

MARCH/APRIL 2021

ISSUE 301

LEGAL BUSINESS

GLOBAL LONDON

BACK ON BOARD

Global London firms take their seats amid City elite

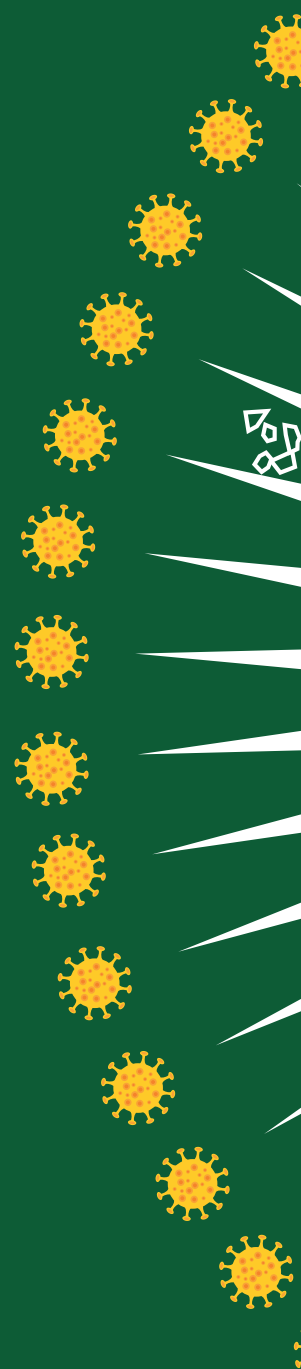
LEGAL BUSINESS | MARCH/APRIL 2021 | ISSUE 301 | www.legalbusiness.co.uk

INTERNATIONAL

Africa first

Demand for commodities and a new
continent-wide free trade agreement could
lead Africa out of the Covid crisis

CHRIS CROWE





In times of stress and unpredictability, it pays to be conservative. Most sensible investors will plump for safe havens during troubled times. So is Africa a senseless gamble?

Some 20 years after the term 'Africa rising' began to enter the world's consciousness, the continent still delivers a plentiful supply of extreme volatility and complexity, intimidating factors that seep into deals, projects and other legal engagements. It is not a benign environment for law firms.

While undoubtedly, Africa has been hit by the Covid-19 pandemic, particularly South Africa, it does offer growth fundamentals that are hugely attractive to bullish investors and acquisitive businesses. 'Businesses continue to want opportunities in markets that have sustained 5% to 10% growth every year and many African jurisdictions are in that bracket,' comments Chris Taylor, head of Addleshaw Goddard's Africa group.

Herbert Smith Freehills (HSF) is another firm that believes its commitment to Africa has significantly augmented its international standing. Its London and Paris offices have targeted the continent for decades, while the launch of a Johannesburg office in 2015 took its ambitions a step further. Nina Bowyer, the Paris-based co-head of HSF's Africa group says: 'We have a lot of clients where our first touch point was through Africa. This is a huge part of our revenues and a really important practice for us. But for me, it's not really about the money, it's about the profile raising, it's about being relevant to our clients.' In January this year, HSF advised the senior lenders, including Absa Bank, African Export-Import Bank and Standard Chartered Bank, on the \$450m senior financing for TNOG Oil & Gas's acquisition of an interest in OML 17, a Nigerian onshore asset.

A SAFE COMMODITY

Being relevant to clients comes in many forms, but as the world's demand for commodities increases, particularly those that are set to fuel the green-tinged transformation of the global economy, this focus on Africa looks particularly astute. The Democratic Republic of Congo (DRC) produces 70% of the world's cobalt, an essential mineral in lithium-ion batteries for electric vehicles. The DRC is also Africa's largest copper producer and the fourth largest globally; copper prices rose by more than 22% in 2020 according to CNBC in December.

'The huge increase in commodity prices could be game-changing for Africa,' says Peter



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Chris Taylor, Addleshaw Goddard

Leon, the Johannesburg-based co-chair of HSF's Africa group. 'Just look at copper prices. While mining projects have been fairly quiet, you will see a lot more activity there. And you'll see a lot more M&A activity, because there's a significant demand for commodities that will fuel the clean energy transition, such as copper and cobalt, not to mention graphite and lithium. Africa produces almost all the minerals required for the global green economy.'

Although Africa is seeing a much slower rollout of vaccines than in other parts of the developed world, it does have the opportunity to rebound in a world that has been universally affected. 'In a way, Covid was a bit of an equaliser in that many countries around

the world, including some of the strongest economic forces, have really struggled and have experienced some of the difficulties that are normally experienced by developing countries,' comments Christo Els, senior partner of South African firm Webber Wentzel, which is in an alliance with Linklaters.

Joe Biden's inauguration as US president is also thought to be positive for the African continent. Promising to re-engage with the world, Biden's stance contrasts with his predecessor Donald Trump, who did not visit Africa at all while in office. 'We're expecting to be able to help our clients take advantage of this development,' comments Robert Legh, chair and senior partner of Bowmans, the South



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Christo Els, Webber Wentzel

demonstrating to the world that it is emerging as a leader on the global trade agenda.’

The free trade area is expected to bolster intraregional trade and lessen the reliance on foreign investment from outside the continent. ‘When AfCFTA was first announced, a lot of people may have been sceptical, but ultimately it is the largest consumer market in the world, it’s an incredible initiative,’ comments Els. ‘There’s a real commitment from African governments to make this free trade agreement work. And if that kind of intracontinental trade really grows and takes off, that’s good for firms such as ours that can really support our clients wherever they do business.’

The prospect of African nations operating in union rather than according to their own singular interests, is a compelling one to firms looking to capitalise on an uptick in cross-border transactions. ‘We see that there is a will in most of the important economies in Africa, but it is a long-term process,’ says Tiago Marreiros Moreira, a partner and head of international operations at Portuguese firm Vieira de Almeida (VdA). Leon believes that intra-African trade accounts for only around 14% of total trade involving the continent: ‘At this figure, it is one of the lowest levels of intracontinental trade in the world, so AfCFTA is certainly very much a step in the right direction. Multinationals will in future be able to set up manufacturing hubs in one country, in order to export to other members of the AfCFTA, which makes a lot of sense economically and which they simply cannot do currently. So it is potentially transformative for Africa not least because the next step will be an agreement on trade in services.’

Of course, the shadow of nationalism and protectionism still hangs over the continent. States such as Tanzania have pushed forward resource nationalism and local content laws to try to bolster the economy, although this naturally deters inbound investment and creates international tensions. It has faced a number of investment treaty claims, following the decision to revoke mining licences and impose local content regulations that demand significant levels of Tanzanian ownership and Tanzanians in senior management positions. Roles below management and other senior positions are to be held entirely by Tanzanians. Tax regulations have also imposed further pressure on foreigners. Barrick Gold settled a tax dispute with Tanzania in 2020 after acquiring the Acacia mining group, and has pledged to share future economic benefits from mines on a 50-50 basis with the Tanzanian government, according to Reuters. ►

► Africa firm with multiple offices around Africa. ‘Looking forward, we’re expecting growth in our M&A, restructuring and insolvency, and project finance practices in particular.’

Having a more evenly balanced opportunity to come out of the crisis may be a positive for Africa, but many believe that its nations need to work together for an ‘African solution’. Africa has for years been associated with economic nationalism and populism, a tendency to focus inwardly on sovereign interests at the expense of international investment. Efforts to create free

trade regions have been largely unsuccessful, but the African Continental Free Trade Area (AfCFTA) came into force on 1 January 2021, in theory creating an economic region of some 1.3 billion people. The World Bank has predicted that it will lift over 30 million Africans out of extreme poverty and ‘boost the incomes of nearly 68 million others who live on less than \$5.50 a day’. Last year, Caroline Freund, the World Bank’s global director of trade, investment and competitiveness said: ‘The implementation of AfCFTA would be a huge step forward for Africa,

‘Angola is open to foreign investors. Many of the companies that are interested in buying those businesses are foreigners.’

Joana Andrade Correia,
Raposo Bernardo



► These policies are not rare in Africa. Zambia, one of the world’s largest copper producers, has driven a hard line against overseas influence in the mining industry, burdening foreign mining businesses with heavier taxes and licensing arrangements. Vedanta, the Indian resources business, has faced a long-running dispute in Zambia over a jointly-owned copper mine that had been put into liquidation. In November 2020, the Zambian Court of Appeal ordered that liquidation proceedings for Konkola Copper Mines be halted, to enable arbitration proceedings to occur between Vedanta and ZCCM-IH, according to Reuters. The dispute concerns an alleged breach of Vedanta’s mining licence.

Despite many instances of economic nationalism and populism, there are numerous examples of liberalisation and a welcoming of foreign capital. Some 80% of Angola’s government revenues currently come from oil and gas and in its latest privatisation programme it seeks to take more than 190 businesses into private ownership.

Joana Andrade Correia, a partner at Portuguese firm Raposo Bernardo, which has offices in Angola and a number of other Lusophone Africa countries, says that the privatisation programme has slowed due to Covid, but is still a hugely bold initiative: ‘Privatisations in the financial sectors, insurance, telecoms, oil, natural resources, and transport are planned for 2021.’ These include Sonangol, the state-owned petroleum and natural gas business, and Endiama, the diamond mining company. Caixa Angola and Angola Telecom are also on the roster of businesses to be privatised. ‘Angola is open to foreign investors,’ she adds. ‘Many of the companies that are interested in buying those businesses are foreigners.’

André de Sousa Vieira, a partner at Portugal’s Morais Leitão, Galvão Teles, Soares da Silva & Associados, agrees: ‘For Angola’s privatisation programme, my feeling is that it is being taken in a serious way and international investors are really looking into it. It might be a bit slower than initially expected, but we have no reason to believe that it won’t move forward. Evidence of

this is the Presidential Decree no. 44/21 approved last month, which updates the programme.’

Understandably, Portuguese firms with strong links to or physical presences in Africa, are intensely focused on Angola for the next two or three years. Marreiros Moreira believes that the nation’s ability to recover from huge levels of hardship over the past 50 years makes it well positioned to transition to a free market economy with strong connections to other African nations and the rest of the world: ‘Angola is a country that has been able to overcome a recent civil war and several other challenges, that is why it is so resilient. So even when facing a lot of difficulties, they are able to find a way, because they have very important commodities in a country with a lot of potential. It will be a long and gradual process of recovery from the oil crisis and the Covid pandemic.’

He has been impressed with the way that this has been managed so far: ‘It is important that Angola is able to keep political stability and open the economy gradually, so that you will see a long-term process of gradual ►

► diversification from oil into other areas. In order to do that, it will also be important to create an environment where foreign investors feel safe.'

ADDRESSING VOLATILITY

Stability cannot be guaranteed in Africa, as in any continent. Another Lusophone jurisdiction, Mozambique, saw significant economic growth until 2016. But then undisclosed national debts came to light resulting in a substantial debt crisis with a debt to GDP ratio of 113% in 2019. In the same year, it was hit by two massive cyclones causing severe societal and infrastructural damage.

An Islamist insurgency in the northern Cabo Delgado district has led to a humanitarian crisis and threatens the landmark Mozambique LNG project, near Palma in the north of the country. Total, which is leading the project, announced in January that it was downsizing its workforce at the site because of jihadists operating in the area. Latham & Watkins is advising the sponsors on the project's \$20bn financing with VdA and Miranda & Associados leading on Mozambican law. White & Case is advising the lenders, which is Mozambique's first onshore LNG development.

The significant gas discoveries off Mozambique's east coast provide a basis for long-term optimism. 'Although Mozambique has suffered as a result of Covid and also in particular ongoing violence in the north of the country, we've not seen a decline in investor interest regarding potential opportunities in the country,' comments Hugo Coetzee, head of the Africa practice at CMS.

Despite the unsettled situation and Covid-related difficulties in other jurisdictions, firms have not considered retreating from the continent. 'We had a small increase of activity in 2020. This is probably quite surprising for most people. And this was due to the privatisation process in Angola and several oil and gas projects, together with a massive LNG project in Mozambique,' says Marreiros Moreira.

Of course, political instability and civil unrest might have devastating societal impacts, but it isn't always bad news for the legal profession, which often thrives where complexity arises. HSF is targeting difficult situations, particularly where international businesses have tense relationships with national governments and where these frictions lead to full-blown disputes. 'One of the important skills we bring to bear is crisis management, because Africa can be a difficult place in which to operate,' comments Leon. 'Our clients appreciate our ability to crisis manage



'We had a small increase of activity in 2020. This is probably quite surprising for most people.' Tiago Marreiros Moreira, VdA

difficult situations. In recent years I've seen African governments becoming concerned – if not aggressive – about concession agreements that previous administrations signed up to that they would now like to reverse because many of these agreements were entered into when commodity prices were low or when there was little investment in the country. Governments come under significant political pressure when commodity prices move upwards and concession agreements do not capture a fair share of rents for the country. This often becomes a stick to beat companies with, as well as a key area of dispute.'

These complex relationships have been further heightened by the influence of China across the continent. China has built and financed a swathe of infrastructure projects across Africa, transforming the economic potential of numerous states, but also making them heavily indebted to the superpower. China has provided loans to almost every country in Africa and eight states have borrowed more than \$5bn each. This forms part of China's gigantic Belt and Road Initiative, which has seen Africa becoming increasingly aligned with Asia, rather than its ►



‘We have our sights very firmly set on being an African as opposed to a South African law firm.’ Robert Legh, Bowmans

► former colonial masters, Britain, France and Portugal.

‘I remember taking a road trip about six or seven years ago all the way across Tanzania, into Burundi and up into Rwanda,’ recalls Michael Strain, a partner in Clyde & Co’s Dar es Salaam office. ‘It was incredible that almost the whole way there was paved road under construction. And it was all being built by the Chinese.’

While China’s involvement in these infrastructure projects typically means there are fewer opportunities for legal engagements for international law firms and even local law firms, Strain still believes the trend is positive:

‘If you look over the last ten years, the Chinese are responsible for bringing some incredible positive change to the continent that, frankly, wouldn’t have happened otherwise.’ Clyde & Co deepened its commitment to east Africa in 2020 through a new association with Nairobi-based Kangwana & Co.

Enthusiasm for infrastructure development is being witnessed across the continent. Nada Eldib, a partner at Eldib Advocates in Egypt says: ‘2020 was a year where the government put a lot of money into infrastructure. Everyone thought that, because it was such a hard year, foreign direct investment would be low. On the contrary,

we saw that foreign direct investment was quite high when it came to roads, rail and ports, as well as the energy grid.’ She believes that the effects of Covid on a relatively young population in Egypt (the median age is only 24.6 years) has been slight compared to the nation’s recent revolutions in 2011 and 2013. She also expects to see considerable growth in trade with Sudan after the US lifted sanctions on the state; it was previously alleged to be a state sponsor of terrorism.

Further afield, Els believes that China’s presence in Africa has served to highlight the opportunities that the rest of the world could be missing: ‘It’s not just Chinese investment into broader Africa anymore, it is probably reaching a stage where other powers around the world are looking into this and waking up to the possibilities that Africa offers.’

Els’s home country, South Africa, has been devastated by Covid-19 with over 50,000 recorded deaths, by far the largest number in Africa. The pandemic hit at a time when the country was already in the midst of poor economic performance and a power deficit. He sees these Chinese-supported infrastructure programmes playing an anchor role in African nations becoming more interdependent on each other in an effort to drive collective economic growth.

This interdependence has driven a number of African firms to expand their influence across the continent. Johannesburg-based Bowmans opened new offices in Zambia and Malawi in 2020, adding to its broader network of branches or associated firms in Kenya, Ethiopia, Mauritius, Nigeria, Tanzania and Uganda. ‘We have our sights very firmly set on being an African as opposed to a South African law firm,’ comments Legh. Bowmans’ South African rival, ENSafrica, has similar ambitions and currently has a presence in Ghana, Kenya, Mauritius, Namibia, Rwanda and Uganda. It is a geographically expansive model that has not been replicated by international firms to the same extent, though the Africa Legal Network, founded by Kenya’s Anjarwalla & Khanna, exists in 15 jurisdictions.

Of course, Africa poses such a unique challenge to firms, given the diversity of cultures, economies and legal systems. It represents an intricate web of complexity that can easily overwhelm and deter. So remaining close to key contacts and partners at this time can maintain opportunities, as Taylor comments: ‘Africa often goes quiet as western economies face downturns. Now is when you’ll see experienced investors stealing a march, and by the time you start to hear noise about Africa again, you have usually missed the boat.’ **LB**