstances).	A GBC2 pays no tax in Mauritius. However, a GBC2 does not benefit from the double taxation avoidance (DTA) network of Mauritius.
Permissible activities (any activity that is not illegal or otherwise against public policy) include: fund management; asset management; financial services; consultancy services; licensing and franchising; insurance; information and communications technologies; employment services; pension; logistics and/or marketing; operational headquarters; funds; shipping; trading; and aircraft financing/leasing.	Permissible activities include: non-financial consultancy; IT services; logistics; marketing; shipping; trading (non-financial); passive investment holding; one-off transactions using a special purpose vehicle. A Category 2 Global Business Licence notably does not permit the holder to engage in financial services.
A GBC1 is also permitted to conduct business in Mauritius. May be a body corporate (either locally incorporated or registered as a branch of a foreign company), a trust or a partnership (including a limited partnership), or a société.	A GBC2 must conduct business only with non-residents of Mauritius and in a currency other than the Mauritian rupee. A GBC2 must be a private company. A GBC2 provides for greater simplicity of application/ operation compared to a GBC1.
The GBC1 requires a licensed Management Company (such as Codan (Mauritius) Ltd) to operate.	A GBC2 requires a Registered Agent (such as Codan (Mauritius) Limited) to operate.
To benefit from the DTA network, a GBC1 must demonstrate substantial control in Mauritius ("central management and control"), and obtain a tax residence certificate from the Mauritius Revenue Authority. The GBC1 requires: • At least two resident directors in Mauritius • Board meetings to be held in (or chaired from) Mauritius • Banking transactions to be channelled through a local bank account • Registered office and statutory records to be maintained in Mauritius • A local qualified company secretary • A local auditor. A GBC1 is required to have annual accounts audited in Mauritius and must file these annually with the Financial Services Commission • Corporate directorship not allowed.	Minimum of one director (need not be ordinarily resident in Mauritius) and which may be a natural person or a corporate body. Board meetings may be held abroad. A GBC2 is required to maintain financial statements, with the Registered Agent, to reflect its financial position and must file an annual financial summary with the authorities.
No minimum capital; minimum of one share (with or without par value); minimum of one shareholder. A GBC1 may be held by a person or entity resident in Mauritius. Par value shares in different currencies allowed (except Mauritian rupees). May also be structured as a Protected Cell Company, a Limited Life Company or a Collective Investment Scheme.	No minimum capital; minimum of one share (with or without par value); minimum of one shareholder. A GBC2 may not have as beneficial owner any person resident in Mauritius. Par value shares in different currencies allowed (except Mauritian rupees). May also be structured as a Limited Life Company.

Appendix B: Withholding Taxation Rates

The following rates are applicable where a GBC1 holds a stake in a company resident in the other treaty country and a dividend, interest or royalty is transmitted from such company to the GBC1.

	Under Double Tax Avoidance Treaty		
Country	**Dividends**	**Interest**	**Royalties**
Africa			
Botswana	5% & 10%*	12%	12.5%
Lesotho	10%	10%	10%
Madagascar	5% & 10%*	10%	5%
Mozambique	8%, 10%, & 15%*	8%	5%
Namibia	5% & 10%*	10%	5%
Rwanda	Exempt	Exempt	Exempt
Senegal	Exempt	Exempt	Exempt
Seychelles	Exempt	Exempt	Exempt
South Africa	5% & 10%*	Exempt	Exempt
Swaziland	7.50%	5%	7.50%
Tunisia	Exempt	2.50%	2.50%
Uganda	10%	10%	10%
Zambia	5% & 15%*	10%	5%
Zimbabwe	10% & 20%*	10%	15%
Europe			
Belgium	5% & 10%*	10%	Exempt
Croatia	Exempt	Exempt	Exempt
Cyprus	Exempt	Exempt	Exempt
France	5% & 15%*	Same rate as under domestic law	15%
Germany	5% & 15%*	Same rate as under domestic law	15%
Italy	5% & 15%*	Same rate as under domestic law	15%
Luxembourg	5% & 10%	10%	Exempt
Sweden	5% & 15%*	15%	15%
United Kingdom	10% & 15%*	Same rate as under domestic law	15%
Asia Middle East			
Bangladesh	10%	Normal rate	Normal rate
China	5%	10%	10%
India	5% & 15%*	Same rate as under domestic law	15%
Kuwait	Exempt	Exempt	10%
Malaysia	5% & 15%*	15%	15%
Nepal	5%, 10%, 15%*	10% & 15%*	15%
Oman	Exempt	Exempt	Exempt
Pakistan	10%	10%	12.5%
Singapore	Exempt	Exempt	Exempt
Sri Lanka	10% & 15%*	10%	10%
State of Qatar	Exempt	Exempt	5%
Thailand	10%	10% & 15%*	5% & 15%*
United Arab Emirates	Exempt	Exempt	Exempt
Rest Of The World			
Barbados	5%	5%	5%

* The applicable percentage depends on the stake held in the entity located in the other treaty country.

The importance of governance to doing business in Africa

"There is no difference between governance in the public sector and the private sector. In both, it harnesses resources in an efficient and effective way, to achieve the best results. Let's stop saying corruption is preventing business in Africa. Good governance is creating more and better business opportunities. My experience is testament to the link between good governance and successful business in Africa."

Mo Ibrahim, Chairman, Mo Ibrahim Foundation

What is the Ibrahim Index of African Governance (IIAG)?

The IIAG is a composite index, and its underlying data set of 123 constituent variables, that provides an annual statistical measure of governance performance in all African countries. The Mo Ibrahim Foundation defines governance as the ability to deliver the political, social and economic public goods and services that any citizen is entitled to receive and that any government has the responsibility to deliver to its citizens. The four categories of the IIAG cover the pillars of governance as identified by the Mo Ibrahim Foundation: Safety & Rule of Law, Participation & Human Rights, Sustainable Economic Opportunity and Human Development. The data are taken from 23 independent data sources.

The 2012 IIAG was the sixth iteration of the Index, and confirmed that governance has improved across the continent since 2000. There have been positive trends in 11 out of the 14 sub-categories, noticeably in all sub-categories within the Sustainable Economic Opportunity and Human Development categories.

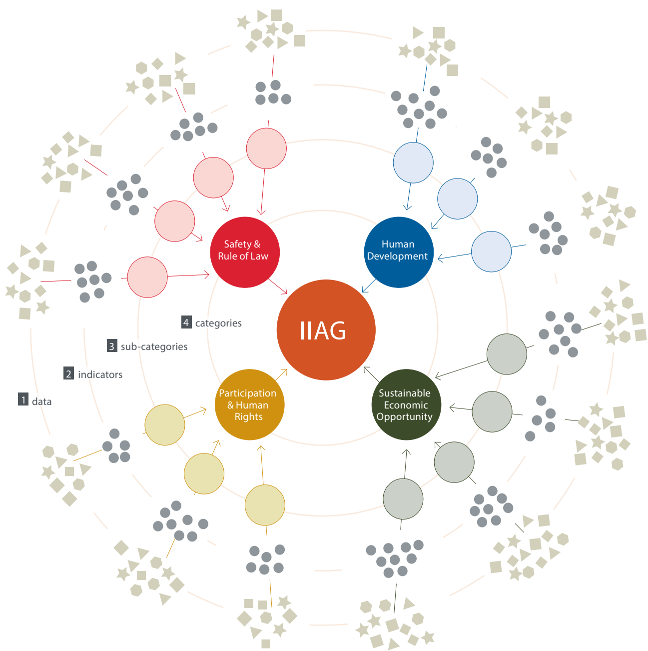
Improvements in governance between 2000 and 2011

From 2000 to 2011, seven countries demonstrated a significant improvement in their overall governance score: Liberia, Angola, Sierra Leone, Rwanda, Congo, Democratic Republic of Congo and Zambia. Since 2006, Tanzania has climbed up the IIAG's rankings, making it into the top ten for the first time. Angola, Liberia and Togo have left the group of the ten worst performers.

Mo Ibrahim
FOUNDATION

Overall continental score in IIAG 2000–2011 +4.2

Safety & Rule of Law -1.2	Participation & Human Rights +2.4	Sustainable Economic Opportunity +5.2	Human Development +10.5
Rule of Law -2.8	Participation +3.6	Public Management +5.1	Welfare +4.1
Account-ability +1.2	Rights -2.7	Business Environment +3.2	Education +9.0
Personal Safety -8.4	Gender +6.3	Infrastructure +5.1	Health +18.3
National Security +5.0		Rural Sector +8.1	



IIAG: From Raw Data to Final Scores

RANK 2006		Score
1st	Mauritius	78
2nd	Botswana	76
3rd	Cape Verde	74
4th	Seychelles	74
5th	South Africa	72
6th	Namibia	70
7th	Tunisia	65
8th	Ghana	64
9th	Lesotho	61
10th	Senegal	59
…		
13th	Tanzania	58

RANK 2011		Score
1st	Mauritius	83
2nd	Cape Verde	78
3rd	Botswana	77
4th	Seychelles	73
5th	South Africa	71
6th	Namibia	70
7th	Ghana	66
8th	Tunisia	63
9th	Lesotho	61
10th	Tanzania	59
…		
16th	Senegal	56

RANK 2006		Score
…		
37th	Nigeria	42
38th	Guinea-Bissau	41
…		
42nd	Eritrea	39
43rd	Togo	38
44th	E. Guinea	37
45th	**Côte d'Ivoire**	36
46th	Angola	35
47th	Liberia	35
48th	Zimbabwe	33
49th	Chad	31
50th	Congo, D. Rep	31
51st	C. African Rep.	29
52nd	Somalia	9

RANK 2011		Score
34th	Liberia	47
…		
39th	Togo	44
40th	Angola	44
…		
43rd	Nigeria	42
44th	E. Guinea	41
45th	Guinea-Bissau	40
46th	**Côte d'Ivoire**	36
47th	Zimbabwe	34
48th	C. African Rep.	34
49th	Eritrea	33
50th	Chad	33
51st	Congo, D. Rep.	33
52nd	Somalia	7

Deteriorations in governance between 2000 and 2011
Madagascar showed a significant decline in overall governance score since 2000. Eritrea, Guinea-Bissau and Nigeria have moved into the group of ten worst performers.

Worrying trends in the main regional powerhouses?
While governance is steadily improving in many countries, some of Africa's regional powerhouses – Egypt, Kenya, Nigeria and South Africa – have shown unfavourable performance since 2006. All four countries have declined in both Safety & Rule of Law and Participation & Human Rights, with particularly noticeable declines in the Participation sub-category. South Africa and Kenya have registered declines in the category Sustainable Economic Opportunity. This year, Nigeria has fallen into the bottom ten governance performers on the continent.

'Imbalanced' governance performance
'Imbalanced' performance between the four categories of the IIAG has been highlighted in previous editions of the IIAG, when Egypt, Libya and Tunisia stood out as cases in point. This characteristic refers to noticeable improvement in one or multiple categories while there is deterioration in the other categories. It is an important point that causes concern for the sustainability of overall governance results. Over the last six years almost half of African countries registered an increased 'imbalance' between the four categories. Five of the six most 'imbalanced' countries were in North Africa: Algeria, Egypt, Libya, Morocco and Tunisia. Not only does North Africa remain the most 'imbalanced' region in Africa, it has also experienced the greatest regional governance deterioration since 2006.

Since 2006, fewer than half of the African countries have achieved the optimum combination of an overall improvement in governance and an increasingly balanced performance across all four categories of the IIAG.

For more information, and to explore the data set further, please visit:
www.moibrahimfoundation.org/interact

To download the full data set of 123 constituent variables in Excel, please visit http://www.moibrahimfoundation.org/downloads/2012-IIAG.xls

The 2013 IIAG will be launched in October 2013.

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Pro Bono

SEED UN Women

Hogan Lovells together with UN Women and UNIDO is supporting the 2013 Gender Equality SEED Awards which recognise Women's Social and Environmental Entrepreneurship in developing countries and emerging economies.

Founded by the United Nations Environment Programme (UNEP), United Nations Development Programme (UNDP), and International Union for the Conservation of Nature (IUCN) at the 2002 World Summit on Sustainable Development in Johannesburg, SEED supports innovative small-scale and locally driven entrepreneurships around the globe which integrate social and environmental benefits into their business model. SEED has a growing programme and the 2013 SEED Awards will recognise up to 35 social and environmental enterprises, two of which will be for enterprises that are led or owned by women.

Hogan Lovells Partner Andrew Gamble will be a member of the independent expert SEED International Jury which will select the 2013 Winners. Each SEED Award winner will receive a package of tailored business support, capacity building services, and a financial contribution; they will be profiled at a high-level SEED Symposium in South Africa in November. The Gender Equality Winners will be offered pro bono support from Hogan Lovells.

Previous SEED winners include:

Uganda: Solar Sister, an African women-led partnership of non-government organisations, women's organisations and solar-lighting producers. This is a direct sales network of women entrepreneurs, selling solar-powered lanterns as a clean and non-hazardous light source for rural households.

South Africa: Reel Gardening providing consumers with a pre-fertilised seed strip that encases seeds at the correct depth and distance apart and offers planting instructions in seven languages. It empowers communities to implement their own sustainable food projects.

The Gambia: "GreenTech Company Ltd" markets briquettes made from waste groundnut shells in combination with fuel efficient stoves produced by local welders. The new cooking stove system is piloted by partnering restaurants and school kitchens and promoted through women's networks.

Ghana: "Ghana Bamboo Bikes Initiative" is a youth-led, non-profit enterprise committed to the economic empowerment of youth by taking advantage of the abundant bamboo raw materials in Ghana to manufacture and assemble high-quality bamboo bikes – suitable for the road conditions and terrain in Ghana and affordable to the poor.

Kenya: "EcoPost" recycles waste plastic into durable and environmentally-friendly fencing posts, so reducing plastic litter on streets and open fields. By providing an alternative fencing material to traditional wood, EcoPost also contributes towards the conservation of forests.

More information and the Call for Applications can be found at: www.seedinit.org

Hogan Lovells has a comprehensive strategy to actively integrate diversity and inclusiveness into all activities, which includes several women's initiatives and achievements:

- a global diversity plan which commits to increasing the number of women partners to 25% by the start of 2017, and 30% by the start of 2022; and of women in management positions to 30% by 2015
- an international advisory practice for social entrepreneurs, particularly supportive of women social entrepreneurs
- a number of pro bono programmes which relate to the provision of free legal advice to vulnerable women
- ranking in The Times Top 50 Employers for Women for the third year running in 2013.

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Being seconded to Hogan Lovells

Africa Legal Network and Hogan Lovells secondment programme

In September 2012, through our secondment programme with Africa Legal Network (ALN), we welcomed two African lawyers to our London office for several months. Co-ordinator of Hogan Lovells' Africa Practice, Camille Astier asks them a few questions about their experiences…

Lydia Nanyange Luyima, MMAKS Advocates
Lydia of Ugandan firm MMAKS Advocates joined the London Real Estate and Energy practices of Hogan Lovells.

Why did you apply for a secondment?

I applied for a secondment to gain exposure and broaden my horizons for the general benefit of my country. Africa has attracted a lot of investment in the recent years including from the UK and China, to name a few. Through understanding and awareness of best practices in the UK and the skills I acquired during my secondment, it will enable me to provide commercially sound advice to domestic, regional and international clients doing business in Uganda. This will attract investment in Uganda, and lead to further development.

I also wanted to build and strengthen a network with the lawyers in the UK which will develop and strengthen links with the legal profession in Uganda.

What did you get the most out of your secondment?

While in the Energy department of the firm, I reviewed proposed legislation in respect to the supply of gas and current legislation in respect of the oil and gas industry. This gave me an insight into the regulation of the Oil and Gas sector in England.

Uganda has recently discovered oil wells and the Oil and Gas Act came into force on 5th April 2013. The review of the UK legislation gave me an insight into what should be contained in laws regarding oil and gas and what is required of the different players in the sector for the benefit of the country. This will be used as a contrast with our current legislation and amendments can be effected where needed.

Did you enjoy living in London?

Yes I did. I got to see lots of new and exciting things and places that I only read about or see on television. The London Eye was the best experience. I also went ice skating for the first time – I couldn't let go of the side of the rink though, I needed all the support I could get!

Has the secondment changed the way your work?

Yes it has. I attended in-house training at Hogan Lovells and external training organised by different law firms and organisations.

Practical participation in different transactions has also developed my skills in negotiation and legal drafting. I also use technology more than before.

What were your three favourite things of working in London?

Life is really fast in the UK. I admired the speed at which things are done, the mode of transport and the technology at the work place.

Zainab Mohamed Bachoo, Anjarwalla & Khanna
Zainab of Kenyan firm Anjarwalla & Khanna joined the London Banking and Corporate practices of Hogan Lovells.

Why did you apply for a secondment?

My reason for applying for the secondment was to further my knowledge in the banking and commercial area of the law as these sectors are more developed and advanced in the UK. The secondment would give me an opportunity to be exposed to the style of work of a lawyer at a UK city law firm. I also wanted to build on and further my legal knowledge and my analytical, marketing and client management skills by exposing myself to international banking and commercial transactions. Additionally, I wanted to make contacts which would be beneficial in the future for exchange of information and knowledge-sharing.

What did you enjoy the most during your secondment?

It was great working at Hogan Lovells as I got to work on a few banking and corporate finance matters and experience first-hand the working style of lawyers in a City law firm. The senior associates in-charge of the matters I worked on ensured that I was present during calls with clients and that gave me an opportunity to observe how vital points of a document are negotiated. I also had the opportunity to liaise with the client and partner in charge on a couple of matters.

I also attended many training sessions, which mainly focussed on Africa and emerging markets. This gave me an insight into the potential Africa has as an investment hub. At these events, I also had an opportunity to meet professionals from different industries and make contacts with them.

The secondees were given an opportunity to meet the pro-bono team of Hogan Lovells and also to meet members of certain charitable organisations which the firm supports enabling us to learn and get ideas for future CSR projects.

What would your advice be for future secondees?

I would say to future secondees that this is a once in a lifetime opportunity so they should do their research/ homework and be very clear about their aims/goals of what they wish to get out of the secondment. It is important to visit the website of the firm to see the kind of work they specialise in, speak to the person you are liaising with at Hogan Lovells on the kind of work you are/may be interested in. This will give them time to plan better. In London law firms, the departments are divided, for example in banking you have general banking, trade finance, project finance and so on hence it is important know which area you need most experience in.

I would also advise that before your arrival, when you are communicating with the law firm on the secondment, insist that you sit with a senior associate to make the most out of your experience. While there, get involved as much as possible in transactions. Everyone is really busy there so it is necessary for you to make your presence felt.

Finally, enjoy London. Take time out to attend at least one play at the theatre, visit the museums and take a walk absorbing the city.

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Hogan Lovells recent work in Africa

Hogan Lovells has recently been involved in the following deals:

African Export-Import Bank
Advising African Export-Import Bank ("Afreximbank") on the update and increase of Afreximbank's US$3,000,000,000 Euro Medium Term Note Programme (the "Programme"), including the transferral of the Programme from Luxembourg's Euro-MTF market to Ireland's Global Exchange Market (the "GEM") and on the issue by Afreximbank under the Programme of US$500,000,000 3.875 per cent. notes due 2018 and listed on the GEM.

Magellan Energy
Advising Magellan Energy on the US Export-Import Bank financing of the sale of solar power systems to Helios Towers Africa.

WRenewables
Advising WRenewables on the US Export-Import Bank financing and other aspects of municipal waste to energy projects in Africa.

Vlisco Netherlands B.V.
Advising Vlisco Netherlands B.V. on its €95 million refinancing with Standard Chartered Bank and Rabobank.

Renaissance Capital and Canaccord Genuity
Advising Renaissance Capital and Canaccord Genuity in connection with a US$25 million capital increase and placing on AIM and the Australian Securities Exchange (ASX) of shares by Beacon Hill Resources plc, an AIM listed resource company focused on building a portfolio of near term production projects in commodities relating to the steel production industry.

Beacon Hill Resources plc owns and operates the Minas Moatize Coal Mine, which is one of three operating coal mines producing and selling coal in Mozambique's Moatize Coal Basin, one of the largest coking coal regions in the world. The company also holds a majority interest in the Changara Coal Project in Mozambique. In addition, through its subsidiary, Tasmania Magnesite NL, the company holds mineral tenure over two large, high-grade magnesite deposits at Arthur River and Lyons River in north-western Tasmania, Australia

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Berlin	Hamburg	Madrid	Prague	Warsaw
Brussels	Hanoi	Miami	Riyadh*	Washington, DC
Budapest*	Ho Chi Minh City	Milan	Rome	Zagreb*
Caracas	Hong Kong	Moscow	San Francisco	
Colorado Springs	Houston	Munich	Shanghai	

* Associated offices