

A leading light in Africa's bright future

The development of Africa's economies has led to substantial opportunities for foreign investors. An analysis by John Kemkers of Eversheds Sutherland.

DARK CONTINENT?

Henry Morton Stanley, the famous (or perhaps infamous) Victorian explorer who coined the phrase "Dr. Livingstone, I presume", is also believed to have popularised the description of Africa as the "Dark Continent". This description had nothing to do with the complexion of some of its people; it instead reflected the very limited knowledge and understanding that the developed world had at that time about the interior of Africa.

Arguably, that understanding has not improved significantly in the intervening years. Of all the continents, Africa remains the least known about or understood. If one thinks about, for example, the area around the Congo river (the setting for Joseph Conrad's suitably titled novel, *Heart of Darkness*): how many of us could distinguish between the Republic of the Congo and the Democratic Republic of Congo; or know the difference between

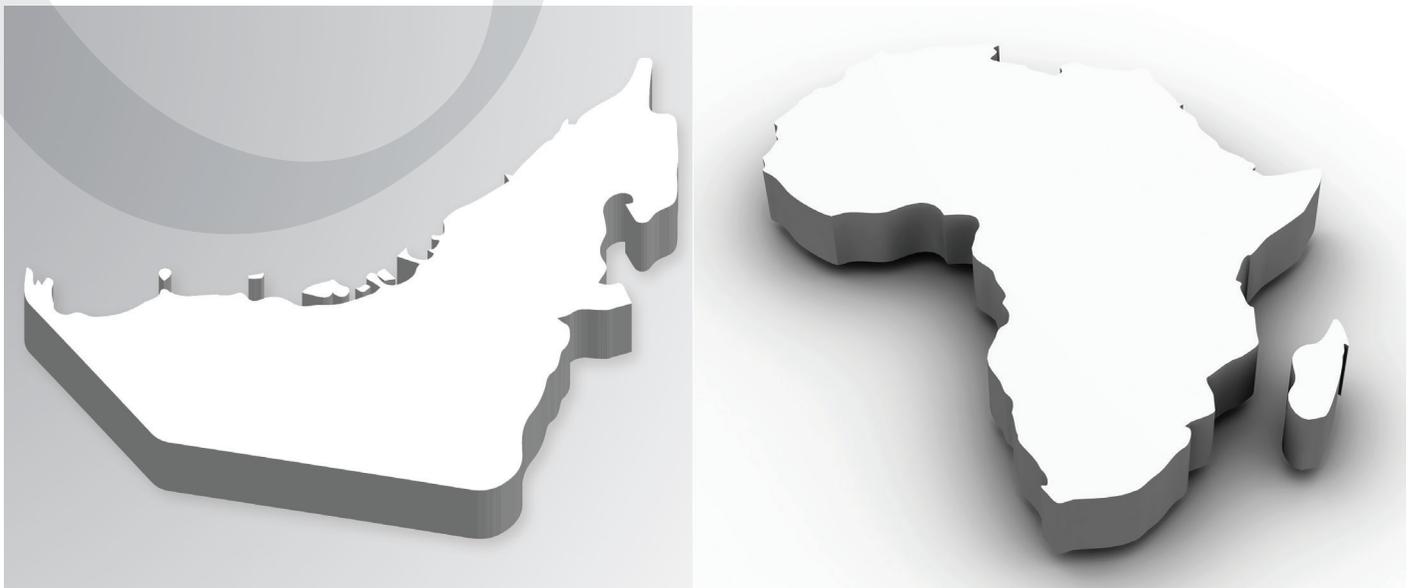
the West African countries of Equatorial Guinea, Guinea and Guinea Bissau?

This lack of knowledge and understanding of Africa is also prevalent among many foreign governments and prospective foreign investors who may also be put off by the continent and its complexities – a continent comprising over 50 countries and more than 1,250 languages, and which is still perceived by many to be plagued by bureaucracy, corruption, tribalism and political instability.

BRIGHT FUTURE

Behind these gloomy perceptions, however, is a continent with a bright future. At the heart of that future is its people. The continent's current population is 1.2 billion but this is projected to double to 2.4 billion in the next 30 years.

The rapidly growing population has led to a continent-wide mission to improve



infrastructure such as roads, railways, ports, airports, schools and hospitals. The development of this infrastructure has required energy and power which has in turn led to numerous energy/power projects across the continent. While many of these projects are oil and gas related there are an increasing number of clean energy programs across the continent, notably in South Africa and Egypt.

These projects are often funded by African governments combined with foreign investment and finance. In many cases, government revenue for the projects is generated by the continent's huge natural resources which have also attracted substantial foreign investment, particularly in the oil and gas and mining sectors.

Unsurprisingly, foreign direct investment (FDI) in Africa has increased in recent years. African FDI inflows increased year on year between 2010 and 2014 with the US, the UK and France being the largest external contributors of FDI, followed by China and Italy. In the past three years, FDI inflows have reduced somewhat, mainly as a result of depressed oil prices and the commodities slow down. However, they are again forecast to increase by about 20 per cent in 2018 to USD50 billion.

All these factors have contributed to African countries having some of the fastest growing economies in the world. In 2018, six of the ten fastest growing global economies will be in Africa according to World Bank projections. These projections are underpinned by expectations of a continued recovery in commodity prices and strengthened economic cooperation.

AFRICAN CONTINENTAL FREE TRADE AGREEMENT

The anticipated increase in economic cooperation across the continent has been reinforced by the signing of the African Continental Free Trade Agreement (AfCFTA) in March this year. The AfCFTA is a trade agreement between 44 African countries which is intended to remove barriers to trade, such as tariffs and import quotas, thereby allowing the free flow of goods and services between members states in the trading bloc. This should in turn boost commerce, growth and employment in much the same way as it has in the EU trading bloc, on which the AfCFTA bloc is loosely modelled.

The AfCFTA is expected to come into

force within the next year - though a number of countries, including Nigeria (Africa's largest economy), have not yet signed the deal, and it will need to be ratified by the signatories' national parliaments before it becomes a reality.

OPPORTUNITY AND INNOVATION

The development of Africa's economies has led to substantial opportunities for foreign investors. The most obvious opportunities, perhaps, are in the energy/power and infrastructure sectors - in partnering with public and private sector entities in Africa on the +700 substantial projects which are currently ongoing across the continent. Many of these projects are being financed by foreign capital with consequent opportunities in the financial services sector.

Other key sectors include the telecoms and consumer sectors where there is increasing demand, fuelled by an aspirational population, and a burgeoning middle class. These sectors are likely to be bolstered by initiatives such as the AfCFTA which are designed to facilitate trade across the continent.

The changing face of Africa is also spawning home-grown innovation which is being exported abroad. A good example is smartphone payments which are starting to become more prevalent outside of the continent. However, the technology was first launched in Africa over 10 years ago - in Kenya, by the mobile operator Safaricom, under the M-Pesa brand. It started as a simple method of facilitating small payments between users; there are now 30 million M-Pesa users in 10 countries with a range of services which include loans, international transfers and health provision.

UAE: A GATEWAY TO AND FROM AFRICA

The UAE, and Dubai in particular, has had a trading relationship with Africa for centuries and continues to position itself as a major hub for trade to and from Africa. In its favour are a range of geo-political factors including: China's rising economic power; China's increasing economic ties with Africa which are being further enhanced by its "belt and road" initiative; and the UAE's unique position as a meeting point for trade between Asia, Africa and the rest of the world.

The UAE has taken advantage of this

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position by making itself the major transport and logistics hub in the region through the developments of its ports, airport and airlines – Emirates, for example, is now the largest carrier into Africa with over 200 flights a week to some 25 destinations.

Over the years, regulatory changes in the UAE have further enhanced the UAE's status as a hub for trade to and from Africa. These range from relatively small changes such as the UAE's open visa policy for China to the development of industrial and technology free-zones such as Jebel and TECOM. An increasing number of foreign companies are setting up in these free-zones to trade goods and services in Africa. Their ability to do so has been further facilitated by the continued development of financial free-zones such as the DIFC. Most of the major international banks, including the major state-owned Chinese banks, have now set-up there and are financing trade and projects across the African continent. It has also contributed to Dubai becoming a private equity and finance hub for investment into Africa.

The DIFC is also becoming a major dispute resolution centre for Africa related disputes through both its arbitration centre and its courts. In addition, investors into Africa may be able to take advantage of the investment protection afforded by the bilateral investment treaties which the UAE has entered into with nine African states, and the double taxation treaties which it has entered into with eight of them.

All these benefits have translated into some impressive trade statistics. Total non-oil trade between the UAE and Africa currently stands at around USD25 billion per annum which represents a 700 per cent increase over the course of the last decade. This is only likely to increase further, given China's economic ties with Africa and the fact that China is now the UAE's largest trading partner with bilateral trade forecast to rise to around US\$80 billion this year.

Of course, the UAE is not just a hub for foreign investment into Africa; many UAE companies are investing there. These include Etisalat (which now has operations in Benin, Burkina Faso, Central African Republic, Egypt, Ivory Coast, Mali, Mauritania, Morocco, Niger and Togo) and DP World (which has terminals/concessions in Algeria, Djibouti, Egypt, Mozambique and Senegal).

OPPORTUNITIES FOR LAWYERS

The increasing economic ties between the UAE and Africa afford real opportunities for lawyers working in the UAE. These range from “front-end” advice on the increasing number of African transactions and projects which are channelled through the UAE into Africa to “back-end” advice on the kind of disputes which inevitably arise when substantial investments are made into what are sometimes comparatively high-risk jurisdictions.

The high-risk nature of some African jurisdictions may also necessitate legal advice on issues such as sanctions and FCPA/Bribery Act compliance as well as ways in which foreign investment can be structured to take advantage of bilateral investment treaty protection and double taxation treaties. For example, if the UAE (or an international client's home jurisdiction) does not have requisite treaties with the jurisdiction in which the client is investing, the investment can be structured through an off-shore jurisdiction such as Mauritius which has a significant number of bilateral investment and double taxation treaties across the continent.

Overall, and despite the challenges that exist across the continent, there are huge opportunities in Africa for many of our clients. As lawyers, we have an important role to play in safeguarding their investments there – investments which are also likely to contribute the development and future prosperity of the continent. ➔



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