Introduction

Welcome to this Hogan Lovells report Doing Business in Africa, which focuses on the challenges and opportunities facing those investing or operating on the world’s second largest continent. The content of the pages that follow is largely based on the discussions that took place at our inaugural Africa Forum event in London in Spring 2013, when we welcomed delegates from across Africa and beyond to a lively series of panel discussions on various aspects of doing business in Africa.

Before delving into the details of transacting in a region that covers a fifth of the world’s total land area, is home to more than 1 billion people and comprises more than 50 sovereign states, let us consider the bigger picture. It is now widely accepted that Africa’s time has come, and we see that optimism on the continent being driven by four key factors, the first being GDP growth.

According to the International Monetary Fund, of the world’s ten fastest growing economies between 2011 and 2015, seven will be in Africa. Only China and India, expected to see 9.5% and 8.2% growth in GDP, will expand faster than Ethiopia (8.1%), Mozambique (7.7%) and Tanzania (7.2%), and then only Vietnam (7.2%) will outperform Congo (7%), Ghana (7%), Zambia (6.9%) and Nigeria (6.8%). Whereas a decade ago most of the world’s GDP growth was expected to come from Europe and the Americas, including Brazil, that trend has reversed and the boom in Africa has seen unweighted annual average GDP growth on the continent exceeding that found in Asia.

Secondly, Africa is no longer the indebted continent. With global world borrowings standing in excess of USD50 trillion, Africa is burdened far less than the Americas, Europe and Asia.

Next, there is no doubt that we are witnessing a new era of stability across Africa. Inflation rates are now broadly averaging 8% per annum as against 22% in the 1990s; government debt as a proportion of GDP has dropped from 82% in the 1990s to 59% in the last decade; and budget deficits have significantly diminished. A Transparency International report published at the end

**Improved stability across Africa**

<table>
<thead>
<tr>
<th>Inflation</th>
<th>Government debt</th>
<th>Budget balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>% per annum</td>
<td>% of GDP</td>
<td>% of GDP</td>
</tr>
<tr>
<td>1990s</td>
<td>2000s</td>
<td>1990s</td>
</tr>
<tr>
<td>22.0</td>
<td>8.0</td>
<td>81.9</td>
</tr>
<tr>
<td>-64%</td>
<td>-28%</td>
<td>-4.6</td>
</tr>
</tbody>
</table>

SOURCE: World Bank World Development Indicators; Political Risk Services; McKinsey Global Institute
of 2012 found over half of African countries to be less corrupt than Russia, and more than a third to be less corrupt than India, and that the level of political stability has significantly improved.

Finally, Africa is witnessing growth in its working-age population – with two-thirds of its population under 30 – that will result in the emergence of a middle class such that the World Bank expects most African countries to be middle income by 2020. This is a continent unburdened by the worries of a baby boom population hitting retirement.

Increasingly, Africa is being viewed as a land of opportunity. But let us not forget its sheer scale. With an area of 30.2 million square kilometers, Africa is larger than China, the USA, India, France, Germany and the United Kingdom combined. It is a vast continent of independent states, with different legal regimes, regulatory frameworks and systems of democracy.

We appreciate the difficulties of generalizing about such a diverse and complex region, but we nevertheless hope that the observations outlined in this paper will provide useful guidance and food for thought.

If you have any questions or wish to discuss any of the topics raised here, please do not hesitate to get in touch with your usual Hogan Lovells contact.

Andrew Gamble
Global Head of Hogan Lovells’ Africa practice

Camille Astier
Co-ordinator of Hogan Lovells’ Africa practice

**Working age population**

<table>
<thead>
<tr>
<th>Region</th>
<th>Growth of the labour force 2010-20 (Millions)</th>
<th>Labour force, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>122</td>
<td>504</td>
</tr>
<tr>
<td>India</td>
<td>78</td>
<td>534</td>
</tr>
<tr>
<td>Latin America</td>
<td>45</td>
<td>316</td>
</tr>
<tr>
<td>Southeast Asia</td>
<td>40</td>
<td>331</td>
</tr>
<tr>
<td>China</td>
<td>12</td>
<td>792</td>
</tr>
<tr>
<td>North America</td>
<td>8</td>
<td>178</td>
</tr>
<tr>
<td>Europe</td>
<td>-4</td>
<td>354</td>
</tr>
</tbody>
</table>

*Source:* International Labour Organization; United Nations World Population Prospects; McKinsey Global Institute analysis
Executive Summary

At our Africa Forum event in London in Spring 2013, Hogan Lovells hosted over 200 delegates and chaired seven panel discussions on key issues facing those doing business in Africa. The conversations that took place and the topics raised are outlined on the pages that follow, but it is worth highlighting the key themes and trends emerging from the analysis in this report:

- The regulatory framework in Africa is diverse and complex, but many African governments are now implementing business regulatory reforms that lower business risks, increase predictability, reduce the costs of doing business and ensure contractual obligations are protected.

- Africa presents great opportunities for the financial services sector, because of its growing middle class, the fact that a large proportion of the population is unbanked, and 40% of adults in sub-Saharan Africa regularly save.

- There is a lack of critical infrastructure on the continent, but African states are increasingly inviting private firms to operate in power, telecoms, renewables and other programs. Well-structured bankable projects are in short supply but attract great interest from investors.

- There is a proliferation of private equity firms of all sizes investing in Africa, but large businesses with strong management teams, solid growth prospects and regional footprints are thin on the ground. A large number of investors are chasing a small number of attractive deals.

- While Africa presents great investment opportunities, it also presents risk, and a key part of any risk assessment is the predictability, transparency and reliability of a country’s judicial system. African governments are increasingly encouraging, accepting and facilitating arbitration as an alternative to the court process.

- Africa is the world’s fastest-growing mobile phone market and the continent is making investments in infrastructure that will put many of its networks on a par with those of developed economies. The continent is leading the way in areas like mobile payments and data will be the next growth story.

- Africa’s contribution to global oil and gas production has doubled since 1965, and developing the continent’s natural resources accounts for more than half of the bank loans raised in the region. The natural resources sector offers investors many natural mitigants to country risk, so there is keen interest in lending to the natural resources and energy sectors, which are seen as underpinning long-term economic growth.

- A key issue going forward will be around partnerships and specifically which development partners African governments will seek to align with. China, Brazil and India are already emerging as highly influential players on the continent.

- The African debt capital markets have matured considerably in the past decade, but raising debt remains extremely challenging for all but the most sophisticated of issuers.
Because of the number of sovereign states that comprise the African continent, the regulatory framework is a complex one not without its challenges. As the region seeks out solid and stable economic growth, the question is whether or not regulation helps or hinders that growth. There is evidence that business regulatory reforms are good for economic growth, and that it is therefore important to implement rules that lower business risks, increase predictability, reduce the costs of doing business and ensure that where there are contractual obligations, those are protected. But excessive regulation can also dampen investor appetite; so striking the right balance is crucial.

A positive development has been the emergence of regional trade agreements and legal harmonization initiatives on the continent. Seventeen countries in francophone Africa, representing more than 270 million people and a third of the continent’s land, have joined an organization for the harmonization of business law in Africa, called OHADA, with a view to standardizing business laws and economic and monetary systems. Eight of those countries belong to the West African Economic and Monetary Union, with a single central bank, currency and banking system; and a further six belong to the Central African Economic and Monetary Community, which operates in the same way.

These trade agreements have the potential to drive African trade flows, influencing investors setting up manufacturing hubs or making production and other sourcing decisions, but they still have some way to go to reach their full potential. Many have yet to invest in meaningful physical infrastructure or robust regulatory regimes to underpin their mandates.

So far these initiatives are only having a positive impact on the opportunities Africa presents to foreign investors. In the financial services sector – globally one of the most regulated sectors of all – we see Africa presenting great opportunities notwithstanding the diverse regulatory regimes that operate.

What is driving that investor appetite? First, Africa has an expanding workforce, such that the working population is expected to more than double to 1.1 billion people by 2040, and likely to be larger than that of China and India. That brings with it a growing middle class, and for financial institutions, the fact that a large proportion of that population is currently unbanked presents good prospects for expansion. Products such as consumer loans and car insurance will inevitably see greater demand going forward, as will asset management services given that 40% of adults in sub-Saharan Africa regularly save, more than the global average. Today there is limited access to finance on the continent and only 14% of savers use a formal financial institution.
The consulting firm Accenture publishes a Tipping Point Index naming the global markets most conducive to financial services growth, and identifies five African states as “forging ahead” in the sector, namely Egypt, Tunisia, Morocco, Nigeria and Botswana. We see non-African banks penetrating the region’s financial services market and African banks spreading across the continent.

**The Accenture “Tipping Point Index”: which markets are most conducive to financial services growth?**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>TPI score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>South Africa</td>
<td>0.73</td>
</tr>
<tr>
<td>2</td>
<td>Mauritius</td>
<td>0.54</td>
</tr>
<tr>
<td>3</td>
<td>Egypt</td>
<td>0.49</td>
</tr>
<tr>
<td>4</td>
<td>Tunisia</td>
<td>0.48</td>
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<tr>
<td>5</td>
<td>Morocco</td>
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<tr>
<td>6</td>
<td>Nigeria</td>
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<tr>
<td>7</td>
<td>Botswana</td>
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<tr>
<td>8</td>
<td>Ghana</td>
<td>0.33</td>
</tr>
<tr>
<td>9</td>
<td>Namibia</td>
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<tr>
<td>10</td>
<td>Algeria</td>
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<tr>
<td>10</td>
<td>Libya</td>
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<tr>
<td>10</td>
<td>Zambia</td>
<td>0.28</td>
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<tr>
<td>13</td>
<td>Senegal</td>
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<tr>
<td>13</td>
<td>Kenya</td>
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<tr>
<td>15</td>
<td>Uganda</td>
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<tr>
<td>16</td>
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<tr>
<td>17</td>
<td>Angola</td>
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<tr>
<td>17</td>
<td>Tanzania</td>
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<tr>
<td>19</td>
<td>Mozambique</td>
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<tr>
<td>20</td>
<td>Côte d’Ivoire</td>
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<tr>
<td>21</td>
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<tr>
<td>22</td>
<td>Cameroon</td>
<td>0.17</td>
</tr>
<tr>
<td>23</td>
<td>Sudan</td>
<td>0.11</td>
</tr>
</tbody>
</table>

SOURCE: Accenture 2011

And the financial services story is replicated in many other sectors as African economies have opened up their markets, embraced capitalism and started to actively seek out Foreign Direct Investment. Many see the future of growth as powered by the private sector, and that is pushing reforms, as states drive to make it easier for investors by reducing the costs and barriers to business. African countries have got better at managing their economies, controlling inflation and stabilizing their governments, such that investor decisions are now driven less by political risk and more by regional economic opportunities.
There is clearly a lack of critical infrastructure across the African continent, with power outages common, transport networks strained, and health and education systems in need of investment. Governments in the region typically spend between 6% and 12% of their income on infrastructure, but that budget is often ineffectively deployed as a result of procurement issues or political tensions, making the development of infrastructure projects in Africa a challenge.

That said, huge progress has been made. In the 1980s, aircraft traversing the continent were not guaranteed to arrive at their destination, let alone take off on time. In 1995, Kenya Airways was privatized and its move out of state control meant government ministers could no longer commandeered flights or override schedules. Today the business is a resounding success and last year it completed a successful rights issue in Nairobi that was the biggest in the history of both Kenya and the entire Eastern and Central African region.

Elsewhere we see deregulation and African governments inviting private firms to enter their power, telecoms, and renewables markets. Financing can be challenging, but well-structured bankable projects – which are in short supply – attract great interest among investors and financial institutions. However, these financial institutions – whether local or international, commercial banks or development finance institutions – will rarely take on foreign exchange risk, and typically transact only in US dollars, passing local currency risk on to governments and their consumers.

Outside of these institutions, when one thinks of major infrastructure projects in Africa, we also see a growing appetite from Chinese investors for opportunities in Africa, particularly into the construction of infrastructure. A case in point is The China Petroleum and Chemical Corporation (Sinopec) acquiring deep-water oil assets in Angola for USD2.46bn in 2010, in what was the company’s first overseas asset acquisition. As Asia’s largest oil refiner, Sinopec is actively seeking overseas investments in oil and gas resources to meet China’s energy demands, and the Angola deal was financed by both Chinese and international banks.

We see Chinese construction firms bidding for projects on the continent even where these are not funded by the Chinese government or by Chinese banks, and this year will also witness the third annual China-African summit celebrating China’s ambitious plans for making Chinese funds available to support development of infrastructure in Africa. China’s National Energy Administration has offered to help African states plan and develop critical infrastructure such as roads and bridges in places like South Sudan.

In infrastructure, as in every other business area, however, creating a business-friendly commercial environment and a stable regulatory regime are critical pre-requisites for African governments to attract foreign capital. Projects are often beset by bureaucratic delays that can extend timetables from years to decades and, for investors, the challenges of evaluating the credit risks of projects can become unwieldy. There is a long way to go but, as governments increasingly move to work more effectively and constructively with investors, opportunities in the infrastructure sphere look ripe for development.
The deployment of capital on the continent of Africa is much in demand from potential investee companies and difficult for the private equity investor to get right, given their return requirements. There is a proliferation of private equity funds at country level looking to invest relatively small amounts per deal, often sub-USD20m. Larger regional funds may go up to five times that size and over, and then there are the global funds that will play in Africa when there are bigger deals to be done, such as Carlyle’s first investment on the continent last year, when it took part in a USD210m equity injection into ETG, a Tanzanian agri-commodities trader.

While many investors favor certain sectors over others – most notably consumer, telecoms, natural resources and infrastructure – strong management teams are often the greatest drivers for investment decisions. Where companies boast management or family owners that are keen to grow alongside private equity partners, a business with growth potential, and a regional footprint, investment is available. Often private equity sponsors will look for a geographic spread within the business to mitigate the political risk in any one country. Partnership between the investee company and the private equity investor is key to a successful private equity deal in Africa.

The private equity market in Africa is maturing, but still attracts much lower leverage, and requires longer life cycles for investments, than private equity sponsors might look for in more developed economies. In most of Africa, investors are not using leverage but are still delivering internal rates of return of more than 20%, even if deals may take double the normal five-year timetable to mature. What is clear is that in Africa, like in other emerging markets, private equity is about investing in growth businesses, while in the mature markets of the world it has often become about asset rationalization and the use of cash flow with leverage.

There are investors making use of leverage in the African markets, and bank debt is becoming available. It is not uncommon to see leveraged deals as the banking environment strengthens, particularly in South Africa, which is a more mature market. The cost of debt is quite high given currency risks and the lack of tax efficiencies available on leveraged debt that is seen in more mature economies.

As far as fundraising is concerned, international limited partnerships are putting money to work in private equity funds targeting the African market, but fundraising is currently difficult the world over. According to Preqin, the data provider, emerging market fundraising increased 72% to USD40bn in the last two years, but fundraising for sub-Saharan Africa fell 3% to USD1.45bn, against a peak of USD2.24bn in 2008. Africa is competing against other emerging markets for private equity funds. Nevertheless, Ethos, the long-established South African fund, raised one of the continent’s largest funds in 2012 at USD800m, and Carlyle’s sub-Saharan Africa fund is expected to close above its USD500m target in the third quarter of this year.

With some of the world’s fastest growing economies, and a budding consumer middle-class, Africa clearly presents opportunities for private equity funds, but there are many investors chasing few deals and Asia still commands a far greater slice of the private equity pie. One of the biggest challenges for the asset class in Africa is to prove returns, and to show that investors can expect to see cash returns back in sufficiently short timeframes to satisfy their demands.
Arbitration in Africa

There is currently significant economic momentum in Africa and opportunities for both domestic and foreign investors. But with opportunity comes risk, and a key part of any risk assessment is the predictability, transparency and reliability of a country’s judicial system. Given that investor confidence in the courts in most African countries, and particularly first instance courts, is not high, and because agreeing to litigate in the English or American courts is not popular because of in-country enforceability issues, arbitration is filling the gap. Many African governments are seeking to create structures that encourage, accept and facilitate arbitration, and are increasingly accepting arbitration clauses in state contracts.

A large number of international arbitrations involving African parties continue to be seated outside Africa, because there remains free choice of non-African venues, and a huge amount of comfort from choosing venues that have established reputations based on centuries of resolving disputes. Many investment arbitrations will be under ICSID (International Centre for Settlement of Investment Disputes) provisions, while a number of countries have entered into Bilateral Investment Treaties (BITs) with investor host countries or have adopted statutes that afford the same provisions to investors as a BIT even if a BIT is not in place.

It is vital to get the drafting of the arbitration provision in a contract correct, but even then it may be impossible to avoid an African seat for any potential arbitration, particularly for public contracts. Where there is a choice of venue in Africa, or within an African country, investors should look closely at the statutory obligations and be mindful of cultural considerations. In Nigeria, for example, the federal system of government allows for a number of different venues of arbitration, with Lagos arguably more attractive thanks to fast-track rules for arbitration-related litigation and other provisions.

In-country enforcement of awards depends on the local legal system where the assets are located, and the approach varies significantly from country to country. In South Africa, for example, an award may be made an order of court, in which case, it will be enforced in the same way as a court judgment. In Lagos, however, there has been an effort to align the standards of enforcement with international practice. It is, therefore, vital to understand the legal system that underpins the arbitration, and to include the necessary warranties at contract stage.

There are a clutch of centers in Africa that are seeking to establish arbitration strongholds, including Cairo (which has in the past been very North African focused but is now looking southwards), Lagos, Johannesburg and Nairobi. But none of these new centers are without concerns, and it remains difficult to convince investors to include clauses in contracts that allow for arbitration on the continent. Mauritius, however, makes a strong play, acting as a bridge between the developed and developing economies and drawing on a lot of experience in the financial services sector, with a strong and stable government.

The challenge for arbitration in Africa typically comes at the enforcement stage, where some local courts are bogged down by delays and populated by judges who see arbitration as a threat to their jurisdiction. Progress is being made, but in many ways an arbitration system is only as good as a court system, so due diligence and early consideration of the issues at contracting stage are critical.
In comparison to many European countries, some African jurisdictions are leading the way in the field of telecommunications. Mobile cash and payments is a hot topic in Europe, with Barclays having only recently launched its PingIt service. In Africa, however, Vodafone’s M-Pesa was launched in 2007 and now tops 4.5 million subscribers with transactions hitting USD622m in Tanzania alone.

African nations are making investments in infrastructure – Etisalat of Egypt is currently looking to raise USD1.2bn for network upgrades and MTN Group of South Africa will spend USD1.5bn on its network this year, to give but two examples. And Africa is building networks – while 4G long-term evolution (LTE) high-speed wireless has only just arrived in some cities in the UK, in Africa we see Rwanda, Zambia and Tanzania moving ahead with LTE, and Essar Telecom keen to skip 3G and invest directly in LTE in Kenya.

Vodafone’s M-Pesa mobile payments system has been a success in Africa because it has enabled millions of people with limited access to a bank account, to make person-to-person and customer-to-business transactions. In countries where there is a high level of financial exclusion, regulators were receptive to the new technology. In Kenya and Tanzania, where there was no real payment regulatory regime in place, the regulators worked hard to get the necessary rules on the statute books, including anti-money laundering measures.

The voice telecom story in Africa has also been a great success, with mobile subscriptions now reaching 70% penetration, with significant growth potential still on the table, as areas of sub-Saharan Africa still have penetration below 60% (even less when you consider many users have more than one SIM card – some estimate as many as 500 million Africans are yet to get their first telephone). Africa will
remain the fastest-growing mobile market going forward, and data will be the next growth story, as increasing purchasing power, better connectivity and coverage and the declining cost of smart phones drives smart-phone usage.

Mobile content users are expected to increase 150% by 2014, due to Africa currently lagging the rest of the world in data penetration. But the desktop computer, the laptop and the tablet will play a much smaller role in the data revolution on the continent, as data use goes straight to mobile ‘phones.

We expect to see consolidation among the network operators, as the cost of rolling out the next generation of networks becomes prohibitive for smaller players. Meanwhile, the need for infrastructure investment is a clear issue, while falling voice revenues, increased demand, capital crunches from corporate parents, and competitive pressures from low-cost international players put more pressure on the networks. Hence, we are seeing moves to share networks, with tower companies taking ownership of vital infrastructure and making the assets work harder, leasing them back to operators. In India, the networks faced similar pressures and in recent years towers have gone from being 90% owned by the network operators to now 90% owned by independent companies.

Telecoms has the ability to deliver in Africa where other parts of the infrastructure are failing, as the mobile payments example illustrates. The challenge, as always, is to attract external funding, and that requires structuring transactions in a way that will attract partners.

**Mobile market growth per region**

<table>
<thead>
<tr>
<th>Region</th>
<th>Compound Annual Growth Rate 2008-12</th>
<th>Compound Annual Growth Rate 2012-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>22%</td>
<td>11%</td>
</tr>
<tr>
<td>Asia Pacific</td>
<td>19%</td>
<td>8%</td>
</tr>
<tr>
<td>Middle East</td>
<td>21%</td>
<td>10%</td>
</tr>
<tr>
<td>Latin America</td>
<td>12%</td>
<td>6%</td>
</tr>
<tr>
<td>US &amp; Canada</td>
<td>6%</td>
<td>4%</td>
</tr>
<tr>
<td>Western Europe</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>7%</td>
<td>3%</td>
</tr>
</tbody>
</table>

**Source:** WCIS
Natural Resources Challenges and Energy in Africa

In 1965, Africa produced 6.8% of the world’s oil, with North America, Europe and Eurasia contributing a combined 49.2%. Fast forward to 2010, and Africa’s contribution has doubled, such that it now produces 12.1% and Europe and America have seen their production fall to 38.2%. There have also been significant discoveries in recent years in Uganda, Kenya, Tanzania and elsewhere. These will become producing areas in the future.

So the balance of power is shifting, and Africa’s natural resources are in the spotlight. Developing those resources requires capital, such that, according to Dealogic, of the USD75bn of bank loans raised in the region between 2010 and 2012, more than half (USD40bn) were dedicated to oil and gas, metals and mining, and energy and utility projects.

American and European banks have scaled back their lending in the wake of the credit crisis, as they have elsewhere, and the recent revival of the market is being driven by regional African banks. The issue for financing on the continent is the need for lenders to take on country risk – a combination of political, macroeconomic, legal and regulatory risk. Ultimately banks’ lending appetite will depend on the level of mitigation of that country risk. That mitigation is usually done with structured debt products, which may involve: isolating borrowers’ hard currency cashflows in offshore structures; taking security over assets that can be easily offshored; or even insurance cover and guarantees.

The good news is that the natural resources sector offers many natural mitigants to country risk, not least the fact that it is usually US dollar-denominated and export-orientated, thus creating low convertibility risk, low transfer risk, and low macroeconomic risk. In some cases assets are geographically offshore, or are associated with efficient transport infrastructures that help manage war and civil disturbance risks, though these remain a challenge for landlocked areas.

1965 Oil producing landscape in Africa

SOURCE: Tullow Oil
However, many governments are adopting ‘local content’ laws, stipulating that for foreign parties to be involved in oil and gas projects they must ensure indigenous resources are used to the benefit of local populations and future generations. Most investors are happy with such requirements, but it is essential that the local capabilities are genuinely available to meet the demands of the projects in question.

Investments in natural resources normally involve large and expensive imported equipment, with multilateral or bilateral financing reducing political risk exposure. Local content laws encourage local sourcing and supplier development which means the energy companies are more exposed to country risks due to onshore assets with domestic-orientated businesses that are local currency based. Here lenders need to build effective security packages, including under local law, to mitigate risks.

Hence, while there may be levels of country risk in Africa, there is nevertheless keen interest in lending to the natural resources and energy sectors, which are viewed as underpinning long-term economic growth prospects. Behind Asia, Africa is increasingly recognized as the second most important source of economic growth for the global economy, and thus banks wish to increase their footprint in the region to access future business opportunities.

Key issues going forward will be around which development partners African governments will align with; China, Brazil and India are already emerging as highly influential players on the continent.
Raising Debt in Africa

The African debt capital markets have matured considerably in the past decade, with about 10 sovereigns accessing the Eurobond market in the last six years, as well as five major financial institutions. It is believed that there are perhaps as many as five further financial institutions, and five further sovereigns, that will access the market in the next 18 months.

Zambia’s debut USD750m Eurobond issue in September 2012 put the focus of the debt markets on Africa, identifying the great appetite for credit on the continent and the corresponding lack of supply. Zambia went to market with a 10-year bond priced at a final coupon of 5.625%, its first international bond, to be used to fund its budget and invest in infrastructure. The country’s political stability, a decade of growth above 6% and a record of fiscal discipline all helped buoy investor appetite.

Before 2007 there was relatively little African participation in the world bond markets, and even today it seems only issuers of substantial size, raising more than USD500m, are able to access them. That raises questions about the alternative sources of debt finance for corporates or local borrowers too small to tap the Eurobond market.

Some South African corporates have issued in the United States’ private placements market, but that generally focuses on investment grade issuers so is not appropriate for many in sub-Saharan Africa. Many corporates are, therefore, left to access the bank market for their financing needs, and there we see a crude split between the international banks with a local presence, and those without. Those with a local presence have a greater understanding of the risks involved, and perhaps more risk appetite, but there remains a reluctance to lend to African corporates. As a consequence, development finance institutions are considered critical for the development of small and medium businesses across the continent, which otherwise struggle to get proper access to credit.

Generally, international lenders will only lend to strong names, often government borrowers, and often at shorter tenures. With debt market conditions so challenging, one trend we are seeing is the growth of subordinated lending, where companies that need to strengthen their balance sheets, but do not necessarily need equity, enter the mezzanine loan market.

Finally, there are the local currency bond markets of which Nigeria’s is the largest. Most of the USD36bn-worth of naira-denominated bonds listed in Nigeria are issued by governments and government agencies, but banks and some companies are now turning to the local market for funding. Kenya’s smaller bond market is also making progress, with corporate bonds representing around 10% of the USD67bn market as the exchange becomes an important source of long-term funding for local companies. Other similar markets are starting to develop in Mozambique, Tanzania and Botswana.

Raising debt in Africa remains extremely challenging for all but the most sophisticated of issuers, with investors still wary of the credit risk of African countries. But real progress is being made, and with signs of growth in the domestic investor base, credit could become easier to access.
Africa is gaining increasing significance as one of the world’s key emerging markets. With accelerated economic growth across a number of countries and sectors, high returns on investment, and progress in the areas of political reform, macroeconomic stability, and social development, it is becoming an attractive region for international investment.

A strong track record
Hogan Lovells has been active in Africa for the past 30 years. We regularly advise clients on a wide range of transactions including trade and export financing, debt restructuring, prefinancing, project development and finance, mergers and acquisitions, the establishment of investment funds, and capital markets.

Our advice is clear, succinct, and practical, based on our in-depth knowledge of the legal, regulatory, and commercial environments within Africa and a full understanding of our clients’ business objectives.

We are committed to expanding our client base in the region. In particular we are able to assist African corporates looking to invest outside the continent or obtain a listing on one of the major international markets. We also assist clients based outside Africa with their investment activities within the continent.

We have represented clients in both Anglophone and Francophone countries of Africa. Transactions in French-speaking and civil law countries are handled from our Paris office where we have substantial practical knowledge of the unified legal system that applies in 17 sub-Saharan jurisdictions, the Organisation pour l’Harmonisation en Afrique du Droit des Affaires (OHADA).

An established network of local firms
We believe that an important aspect of being able to provide a comprehensive legal service is to have established contacts in those jurisdictions where we do not have a local office. Hogan Lovells enjoys excellent contacts with many reputable African law firms and we carefully select those with whom we work.

Experience across a wide range of areas
Our experience in Africa includes the following areas:

- Government advisory and sovereign lending
- Debt restructuring
- Trade and export financing
- Project finance
- Mergers and acquisitions
- Establishment of investment funds
- Capital markets
- Dispute resolution

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