INTO AFRICA

A publication from Capital Markets in Africa

OCTOBER 2017

MIND THE GAP

RISK IN AFRICA

BUSINESS RISK IN AFRICA: OLD PROBLEMS VS NEW CHALLENGES

HARMONISING LAW CRUCIAL FOR ECONOMIC GROWTH IN EAST AFRICA

NEW NATIONALISM' AND THE POLITICAL THREAT TO AFRICA'S EMERGING CHAMPIONS

EXPLORING SUB-SAHARAN AFRICAN EMERGING RISK LANDSCAPE

IDENTIFYING AND MANAGING RISKS OF DOING BUSINESS IN NIGERIA

THE EFFECT OF GLOBAL AND REGIONAL ISSUES ON AFRICAN TRADE FINANCE

www.capitalmarketsinafrica.com

TEMPLARS

GLOBAL STANDARDS INTERWOVEN

WITH LOCAL EXCELLENCE

Energy & Projects | Finance
Dispute Resolution | Corporate | Tax

"One of the preferred Nigerian firms of the international legal community..."

- IFLR 1000

www.templars-law.com templars @templars_law info@templars-law.com Lagos | Abuja +234 1 461 1290, +234 1 279 9396

Editorial

EDITORIAL TEAM

Editor
Tunde Akodu

Associate Editor
Michael Osu

Advertising & Sales
Tola Ketiku

CONTENTS

FEATURED ARTICLES

'New Nationalism' and the Political Threat to Africa's Emerging Champions

Business Risk in Africa: Old Problems Vs New Challenges

Harmonising Law Crucial for Economic Growth in East Africa

Navigating Corruption Risks in Africa

Exploring Sub-Saharan African Emerging Risk Landscape

Protecting Against Political Violence & Terrorism Risk in Africa

Tackling Corruption in Africa: Asset-Tracing and Recovery

Identifying and Managing Risks of doing Business in Nigeria

Currency risk can be managed

SPECIAL FEATURES

The Effect of Global and Regional Issues on African Trade Finance

Alternative Dispute Resolution to go Mainstream

Africa Real Estate: Emerging Risks and Opportunities

EXCLUSIVE INTERVIEW

DAVID ROGOVIC - Assistant Vice President - Analyst

INVESTMENT PHILOSOPHY

What's an ICO? Like an IPO with Digital Coins: Quicktake Q&A

ECONOMIC WATCH

What Analysts are saying about Africa's Economic Outlook

Cover Image : Dock with gaps
Image Source: Pexels.com

DISCLAIMER:
The contents of this publication are general discussions reflecting the authors' opinions of the typical issues involved in the respective subject areas and should not be relied upon as detailed or specific advice, or as professional advice of any kind. Whilst every care has been taken in preparing this document, no representation, warranty or undertaking (expressed or implied) is given and no responsibility or liability is accepted by CAPITAL MARKETS IN AFRICA or the authors or authors' organisations as to the accuracy of the information contained and opinions expressed therein.

Welcome to the October 2017 edition of **INTO AFRICA**, a publication with fresh insight into Africa's emerging capital markets. This edition looks at challenges and risks in Africa and its title: ***Mind The Gap: Risk In Africa.***

Over the past few years, African economies have increasingly an essential part of any expansion strategy as corporate leaders and fund managers under constant pressure to maximize returns and put capital to work. Although, African markets offer a wealth of investment opportunities, these landscapes also present a number of challenges and risks for foreign entities, such as potential fraud and corruption, difficulties acquiring accurate financial information, ownership and governance practices, and regulatory and legal issues. Furthermore, political turmoil, the risk of a widening budget deficit, a weakening currency and the prospect of a credit downgrade usually put investors off African markets.

The World Bank's 'Ease of Doing Business Index' indicates that a significant proportion of African countries still rank in the bottom half of the scale. Likewise, majority of countries included in the bottom half of the Transparency International's annual Corruption Perception Index are located on the African continent. Therefore, African leaders must increase their commitments to the principles of governance, democracy and human rights as well as equal distribution of wealth. This includes in particular strengthening the institutions that hold the governments accountable as well as organise credible elections.

In order to further highlight peculiar challenges and risks that are associated with investing and operating in Africa, **ROBERT BESSELING** (Executive Director, EXX Africa) examines the emergent of 'new nationalism' in Tanzania, Zambia and Kenya as well as threat to political stability in Cote d'Ivoire and ethnic unrest in Ethiopia in the article: *"'New Nationalism' and the Political Threat to Africa's Emerging Champions"*.

In the article *"Business Risk in Africa: Old Problems vs. New Challenges"*, **BARNABY FLETCHER** (Analyst, Control Risks) explores the business risk in Africa by looking at changes and developments in Angola's political and economic landscapes. Likewise, **DEEPA VALLABH** (Head of Cross-Border M & A, Africa & Asia, Cliffe Dekker Hofmeyr) and **RIOLA KOK** (Candidate Attorney, Corporate & Commercial practice, Cliffe Dekker Hofmeyr) in *"Harmonising Law Crucial for Economic Growth in East Africa"*, emphasis that harmonisation of laws within the East African Community (EAC) presents an opportunity for increased trade through the development of a unified system of regulatory controls across jurisdictions.

STEVEN POWELL (Head of forensics, ENSafrica South Africa) set out six non-prescriptive fundamental principles that corporates should consider when adopting "adequate procedures" to prevent bribery being committed on their behalf in *"Navigating Corruption Risk in Africa"*. While **MARTYN DAVIES** (Managing Director, Emerging Markets & Africa, Deloitte Africa) and **HANNS SPANGENBERG** (Senior Economist, Africa Services Group, Deloitte Africa) feature in the article *"Evolving Sub-Saharan African Risk Landscape"*. At the same time, **NICKY ABLETT** (Director of Property & Political Risks, QBE Underwriting Limited) highlights some commonly used insurance definitions of the perils covered by political violence in *"Protecting Against Political Violence and Terrorism Risk in Africa"*.

Still on corruption, **LIAM NAIDOO** (Counsel, Hogan Lovells LLP) and **THOMAS ALMOND** (Trainee, Hogan Lovells LLP) opine that there is little doubt that Africa has in recent years experienced a significant shift in both social and political attitudes to tackling corruption in *"Tackling Corruption in Africa: Asset-Tracing and Recovery"*. Likewise, **IJEOMA UJU** (Partner, Templars Law, Nigeria) features the article *"Identifying and Managing Risks of Doing Business in Nigeria"* and **ELAINE MABILETSA** (Senior Specialist: Currency Derivatives at the Johannesburg Stock Exchange) contributes the article titled *"Currency Risk Can Be Managed"*.

In the exclusive interview segment, **DAVID ROGOVIC** (Assistant Vice President-Analyst, Moody's Sovereign Risk Group) talks to us about African credit outlook and concludes that African sovereign issuers face macroeconomic and fiscal challenges as well as evolving political uncertainty.

And there's more, in the special feature section, **SIMON COOK** (Trade & Export Finance Partner, Sullivan & Worcester LLP UK) explains the effect on the financing of trade in Africa of certain global, macroeconomic and regional issues in *"The Effect of Global and Regional Issues on African Trade Finance"*. **SELWYN BLIEDEN** (Head, Africa Coverage, Commercial Property Finance, Barclays Africa) states that property fundamentals hold as much in Africa as they do elsewhere in *"African Real Estate: Emerging Risks and Opportunities"*. Also, **BOWMANS SOUTH AFRICA** provides a commentary on alternative dispute resolution in South Africa.

And yet there's still MORE….. we bring you a summary of what analysts are saying about Africa's economic outlook as well as an introduction to initial coin offering (ICO).

Tunde Akodu

Editor

Connect with The Editor on Linkedin. Follow us on *twitter @capitaMKTafrica*. Subscribe to INTO AFRICA at *http://eepurl.com/buHhNv* or please send an email to *intoafrica@capitalmarketsinafrica.com.*

Please visit our website at *www.capitalmarketsinafrica.com* for the latest news, bespoke analysis, investment events and outlooks.

ENJOY!

'NEW NATIONALISM' AND THE POLITICAL THREAT TO AFRICA'S EMERGING CHAMPIONS

By **Robert Besseling**, Executive Director, EXX Africa

As Africa moves into 2018, emerging champions of investment in francophone West Africa and Anglophone East Africa will remain key sources of economic growth on the continent; yet, underlying socio - economic grievances will steer usually business - friendly governments into a more nationalist and authoritarian direction that will begin to limit the sustainability of their success.

In 2017, economic growth in Sub-Saharan Africa has begun to rebound after recording the worst decline in more than two decades in previous years. Average regional growth is projected to reach 2.6% in 2017. Yet the recovery has been weakened by anaemic growth in the region's largest economies, namely Nigeria, South Africa, and Angola, due to policy uncertainty and insufficient adjustment to low commodity prices. Moreover, several central African oil exporters are facing economic difficulties and are turning to the International Monetary Fund (IMF) for assistance.

Instead, the tentative recovery is driven by record growth in a handful of countries in francophone West Africa and the East African region. Countries such as Côte d'Ivoire, Ethiopia, Senegal, Kenya, and Tanzania continue to exhibit economic resilience, supported by domestic demand. Other countries, such as Zambia, are set to benefit from a relative increase in some commodity prices. However, many of these new champions of investment have increasingly been tested over the past year as new political challenges emerge due to persistent socio-economic grievances and a renewed ambition by some African governments to capitalise on foreign investments.

The emergence of a 'new nationalism'

In Tanzania, the concept of a 'new nationalism' has been enshrined in the policies of relatively new President John Magufuli, whose self-styled 'economic war' has targeted the mining and power industries, as well as the nascent natural gas sector. In July, the government passed new laws to increase mining taxes, to force companies to re-negotiate their contracts, and to allow the state to own up to 50% of shares in mining companies. President Magufuli subsequently threatened to shut down the country's mines if these delayed talks to resolve a dispute over back taxes. Both Tanzania's largest foreign investor Acacia Mining and AngloGold Ashanti's local subsidiaries have gone to arbitration to protect their interests under their existing Mining Development Agreements (MDA). There are also two international arbitration cases currently open involving Tanzania's power utility Tanesco in a similar power sector dispute.

Meanwhile, President Magufuli is stacking the key institutions governing the mining sector with ideologically - aligned loyalists. The more business-friendly opposition has been unable to challenge the government's interventionist and belligerent policies towards the mining sector. In July, six opposition lawmakers were arrested for unlawful assembly. Prominent opposition lawmaker Zitto Kabwe has warned of a fall in the value of the shilling against the dollar as gold exports are likely to slump, yet his warnings are still falling on deaf ears as Magufuli's economic war is still highly popular. The government's next step is likely to be the renegotiating of all MDAs to include the new legislative provisions, while crucial negotiations governing the development of the liquefied natural gas sector (LNG) sector have been compromised by the dangerous precedent set in other extractive sectors.

The emergence of a 'new nationalism' is also prominent in Zambia, where the government's declaration of a state of emergency in July to crack down on an alleged violent insurgency mirrors its authoritarian policies in the economic sphere. Zambia is seeking to secure up to USD1.6 billion in loans under a new credit facility with the IMF, which is urgently needed to support the Zambian economy, which has been struck by lower global copper prices that have depleted foreign exchange reserves, ballooned budget deficits, and pushed economic growth to its lowest level since 1998. The IMF programme is aimed at supporting the balance of payments, increase state revenue streams, and to cut public expenditure. Zambia's negotiating team led by Finance Minister Felix Mutati is hoping to conclude the deal by the end of September to fit into the country's budget cycle.

However, the government of President Edgar Lungu has refused to accept fresh austerity measures requested by the IMF in return for the credit facility. Mutati's negotiations with the IMF are increasingly being thwarted by the influence of several advisers to President Lungu, whose main objective is to weaken the opposition and to prepare the ground for Lungu to run for a third term in 2021. Moreover, growing political risk for the mining sector may also stall further IMF negotiations. The cash-strapped government is now trying to recoup losses by launching law suits against mining companies. As such, political intrigue, stalled negotiations with the IMF, and arbitrary lawsuits in the copper mining sector are undermining Zambia's economic recovery on the back of higher global copper prices and the country's return to political stability.

Kenya Amidst Election Uncertainty

Meanwhile, in Kenya, the Supreme Court ruling to nullify President Uhuru Kenyatta's re-election last month has stunned the country's political system. The court ruling is a game-changer as it gives credence to opposition concerns that the electoral and political system is fixed in favour of the ruling elite of the Kikuyu ethnic group. Opposition supporters believe that the last two elections and this year's vote were 'stolen' from them. However, there is no guarantee that the opposition will win the re-rerun of the presidential vote. Incumbent President Kenyatta has a 1.4 million margin over opposition leader Raila Odinga and his governing Jubilee party won overwhelmingly in many counties and dominates the national parliament.

Kenyatta's previous government has frequently shown its tendency towards populism, notably in its politically-motivated decision in 2016 to cap lending rates that has sapped the local banking sector's profitability. Political pressure will rise for the new administration to intervene in strategic sectors, such as telecoms, where the government is considering taking a larger stake in the partially state-owned telecoms company Safaricom. In the banking sector, the government has also become more interventionist, not only imposing a cap on interest rates, but also seeking to dilute central bank oversight and force consolidation in the sector.

In case of an opposition victory, the opposition alliance's respective ethnic constituencies would begin to replace the Kikuyu and Kalenjin that have dominated the civil service and public sphere since 1964. This would create a chaotic process where experienced technocratic public servants would be suddenly displaced in favour of likely less experienced political appointees. This ethnic switch-over would cause severe paralysis in the state bureaucracy, including delays to licensing, demands for fresh kickbacks, and risk of contract alteration.

Cote d' Ivoire Political Stability Undermined

Despite record economic growth in Côte d'Ivoire and substantial investment opportunities, political stability and security are being consistently undermined by an intensifying rivalry over the presidential succession ahead of the 2020 elections. A recent spree of military mutinies and outbreaks of fighting across the country have indicated the persistent threat of conflict in the three-year outlook. The situation is being exacerbated by a fall in state revenues from the cocoa and other sectors, which has limited the government's ability to pay off mutineers and striking public sector workers. The political preoccupations are likely to frustrate foreign investments in key sectors such as gold mining, ongoing privatisations, and large transport and power infrastructure projects.

Ethnic Unrest Threatened Ethiopia's Outlook

While the government of Ethiopia has lifted a ten-month state of emergency imposed to quash anti-government protests across the country, sectarian and ethnic unrest will remain the primary threat to political stability as security forces continue to violently repress popular demonstrations over political and economic marginalisation. The governing coalition of the Ethiopian People's Revolutionary Democratic Front will increasingly be challenged as the government fails to meet socio-economic targets that underscore the regime's legitimacy. The dominance of political, military, and economic power by the ethnic Tigrayan elite is also increasingly challenged as political control has shifted towards Prime Minister Hailemariam Desalegn and his growing support base.

As a result of the recent political upheaval, economic momentum is dwindling and infrastructure investment is declining. Large Chinese loans for schemes such as railways, dams, and sugar factories have dried up. Instead, the government is seeking financing for public-private partnerships. Despite massive investments, exports have not increased from around the USD3 billion yearly mark where these have been for five years. This is occurring amid continued fiscal expansion, growth that has dipped from around 10% to 7-8% in recent years, and an increasing debt burden. Should economic expansion slow further, Ethiopia's political problems are likely to deepen, as resources shrink and recriminations grow. The government is steadily liberalising and reforming the banking sector, although the state is still the dominant player offering unfair competition for local and foreign banks. Massive infrastructure investment will sustain the high real GDP growth rate, despite the need for a more balanced policy mix to address recurring high inflation and a widening current-account deficit.

As Africa moves into 2018, these emerging champions of investment will remain the key drivers of economic growth on the continent.

Contributor's Profile

Robert Besseling founded EXX AFRICA in 2015, after pursuing a decade-long career in political risk forecasting at industry-leading companies such as London-based Exclusive Analysis and NYSE-listed IHS Global. At EXX AFRICA, Robert leads a team of partners and contributing analysts to produce commercially relevant and actionable analysis on African political, security, and economic risk. Robert also retains the lead on many consulting projects for blue chip corporations in a wide variety of sectors.

Robert is an expert in forecasting political, security, and economic risk to African natural resources and associated infrastructure development. He has traveled extensively on the continent and calls Africa his 'home'.

Robert holds an MA (Hons.) in History from the University of St. Andrews in Scotland. He also has an MBA and a PhD in African political and economic history. He is fluent in English, French, and Dutch.

BUSINESS RISK IN AFRICA: OLD PROBLEMS VS NEW CHALLENGES

By **Barnaby Fletcher,** Analyst, Control Risks

On 21 September José Eduardo dos Santos formally stepped down after 38 years as Angola's president and his successor was inaugurated. Dos Santos decided not to contest the 23 August elections, but the smooth transition to his chosen successor and the continued rule of the Popular Movement for the Liberation of Angola (MPLA) is leading some commentators to assert that little will change. Yet behind the scenes the political landscape is already undergoing substantial shifts. Decision-making powers are increasingly decentralised and long-touted plans for economic diversification have been granted fresh momentum. Behind the superficial status quo there will be new opportunities for investors, accompanied by new risks.

Changes in Angola are reflective of those in the wider continent. Investor perceptions of sub-Saharan Africa still tend towards violent instability and aged autocrats. Yet with dos Santos' departure the latter list grows shorter. President Robert Mugabe (Zimbabwe) and President Teodoro Obiang Nguema (Equatorial Guinea) are now outliers rather than the norm. Successful coup d'états averaged two a year throughout the 1970s and 1980s; that number is now less than one. Like Angola, too much of Africa remains too heavily dependent on natural resources. But governments have responded to low commodity prices with diversification strategies, while foreign direct investment shows increasing variation in its origin, destination and sector.

The ability of companies to access the opportunities presented by these political and economic changes depends, as it always has done, on their ability to understand and mitigate the accompanying risks. But this task is complicated when changes to the risk landscape are ongoing and erratic in their manifestations across different countries. Many of the primary challenges with the potential to derail an investment also remain rooted in specific local contexts. Nonetheless, certain themes are broadly applicable across large swathes of sub-Saharan Africa.

Old problems evolve…

New risk landscapes may contain familiar features, but investors should be wary of assuming that challenges will always remain the same. Corruption may be a long-standing concern, for example, but patronage networks shift in accordance with elections and succession battles. Understanding these shifts is important even for investors with strong anti-corruption procedures in place, especially in a continent where corruption investigations are often politically motivated and connections to previous administrations are sufficient to attract intrusive scrutiny. Even in Mauritius, a country with an enviably clean reputation, government attempts to introduce new anti-graft legislation have been met with allegations that it is seeking to target political opponents and their commercial partners.

Risks that were once thought to be in decline can re-emerge. After the debt relief of the late 1990s, debt levels have once again risen. Governments covered budget shortfalls caused by low commodity prices by borrowing and the burden of servicing foreign currency-denominated debt has increased after local currency depreciations of recent years. A number of countries – including Ghana, Djibouti, Mali and Cameroon – are judged by the International Monetary Fund (IMF) to be at high risk of debt distress. Mozambique has missed a number of scheduled debt repayments so far in 2017.

The risks of sovereign defaults or non-payment are once again rising and publicly-funded investment projects are being delayed. Rapid currency depreciations in 2014-16 prompted countries such as Nigeria and Ghana to introduce capital controls, and placed severe practical – if not always regulatory – restrictions on the ability of companies to repatriate profits from countries such as Angola. And while many countries are showing signs of gradual economic recovery, this remains tentative and vulnerable to being derailed as bonds approach maturity in Gabon, Kenya, Zambia and elsewhere.

Other traditional drivers of risk are still prominent and becoming more so. African governments have long faced demographic challenges. Official rates of youth unemployment are above 20% in 12 countries in sub-Saharan Africa – above 50% in South Africa and Swaziland – and the rise of automation will further reduce the ability of governments to offer employment opportunities. Rapid urbanisation has left them further dislocated from traditional community structures, and in areas such as Somalia or the Sahel made them more vulnerable to radicalisation. The militancy and terrorism this feeds – and the threats this poses to both state assets and commercial operations – are not new, but are increasingly complex.

In southern Africa, ruling parties that can no longer rely on increasingly-dated liberation struggle credentials to ensure the votes of a youth are instead turning to populist policies. The 'radical economic transformation' agenda being pushed by South Africa's President Jacob Zuma is a key example of this. Antagonistic rhetoric towards foreign commercial interests is fuelling legislative uncertainty, while local content initiatives designed to illustrate the government's populist credentials place growing regulatory and financial burdens on companies.

…and new challenges emerge...

Arguably the most exciting opportunities in sub-Saharan Africa are those fuelled by technology. A substantial improvement in telecommunications infrastructure and the world-beating success of initiatives such as M-PESA have fuelled huge growth in more high-tech industries. Africa reached 1bn mobile subscriptions at the end 2016, and hundreds of tech hubs are seeking technology-driven solutions to the continent's problems. Technology, media and telecommunications attracted more foreign direct investment projects than any other sector in 2016. But as governments attempt to regulate the rapid evolution of these sectors new risks are emerging.

Much of the legislative effort appears motivated by goals other than promoting sector growth. Although few countries maintain the monopoly seen in Ethiopia, many states do still hold significant commercial interests in the telecommunications sector that is often motivated by a desire to control information. The discriminatory action and unfair competition this can prompt are clear in Zimbabwe, where private-sector companies are forced to share infrastructure in an attempt to erode the advantage they hold over state-owned competitors. Zimbabwe's proposed Computer Crime and Cyber Crime Bill also serves as an example of the reputational risks companies face. It threatens to force companies to allow government access to customer data, while also proposing punitive penalties for ambiguously-defined digital offences that will invariably be used to target government critics.

The rapid growth of African telecommunications and connectivity has also been accompanied by growing cyber-security concerns. Criminal groups, most infamously from Nigeria, have demonstrated relatively sophisticated capabilities; a sustained phishing campaign discovered in late 2016 originated in Nigeria and attacked 500 companies across 50 countries. Within Africa, however, criminal groups have enjoyed success with relatively unsophisticated activity such as mobile banking Trojans or payment diversion fraud. This has been enabled by the failure of cyber-defences to keep pace with the rapid spread of internet penetration, the widespread use of pirated software, and corruption. In March a cybercriminal group was arrested in Kenya, accused of stealing almost USD 300m from government bodies and co-operatives through a combination of low-level tools and disgruntled employees.

Cyber-activism also poses challenges, with campaigns prompted by political grievances to bring down websites through distributed denial of service (DDoS) attacks or leak data through SQL Injections. While government websites are typically the target, cyber-activists have been known to target companies they believe are close to the government or simply that are vulnerable, even if only tangential to the stated motive of a campaign. In April, for example, DDoS attacks motivated by corruption allegations against South Africa's President Jacob Zuma included an investment company among its targets, while a similar DDoS campaign aimed at undermining President Ali Bongo in Gabon impacted on an international insurance company.

Africa in a changing world

To fully understand the business risk landscape in Africa, it is increasingly important to understand its international relations. In many ways Africa is increasingly connected. Extraterritorial legislation such as the US' Foreign Corrupt Practices Act (FCPA) or the UK Bribery Act is gradually shifting business practices in Africa. Similarly, the imminent implementation of the EU's General Data Protection Regulation (GDPR) is encouraging countries – including Uganda, Kenya, Ghana and South Africa – to push forward with implementation of their own data protection laws. The GDPR's requirement that any company holding EU resident data meets EU data protection standards may pose compliance challenges for investors and their African partners, but in the longer term it is likely to drive improvements in Africa's often lax cyber-security.

Elsewhere, however, the 'America First' rhetoric of the Donald Trump administration in the US and an EU concerned with internal issues will likely see Africa pushed further down the global agenda. Global economic uncertainty could deter investment in a continent still perceived as more risky than most. The protectionist stance pushed by Trump in the US raises questions about the future of preferential trade access granted to African countries under the African Growth and Opportunity Act (AGOA). Accompanying this has been a broad decline in direct budgetary support in favour of programme- or project-specific funding, exacerbating the budgetary strains and associated risks described above.

The centralisation of power in the dos Santos presidency posed challenges for investors in Angola, leading to opaque decision-making with little accountability. Yet it also ensured that once presidential approval for a project was secured, bureaucratic and regulatory hurdles became far less ominous. Investors in a post-dos Santos Angola will have to engage with a more complex stakeholder landscape, albeit one with more opportunities on offer. As in Angola, same in the wider continent. Africa is increasingly presenting investors with varied opportunities across a diverse range of sectors. Yet old challenges are re-emerging, evolving, and combining with new problems to present risks that are not necessarily greater than before, but are significantly more complex.

Contributor's Profile

Barnaby Fletcher provides political, operational and security risk analysis on southern Africa. He is a regular contributor to Control Risks' subscription services and also works on bespoke consulting projects for clients. These have included advising a large range of companies looking to enter new markets or expand existing operations, as well as working alongside Control Risks' Cyber and Maritime experts to help clients understand and mitigate a broad range of business risks.

HARMONISING LAW CRUCIAL FOR ECONOMIC GROWTH IN EAST AFRICA

By **Deepa Vallabh,** Head of Cross-Border M & A, Africa & Asia, CDH, LLP
By **Riola Kok,** Candidate Attorney, Corporate & Commercial, CDH, LLP

A combination of globalisation, foreign investment and an increase in multinational co-corporations in Africa over the past decade has resulted in the rise of cross border transactions taking place on the continent and the much needed foreign direct investment to fuel growth in Africa.

However, the growth has not occurred at the rates that one would have expected in the recent years. In order to increase commercial transactions in Africa, African economies must create an economic and political environment that is conducive to cross border commercial transactions, giving foreign investors the assurance of growth and returns. This article wishes to focus on is the East African Community's (EAC) commitment to the harmonisation of laws and legal practice within the community as a means to make transacting in the region accessible, economic and efficient..

China, of late, has been the main source of infrastructure funding in East Africa, with an investment in African infrastructure, including in the Eastern region, of approximately $1 trillion in the last few years. Unfortunately, the cost of doing business in East Africa is higher than in other regional blocs as a result of the state of the transport infrastructure in the region.

The East Africa Railway project presents an opportunity to increase trade within the region by providing more efficient and economic means of transportation across jurisdictions within the East Africa region. The $3.2 billion project spans from Mombasa to Nairobi with the view to later expand the railway to the borders of Uganda.

The progress of the East Africa Railway, like other cross border projects in Africa, is impeded by the lack of legal capacity within the region, as well as stringent and inconsistent regulatory controls within different countries. Administrative and technical requirements of each partner state within the EAC has delayed the construction of the railway as a result of inefficient procurement procedures, poor monitoring and evaluation processes, restrictive regulatory controls of states, and inefficient bureaucratic processes at ports, making the harmonisation project of the EAC an imperative part of facilitating transactions in the region.

"The harmonisation of laws within the EAC presents an opportunity for increased trade through the development of a unified system of regulatory controls across jurisdictions."

The EAC was established in terms of the EAC Treaty in July 2000, and its membership includes Kenya, Tanzania, Uganda, Rwanda and Burundi. Among the objectives of the EAC is the creation of a common market to allow for the free movement of persons, capital, services and the rights of residence and establishment, in order to eliminate some of the barriers in executing commercial transactions in East Africa.

Article 126 of the EAC Treaty provides that partner states to the EAC shall, through their appropriate national institutions, harmonise their national laws pertaining to the objectives of the community. Furthermore, Article 47 of the Protocol on the Establishment of the East African Community Common Market adopted by the EAC in 2009, made provision for partner states to undertake to approximate their national laws and to harmonise their policies and systems for the purpose of implementing a common market in the region.

The harmonisation of laws within the EAC presents an opportunity for increased trade through the development of a unified system of regulatory controls across jurisdictions. Harmonisation would also facilitate the sophistication of operational practices across jurisdictions that will in turn result in cost-effective and efficient transacting within the EAC.

In conjunction with the effort to accommodate laws within the EAC is an endeavour to also harmonise legal practice within the region. The East African Community Cross Border Legal Practice Bill, 2014 is premised on Article 126 of the EAC Treaty, and makes provision for the legal representatives of one partner state to render legal services in other partner state despite not practicing in that particular state. This includes a plan to harmonise legal training and certification within the region to provide for common standards across the community and to provide a common set of regulations to facilitate cross border practice.

"Harmonisation would also facilitate the sophistication of operational practices across jurisdictions that will in turn result in cost-effective and efficient transacting within the EAC."

Currently, there is insufficient legal capacity within East African to support the expanding economic growth and the transactions that flow therefrom. The harmonisation of legal practice addresses the inconsistency in the rate of growth in East Africa and the number of legal

professionals equipped to service and execute commercial transactions within the region. The UN Economic Commission for Africa Report on Professional Services published in 2010, estimated that in East African countries such as Uganda and Tanzania the ratio of lawyers to people are 4 lawyers to every 100 000 people and 2 lawyers to every 100 000 in Uganda and Tanzania respectively.

The process of harmonisation of cross border legal practice will contribute to building legal capacity within the region. In addition, cross border legal practice will increase the competitiveness of East African lawyers, allow for the imports of best practices across jurisdictions and enable the ease of co-ordination of legal services across jurisdictions and the strengthening of skills integration within the region.

A Mutual Recognition Agreement between the Competent Authorities of Advocates in the East African Community (Mutual Recognition Agreement) has been signed by partner states of the EAC to facilitate the harmonisation process within the advocates' profession. The Mutual Recognition Agreement allows for an advocate who meets the requirement set out in the Mutual Recognition Agreement to make an application to a competent authority in a partner state within which they do not practice to be recognised as a practicing advocate in the partner state in terms of the Mutual Recognition Agreement.

The harmonisation of legal practice across jurisdictions is a growing legal international trend. In as early as 2003, the International Bar Association tabled for discussion the Draft Best Practice Recommendations for the Temporary Cross Border Commercial Practice in response to the demand for cross-border commercial lawyers.

The harmonisation of laws within the EAC is not without challenges. It is a task of great magnitude, is under-funded and the incongruence between legal systems and language differentials within the community present challenges to the process. In addition, political will and involvement is essential to ensuring that legislative and administrative measures towards harmonisation are taken by each partner state on a national level. These challenges are evidently not viewed as insurmountable by the EAC who still see value in pursuing the process of harmonisation of laws and legal practice, and are in the process of doing so. However support from the international legal community, particularly from South Africa can help facilitate a faster transition to achieving harmonisation.

"The harmonisation of legal practice addresses the inconsistency in the rate of growth in East Africa and the number of legal professionals equipped to service and execute commercial transactions within the region."

"A combination of globalisation, foreign investment and an increase in multinational co-corporations in Africa over the past decade has resulted in the rise of cross border transactions taking place on the continent and the much needed foreign direct investment to fuel growth in Africa."

A similar approach to harmonisation would assist other regions within Africa to address the issue of capacity, the economics of deal making and to ensure cross border transaction efficacy. Institutional collaboration and building sustainable partnerships are essential to meet the transactional and development objectives of the continent, and harmonisation of laws and legal practice is one mechanism to achieve this.

"African economies must create an economic and political environment that is conducive to cross border commercial transactions, given foreign investors more certainty of growth and returns.

Contributos' Profiles

Deepa Vallabh is a director in Cliffe Dekker Hofmeyr's Corporate and Commercial practice and is Head: Cross-Border M&A: Africa & Asia. Deepa specialises in a number of legal areas, including mergers and acquisitions (both domestic and cross-border), corporate reorganisations and restructurings with a particular focus on cross-border M&A into Africa. Deepa's expertise also extends to competition law, structured finance, securitisations, derivatives, bond exchange and other general finance related matters. She has been involved in various transactions related to the Johannesburg Stock Exchange.

Riola Kok is a Candidate Attorney in Cliffe Dekker Hofmeyr's Corporate and Commercial practice. Riola graduated from the University of the Witwatersrand with an LLB and University of Cape Town with a BA in Social Science.

NAVIGATING CORRUPTION RISKS IN AFRICA

By **Steven Powell,** Head of forensics, ENSafrica South Africa

Africa is regarded as an investment destination of choice for many international businesses looking to expand their horizons by branching out and accessing burgeoning populations with a largely untapped consumer demand. The enthusiasm and vigour of new business development executives and their appetite for risk must, however, be kept in check by robust anti-corruption compliance officers and managers, as the risk of fraud and corruption can be an insurmountable obstacle if not managed properly.

It is often a challenge to ensure that employees, agents and business partners do not engage in acts of corruption and, without proper protection in the form of policies, procedures, training and anti-bribery clauses in contracts, the company may be held liable for their illicit acts. A further challenge is to ensure that unscrupulous vendors do not bribe an organisation's employees.

Employees must be trained extensively when a business considers expansion into Africa, as business development employees are usually the first troops deployed into new markets. There is no room for naivety, and multinationals must accept that they may be seen by locals as a revenue opportunity in almost every step of setting up a new business.

To navigate corruption risks, it is important to arm employees with a robust anti-corruption policy and programme, underpinned by a range of procedures and controls.

The United Kingdom has issued useful guidelines for corporates to consider in order to mitigate corruption risks. These guidelines set out six non-prescriptive fundamental principles that commercial organisations should consider when adopting "adequate procedures" to prevent bribery being committed on their behalf. These principles are:

Principle 1: appropriate procedures

A commercial organisation's procedures to prevent bribery by persons associated with it should be proportionate to the bribery risks it faces, having regard to the nature, scale and complexity of its activities. This principle requires the organisation to have a robust anti-bribery policy in place, with procedures designed to foster compliance by employees, business partners, agents and intermediaries.

Principle 2: top-level commitment

Top-level management of a commercial organisation must be committed to preventing bribery and set the appropriate ethical tone from the top. The establishment of the ethical tone would include:

- making a statement of commitment to combat corruption in all parts of the organisation's operations
- developing a code of conduct that communicates to employees what is expected of them
- leading by example
- providing a safe mechanism for reporting violations
- rewarding integrity

Principle 3: risk assessment

Organisations should conduct a risk assessment addressing the nature and extent of the risks relating to bribery and corruption to which it is exposed. The risk assessment should focus on identifying and addressing an organisation's vulnerabilities to internal and external corruption.

Principle 4: due diligence

Organisations must practice due diligence to know who they are doing business with and to identify bribery risks associated with particular business relationships. Management should exercise due diligence in seeking to prevent and detect criminal conduct by employees and other associates. The benefit of due diligence is that it will inform the application of proportionate measures designed to prevent persons associated with them from bribing on their behalf. Due diligence exercises require careful screening of prospective employees and third parties through background checks and effective monitoring of performance:

- due diligence for employees: organisations must use due diligence to refrain from delegating considerable discretionary authority to any individuals who have a propensity to engage in illegal activities; and
- due diligence for third parties: organisations must use due diligence to ensure that they form business r elationships with reputable third parties.

Principle 5: communication

An organisation must "ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation". Management must implement measures to ensure that anti-corruption policies, standards and procedures are communicated effectively to all employees and, where appropriate,

agents and business partners. This communication should include:

- periodic training for appropriate employees and third parties;
- certifications from associated persons to ensure that they understand the company's anti-corruption policies, standards and procedures; and
- a confidential system that provides parties a means to raise concerns about bribery, provide suggestions for improving the company's anti-bribery procedures and seek advice.

Principle 6: monitoring and review

Organisations must institute monitoring and review mechanisms to ensure compliance with anti-bribery and corruption policies and procedures, to identify any issues as they arise and to make improvements where necessary. The monitoring and review should consist of four mechanisms:

- implementing internal controls to monitor and review anti-bribery policies and programmes;
- conducting periodic reviews and reports for top-level management;
- identifying triggers for mandatory risk assessment and anti-corruption compliance programme review; and
- using external specialists/verification entities to independently evaluate the effectiveness of anti-corruption compliance programmes.

By adhering to these principles, commercial organisations are able to manage corruption risks in high- risk jurisdictions.

Contributor's Profile

Steven Powell is head of ENSafrica's Forensics Department. He is a renowned specialist white-collar crime prosecutor and forensics lawyer. Steven specialises in leading forensic investigations that result in successful disciplinary and criminal proceedings against offenders, as well as the recovery of losses in both civil and criminal matters.

Steven is also frequently invited to present on the topics of white-collar crime, and corruption and fraud issues throughout Africa. Further, he lectures on corruption for the University of the Western Cape's Forensics certificate course and is a regular speaker at the Universities of Cape Town and Stellenbosch. His qualifications are: BProc (University of Cape Town), LLB (University of Cape Town) and Admitted as an advocate of the High Court of South Africa.

SOME SELECTED POLITICAL COMMENTARIES ACROSS AFRICAN COUNTRIES

ANGOLA: Joao Lourenco was sworn in as president of Angola in a ceremony marking the first leadership change in almost four decades in sub-Saharan Africa's second-biggest oil producer. The 63-year-old former defence minister takes over from Jose Eduardo dos Santos, who steps down after 38 years in office but will continue to lead the ruling Popular Movement for the Liberation of Angola until next year. The MPLA won 61 percent of votes in elections last month, securing 150 seats in the 220-member parliament.

DEM REP CONGO: The Independent National Electoral Commission (CENI) announced that the presidential elections are unlikely to take place in 2017 due to delays in the voter registration process. The U.S. threatened to impose further unilateral sanctions on any party that attempts to hinder the country already delayed elections to replace President Joseph Kabila. The government sentenced Sindika Dokolo, the son-in-law of Angolan President Jose Eduardo dos Santos, to one year in prison for real estate fraud, which strained the relations between the two neighboring countries.

EGYPT: President Abdel Fattah el-Sisi ratified a law for the creation of a National Electoral Commission that would manage and supervise referendums and elections. Egyptian Member of Parliament Ismail Nasr Eddin's suggestion to amend the 2014 Constitution to extend President el Sisi's current four-year term by two years has been met with wide criticism from some political forces. Clashes persisted between security forces and Islamic State militants in the Sinai province and in the southern cities of Luxor and Qena.

GABON: Gabon's government approved a proposal to amend the constitution that will extend presidential elections to two rounds of voting and strengthen the role of parliament. The proposal, which would entail the creation of a special court that has jurisdiction over top government officials, was adopted in a cabinet meeting. The draft legislation is based on talks between the government and opposition parties in April and May, and also proposes to limit the mandate of senators to five years, from six.

KENYA: The Supreme Court ruled the August 8 election unlawful on September 1, and ordered a rerun. A five-judge bench delivered the court's detailed judgment, which upheld the main opposition's complaints that President Uhuru Kenyatta's re-election was rigged. The court criticized the Independent Electoral & Boundaries Commission's refusal to comply with its order to grant the opposition access to its servers to verify the results.

LIBYA: The Prime Minister of Libya's UN-backed government Fayez al-Serraj announced on July 15 a new roadmap to end the country's political crisis. The roadmap calls for holding parliamentary and presidential elections in March 2018, gradually merging rival parliamentary bodies and implementing a nationwide ceasefire. Al-Serraj met his military opponent General Khalifa Haftar in France and agreed to implement a ceasefire, hold parliamentary and presidential elections next year, and secure territory against terrorism and human trafficking.

SOUTH SUDAN: President Salva Kiir opposed the renegotiation of the August 2015 peace agreement with Sudan People's Liberation Movement- In Opposition (SPLA-IO). Government forces captured the rebel stronghold of Pagak, which is the former headquarters of rebel SPLA-IO, breaching the unilateral ceasefire that was declared in May 2017. Sudan allowed South Sudanese forces to launch an attack from its territories on the Unity and Upper Nile states, in response to the postponement of the permanent lifting of U.S. sanctions against Sudan.

SUDAN: Fighting escalated between factions loyal to Chairman Malik Agar and his rival Abdelaziz al-Hilu in the Blue Nile state, fuelled by a dispute over leadership of the Sudan People's Liberation Movement-North. The clash resulted in the death of several dozen fighters and one humanitarian worker, prompting al-Hilu to declare a controversial six-month unilateral ceasefire. Vice President Bakri Hassan Saleh continued his campaign to collect illegally owned arms and vehicles in the Darfur and Kordofan regions, but faced resistance from Musa Hilal the leader of the Awakening Revolutionary Council militia.

TUNISIA: The government continued its campaign against corruption that was launched in May 2017. Several directors of hospitals, as well as doctors and pharmacists were suspended on the suspicion of corruption. President Beji Caid Essebsi ordered the Tunisian army to protect phosphate, gas and oil production facilities.

EXPLORING SUB-SAHARAN AFRICAN EMERGING RISK LANDSCAPE

By **Martyn davies,** Managing Director, Emerging Markets & Africa, Deloitte Africa
Hanns Spangenberg, Senior Economist, Africa Services Group, Deloitte Africa

The first step to mitigating and dealing with downside risks is knowing which potential risks are out there. Understanding sub-Saharan Africa's (SSA) evolving risk landscape is an imperative in order to manage risks and opportunities in a way that is both opportunistic and sustainable.

Structural risks, long-evident in SSA economies, were exposed by the end of the commodity super-cycle. One of the consequences was a slowdown in real GDP growth, which arguably bottomed out last year at a mere 1.4%, compared to an average of 5.3% per annum (p.a.) over the preceding decade. The normal response from policymakers to an exogenous (i.e. external) macroeconomic shock (like falling commodity prices) would be a combination of fiscal and monetary stimulus. However, the global financial crisis of 2008 that started in the US had lasting repercussions across the world, with many SSA governments choosing to stimulate the economy via looser monetary and fiscal policy stances. While this helped to mitigate the effects of the global financial crisis, this also limited the options to use the same tools when SSA faced a commodity-price crisis a few years later.

Consequently, while the continent is showing signs of being on a path to recovery in 2017, it is a tentative recovery, and a path that has many potholes. Multiple years of fiscal and current account deficits meant that government's had to incur external debt. World Bank data shows that SSA's total external debt increased from US$282.9bn in 2010 to just over US$416bn by the end of 2015 – representing an increase of some 47%! These debts require interest payments, and given that they are denominated in foreign currency, this means that countries are even more susceptible to exchange rate risk than they already were. Weakening local currencies are translating to rising interest payments, which are becoming increasingly burdensome. This places more pressure on the government to increase their debt levels in order to meet interest payments, which could potentially lead to a debt trap.

In line with rising debt in the public sector, the financial sector in SSA is also facing mounting pressure. The International Monetary Fund (IMF) noted in its latest SSA regional economic outlook that the combination of lower real GDP growth and uptick in government arrears "has resulted in a widespread increase in nonperforming loans, triggering higher provisioning, straining banks' profits, and weighing on solvency". A thriving and – more importantly – stable financial sector is systemically vital for the ongoing development and growth of SSA. Should the financial sectors in pockets across the region continue to deteriorate, or even fail, then long-lasting negative consequences are sure to follow.

As mentioned earlier, structural (another word for long term) factors that were exposed by the commodity-price slumps continue to place strain on SSA economies, and carry their own risks. On top of the lack of diversification and over-dependence on commodity exports that directly led to the slowdown across the region, there are additional structural factors that need to be taken into account. These include extreme weather conditions (listed as the most likely global risk by the World Economic Forum in its 2017 Global Risks Report), interstate conflicts, failure of national governments, a lack of infrastructure, unemployment or underemployment, and terrorism. While these risk are relatively confined to specific countries or geographical regions, they do hold the potential for spreading (also known as contagion or spillover risk). As such, investors and business alike must be cognisant of these risks when formulating their strategies.

Furthermore, there are potential risks emanating from outside of the continent that could potentially have adverse effects on the SSA region. Uncertainty in global financial markets does not bode well for Africa, since investors generally seek calmer waters in times of turbulence. This is known as a flight to safety, which traditionally sees higher debt costs in emerging and developing markets. Upticks in geopolitical risk are key drivers of safety flights.

Arguably, the current US administration is one of the key factors affecting global uncertainty in financial markets. Fiscal reform was at the forefront of the Donald Trump presidential campaign, with financial markets welcoming this potential driver of US real GDP growth. However, with the failure of healthcare reforms, there is increased uncertainty about whether or not fiscal reform will indeed happen. Additional uncertainty remains regarding the extent of protectionist action that could be taken by the US – which might potentially start a trade war with China. More recently, President Trump escalated tensions with North Korea, which saw investors retreat to safe-haven destinations. Further rhetoric, or even action, regarding military action between the two nations would likely see further financial flows towards traditionally safer assets.

"while the region is showing signs of being on a path to recovery in 2017, it is a tentative recovery, and a path that has many potholes."

"Structural risks, long-evident in SSA economies, were exposed by the end of the commodity super-cycle. One of the consequences was a slowdown in real GDP growth, which arguably bottomed out in 2016 at a mere 1.4% against an average of 5.3% per annum over the preceding decade."

Another key driver of uncertainty stemming from the developed world is the ongoing separation of the United Kingdom (UK) from the European Union (EU). Negotiations around the so-called Brexit process officially started in June, but little progress on the manner of the exit has been achieved so far. The 'hardness' or 'softness' of Brexit could have lasting implications for global financial markets, and indeed, for the future of the EU itself.

"The International Monetary Fund (IMF) noted in its latest SSA regional economic outlook that the combination of lower real GDP growth and uptick in government arrears has resulted in a widespread increase in nonperforming loans, triggering higher provisioning, straining banks' profits, and weighing on solvency."

Arguably, another risk stemming from an external source that could affect SSA is China's rising debt levels. In an effort to stimulate the economy, the Asian giant is seeing rising long-term risks, with Moody's Investor Services downgrading the country's sovereign debt rating in May 2017. The probability of a debt crisis in China has risen as the country's shadow banking system has grown. The Financial Times reported in June 2017 that the shadow finance sector accounts for some 80% of China's GDP, compared to only 10% of GDP a decade earlier. Given China's rapidly rising trade and investment flows with SSA, a debt crisis could have devastating consequences for the region.

Overall, SSA is on the cusp of regaining its foothold as a premier investment destination. However, the region's path to recovery is fragile, and requires subtle manoeuvring. The lines between mitigating risk and capitalising on investment opportunities have become increasingly difficult to discern, and those seeking to benefit from the SSA region must carefully weigh their strategic options.

Contributors' Profiles

Dr Martyn Davies is the Managing Director of Emerging Markets & Africa at Deloitte Africa. He also leads the Africa firm's China and Japan Services Group. Over his career, he has been an advisor to a large array of multinational firms on their market entry & engagement strategies in Africa. He has also conducted a large amount of advisory work on behalf of the public sector.

Martyn completed his PhD at the University of the Witwatersrand at the age of 25, has studied at Yonsei University (Seoul) and has completed executive programs at Harvard Business School, Harvard's Kennedy School of Government, Yale University and Said Business School at Oxford University. He has previously been on the faculty at Stellenbosch University and the University of Pretoria, as well as at the business schools of both universities. He is a Visiting Professor at IE Business School, Madrid, Spain.

Hanns Spangenberg is a senior economist at Deloitte within the Africa Services Group team. Hanns is involved in the compilation of ad hoc research reports and publications of the company, as well the production of regular and ongoing economic briefings that track key political and economic indicators. These weekly briefings provide a series of economic and business-focused commentary on leading African economies and their respective outlooks. Hanns holds a BSc. in Business Administration from the University of Alabama at Birmingham (US), with double majors in finance and economics. Hanns also holds a BComm (hons.) in financial economics and a MComm in economics, both awarded by the University of Stellenbosch (South Africa).

PROTECTING AGAINST POLITICAL VIOLENCE & TERRORISM RISK IN AFRICA

By **Nicky Ablett,** Director of Property & Political Risks, QBE Underwriting Limited

Unrest, uprising and rebellion across the northern states, attacks by Al Shabab inspired militants in Kenya, a luxury hotel attack in Mali; all of these seem a long way from what we would have considered the traditional political violence losses insured in Africa of oil fueled insurgency and South African riot losses. Yet all these perils have been experienced within the last ten years. The insurance market has adapted to reflect the changing nature of risk on the continent and tailored solutions mean that atypical events such as the above were insured and had losses paid.

Africa is a very diverse continent, and the risks faced by business are equally diverse. Some commonly used insurance definitions of the perils covered by political violence are:

Terrorism & Sabotage

- A deliberate and violent act committed for political, religious or ideological reasons

Riot, Civil Commotion (SRCC)

- An act committed by a mob or common crowd

Insurrection, Rebellion, Revolution

- An act committed by a seditious or rebellious crowd or an act of revolt

Civil War

- Armed conflict between at least two clear sides of the population of the same country

War on Land

- Conflict, whether declared or not, between two nation states

The lines between the above perils can be very blurred and an event can move from one level to the next very quickly, and in some cases back again. Imagine for example a peaceful protest lasting a prolonged number of days turning violent and escalating into a level of insurrection and ultimately developing into a government threatening event. Whilst under the cover of the same protest, looters get to work emptying shelves of desirable products and it is easy to see where the lines can be blurred.

The worst nightmare of any risk manager is having bought what they thought was adequate cover, only to discover that the incident that actually happened to their property, was not quite covered by the policy they had bought.

Years ago, insurance products developed to cover political violence perils as the Property All Risks market declined to include these losses anymore. These products and wordings, whilst mostly effective at the time, were relatively simplistic. As the nature of events has changed, so too have the products to counteract them. This has helped to highlight any gaps in cover. In nearly all situations within Africa, a fully comprehensive Political Violence policy, including war, would be recommended. Coverage for business interruption, loss of profits and contingent business interruption can be added to these products as required.

Insurance is by no means a panacea for all ills however, and there are inevitably events that are difficult to insure such as nuclear, chemical, biological, radiological and cyber although some form of cover may be available depending on individual risk circumstances. There are always obligations for insureds regarding the management of the risk concerned to maintain safety and security standards, and for insureds to be totally upfront with their insurers about specific threats they may have faced.

The age old maxim of getting what you pay for is as true within the insurance industry as it is in any other. A one size fits all, off the shelf approach may work in some situations, but it may not in others. Specialist insurance requires experienced broking advice, specialist claim teams and a depth of understanding from the insurer. All of these exist within the London Market along with a demonstrable track record of claims payment.

Contributor's Profile

Nicky Ablett , Director of Property & Political Risks, QBE Underwriting Ltd. Nicky has over twenty years' experience within the London Insurance Market and particularly in the sphere of Political Risk, Political Violence and Terrorism insurance. Nicky has been chair of the Lloyd's Market Terrorism & Political Violence panel and has been instrumental in the development of new wordings and new products, often bespoke to a particular customer's needs. QBE is an established leader of Political Violence business with specialism in the energy and commodity sector.

TACKLING CORRUPTION IN AFRICA: ASSET-TRACING AND RECOVERY

By **Liam Naidoo,** Counsel, Hogan Lovells LLP
Thomas Almond, Trainee, Hogan Lovells LLP

There is little doubt that Africa has in recent years experienced a significant shift in both social and political attitudes to tackling corruption. Elections in major countries across the continent have seen leaders democratically elected on the basis of campaigns promising increased efforts to tackle corruption. The elections of Alpha Condé and Muhammadu Buhari in Guinea and Nigeria respectively over the last decade have in particular given credence to the view that tackling corruption has finally emerged as a key concern among the electorate. Further, this trend shows no sign of abating, with the election of Nan Akufo-Addo as president of Ghana in January 2017 following an election campaign dominated by public disquiet about corruption. Themes of anti-corruption were also prevalent (although to a lesser extent) in recent elections in Kenya and the Ivory Coast.

Perhaps more importantly however, following his victory Condé has taken a number of tangible steps to turn the poetry of campaigning into the prose of government. By launching an investigation into all mining licenses, vowing to cancel those obtained through corrupt practises, and compelling mining companies wishing to invest in mineral rich Guinea to sign up to an "extractive industries transparency initiative", Condé is trying to improve the ability of domestic enforcement agencies to successfully combat corruption and trace misappropriated assets.

Indeed governments across the continent are adopting two distinct policy strands to translate these emerging political forces into the machinery of government. The first is the proposal and enactment of new anti-corruption legislation. 18 months after it was first introduced, President Buhari recently managed to successfully shepherd a new Money Laundering (Prevention and Prohibition) Bill through the Nigerian Senate (although further approval is required from the House of Representatives before presidential assent can be given). The bill, if passed, will expand the scope of money laundering offences, and place more onerous due diligence requirements and reporting obligations on both businesses and regulators. Similarly, Tunisia adopted a new constitution in January 2014 which established the Good Governance and Anti-Corruption Agency, whilst Morocco has also taken steps to constitutionalise its own anti-corruption body. The second policy is the strengthening of domestic enforcement agencies; the Nigerian Economic and Financial Crime Commission ("**EFCC**") now claims to have as many as 1,200 permanent staff, whilst the Tanzanian Corruption Bureau, set up a decade ago, has around 2,000. It should be said that it is difficult to confirm the veracity of these figures.
If you are one of the many people who want to see corruption in Africa tackled, such moves are clearly welcome developments. However, your enthusiasm should be curbed. The efforts described above have been of limited tangible effect. Perhaps this is understandable – institutions take time to bed in, and corporate entities and regulators alike must adapt to new legislative landscapes – in this regard note that the UK authorities are only now getting into gear when it comes to prosecuting the UK Bribery Act which has been on the statute books for seven years.

Nevertheless the benefits of the investment of financial and political capital are yet to materialise on the ground. Indeed, in the latest transparency international index, none of South Africa, Nigeria, Tanzania or Kenya materially improved their score. Similarly, and perhaps most ominously, the South African political landscape continues to be dominated by corruption allegations and scandals surrounding Jacob Zuma. Until South Africa takes significant steps to combat corruption, it is difficult to see how Africa can properly move forward on this issue.

If enforcement and tracing of assets therefore continue to be a challenge in African states in the short term, how have governments sought to address this shortcoming? One strategy has been the cooperation with overseas enforcement agencies where interests align. Given the shared common law traditions and historical links between Anglophone Africa and the UK, it is perhaps unsurprising that the UK's National Crime Agency ("**NCA**") has been the most active in this regard. One of the most notable (and well publicised) examples of such cooperation has been the arrest of five Nigerian individuals by the NCA in October 2015 in connection with allegations of corruption during the presidency of Goodluck Jonathan. It was reported that the five individuals arrested included Diezani Alison-Madueke, the former Nigerian oil minister, during whose tenure the governor of the central bank raised concerns that tens of billions of dollars in oil revenues had not be paid to the state by the government-run oil company NNPC (he was promptly sacked). As the domestic investigation continues, a Nigerian court in August 2017 seized properties worth $44m and $21m from bank accounts linked to Ms. Alison-Madueke. In addition, in February 2012 James Ibori, the former governor of one of Nigeria's largest oil-producing states, pleaded guilty to 10 counts of money laundering and fraud following an investigation by the EFCC and London's Metropolitan Police, and was sentenced to 13 years in prison.

Such cooperation has however not been without problems. Following the conclusion of the Ibori case, there has been significant controversy surrounding both

its handling by the UK authorities and the asset-sharing agreement reached between Nigeria and UK in respect of his confiscated assets. A similar situation arose following an investigation by the UK's Serious Fraud Office ("SFO"), which culminated in November 2015, into the activities of Standard Bank. The investigation related to a payment made by a former sister company of Standard Bank to a local partner in Tanzania, and again there was subsequent public criticism from certain prominent figures within Tanzania in relation to the SFO's approach to the relevant individuals involved in the case. All in all the UK authorities have taken a lot of interest in tackling money-laundering that has arisen from corrupt activities by African politicians.

Indeed there has also been some limited action by US enforcement agencies against African individuals. Indeed, US authorities have recently arrested Samuel Mébiame, the son of Gabon's former Prime Minister, in connection with allegation that he fixed bribes for companies to win mining rights in Niger, Guinea and Chad. However, it is not clear whether this resulted from cooperative efforts, and indeed US cooperation has and will likely continue to be more restricted than that with UK and European enforcement agencies.

Interestingly, if you look at the targets of such cooperative investigations and to enforcement more generally across the continent, the emphasis has tended to be placed on prosecuting historical cases of corruption involving former government officials (and their families and associates), rather than on preventing current or on-going public sector corruption. Notably, this has meant that there has also been a lack of focus on role of multinational companies in corruption within the region by African enforcement agencies. Although a number of the prominent live and concluded corporate investigations being led by both the SFO and the US Department of Justice involve political corruption in sub-Saharan Africa there is limited action by African enforcement agencies against multinationals. There are exceptions particularly in the extractive industry where a number of multinationals have had licences suspended or even stripped notably in Guinea and Nigeria – the latter deriving from charges brought by the EFCC, for example, against former Nigerian oil minister Dan Etete and former attorney general Mohammed Adoke. We expect there to be a growing emphasis within prosecutorial agencies in Africa to target multinational companies. This increased exposure highlights the importance of doing proper due diligence when investing in countries where there is a high risk of corruption. There is now real risk that assets procured by corruption can be seized by local authorities and we cannot discount the possibility that even innocent third parties who acquired such assets in good faith could be accountable.

Notwithstanding all that, states are still finding it difficult to efficiently combat corruption and trace assets. One particular avenue that has not yet been explored to its full potential however is that of bringing civil, rather than criminal, claims against those accused of corrupt activities. Whilst the particular methods for taking such action, and the specific claims that will arise, will depend upon the jurisdiction and specific circumstance in question, there is the possibility that such claims could be made in foreign courts if a sufficient connection can be established. Such a connection could likely be found where, for example, money has flowed through, or a defendant is physically based within, a particular foreign jurisdiction. English courts, for example, have a number of powerful tools available to civil claimants to assist with asset preservation and disclosure. These resources may therefore be of value in the continued fight against corruption. Indeed, the value of such tools to those seeking to recover assets can be seen in the number and diversity of cases brought through English courts relating to allegations of corruption in former Soviet republics in the decade following the end of the cold war.

Such civil claims have also been brought in the US, with US prosecutors having previously recovered assets belonging to Teodorin Obiang, the son of the ruler of Equatorial Guinea, using such methods. Although, embarking upon civil claims can assist victims recover stolen assets faster than waiting for criminal proceedings such claims need to be funded privately.

Whilst therefore there is increasing emphasis on tackling corruption across Africa, there remains much work to do. Policies enacted following increasing public political engagement on this issue will take time to bear fruit, and therefore governments and enforcement agencies will need to continue to develop strategies to maximise their resources and increase the efficiency of their efforts to tackle corruption and trace assets of those convicted of such activities. The value of using civil claims in such regard, in addition to cooperative criminal investigations, should not be underestimated.

"There is little doubt that Africa has in recent years experienced a significant shift in both social and political attitudes to tackling corruption. Elections in major countries across the continent have seen leaders democratically elected on the basis of campaigns promising increased efforts to tackle corruption."

Contributor's Profile

Liam Naidoo is a counsel in Hogan Lovells' Investigations practice focusing on business crime, fraud, bribery and corruption, Liam's practice particularly focuses on the management of internal investigations following allegations of corrupt activity of employees, agents and other third parties. This experience allows him to give targeted advice to clients on anti-corruption compliance measures. In addition, Liam has significant experience in Commercial Court litigation arising out of complex fraud and bribery actions.

AFRICAN SOVERIGN ISSUERS FACE MACROECONOMIC AND FISCAL CHALLENGES AS WELL AS EVOLVING POLITICAL UNCERTAINTY

*An Inerview With **Mr.David Rogovic,** Assistant Vice President-Analyst in Moody's Sovereign Risk Group.*

David Rogovic is an Assistant Vice President - Analyst in Moody's Sovereign Risk Group. David has lead and back-up analyst responsibilities for a number of sovereign and supranational credits in Africa as well as Latin America and the Caribbean. David's prior experience includes the best part of a decade analysing sovereign credit risk in Western and Eastern Europe, Russia, Turkey and Asia with J.P. Morgan, Nomura Asset Management and Roubini Global Economics, as well as an earlier stint with S&P's financial institutions division. David is a Fulbright scholar (Economics Institute, Zagreb) and was awarded a Master of Public Administration from the School of International and Public Affairs at Columbia University and Bachelor of Arts (Economics) from Pace University.

CAPMARKETSAFRICA: *What are the key macroeconomic challenges that Africa is facing in 2017 and how will they affect African issuers and borrowers in 2018? And what must issuers and borrowers do to overcome these challenges?*

DAVID ROGOVIC: African countries face a number of credit challenges. The ongoing fiscal adjustment to lower commodity prices is testing for resource-rich states, while there are rising debt levels in parts of the continent. This can be due either to exchange rate weakness in countries heavily indebted in foreign currency or those with persistent fiscal deficits, political risk or subdued economic growth.

This difficult environment has fuelled concerns over liquidity risk in countries that rely on external funding. Many have started adjusting policies in response to these credit challenges, attempting to diversify their economies, broaden their revenue bases, or allow the exchange rate to adapt. But we're still at an early stage in the adjustment process.

While we've seen problems arise in many countries, overall benign global financial conditions have allowed most African sovereign borrowers to maintain access to international capital markets this year. However, the erosion of buffers, such as international reserves or room to increase public debt, leave a lot of African countries more vulnerable to future external shocks. The challenge remains to continue down the path of adjustment, rebuild international reserves and other buffers to protect against shocks.

"The ongoing fiscal adjustment to lower commodity prices is test a for resource-rich states"

CAPMARKETSAFRICA: *What impact will the rapid growth in African sovereigns accessing international capital markets have for African economies? Is this the next step for maturing African capital markets, or are governments exposing themselves to unnecessary risk?*

DAVID ROGOVIC: The rapid growth in African sovereign bond issuance offers a number of potential benefits, including financing for Africa's large infrastructure needs. The World Bank estimates infrastructure needs in Africa exceed US$ 90 billion, and sovereign bond issuance can help fill this gap.

Additionally, sovereign bonds provide a benchmark for corporate bond issuance, offer longer maturities than other forms of private market financing, and by issuing debt that is relatively liquid, they also allow more investors to access the region.

However, the increase in African sovereign bond issuance exposes the region to a range of risks, especially when you consider how sovereign credit fundamentals have changed since the time of issuance.

The peak in Africa sovereign bond issuance coincided with the start of a deterioration in sovereign credit metrics due to multiple external shocks. This is reflected in our rating actions, with four sovereign downgrades in Sub-Saharan Africa this year, following 11 downgrades in 2016.

"The rapid growth in African sovereign bond issuance offers a number of potential benefits, including financing for Africa's large infrastructure needs."

The region's growth outlook, once one of the brightest in the world, has dimmed. A decline in commodity prices placed pressure on commodity-exporters, as falling commodity-related government revenue and export receipts contributed to a reversal in fiscal and current account positions. Weaker growth prospects, with now higher debt levels and in some cases large fiscal and external imbalances, add to debt sustainability concerns.

CAPMARKETSAFRICA: *How are macroeconomic decisions elsewhere – particularly monetary policy at the US Fed and the ECB – affecting the environment for African investment and growth? What are the consequences for FDI coming into the market?*

DAVID ROGOVIC: After such a long period of monetary stimulus and loose global financial conditions, there is concern about the impact a reversal of this extraordinary monetary easing will have on African investment and growth prospects. Given the increased reliance on international debt issuance, African sovereigns are more exposed to shifts in global financial conditions.

Commodity producers in Africa were already exposed to shifts in global demand, via the impact on prices for exports like oil or industrial metals, but now there is another avenue of possible contagion through global financial conditions.

The key risk for many borrowers is the prospect of more difficult external financial conditions due to the reversal of monetary stimulus by the Fed and ECB. If the Fed and ECB are raising interest rates in response to strong growth, in an environment of rising commodity prices, then we would expect a more benign impact on African investment and growth. On the other hand, if the Fed and ECB raise rates but we don't see an increase in global demand for African exports, the impact could be more negative.

CAPMARKETSAFRICA: *Macroeconomic vs geopolitical woes: What are the biggest challenges for the economies of South Africa, Kenya and Nigeria?*

DAVID ROGOVIC: In South Africa, the political environment and tensions within the government have led to a gradual weakening in the institutional framework. The slow pace of economic growth combined with high levels of youth unemployment and wide income disparities create a challenging socio-political environment. Policy uncertainty is having a material impact on the growth outlook, through slowing progress with structural reforms and reduced investment. We've also seen a gradual erosion of fiscal strength due to rising debt levels and an accumulation of contingent liabilities, key reasons for our repositioning of South Africa's sovereign rating at Baa3 earlier this year.

Kenya's main challenge is how to address the rising debt levels and large fiscal and current account deficits. While concern over public debt isn't as high as in some other countries, Kenya, , rated B1 stable, does face elevated domestic funding needs and debt affordability is constrained by the large interest bill compared with a relatively narrow revenue base.

Nigeria's main challenge is adjusting to lower oil prices. It is highly reliant on oil revenue and has limited fiscal buffers and very weak institutional capacity. Although the oil and gas sector makes up less than 10% of GDP, oil and gas exports accounted for 90% of goods exports and 60-70% of government revenue before the decline in oil prices. Overall levels of public debt are low, and in contrast to some other countries, most of this debt is denominated in local currency, insulating Nigeria from exchange rate risks.

However, non-oil tax revenue is one of the lowest in the world, and is a long-term constraint on the country's rating. Nigeria is also exposed to political risks stemming from the conflict with Boko Haram and attacks on oil infrastructure in the Niger Delta. After downgrading Nigeria by one notch in 2016, we assigned a stable outlook on Nigeria's B1 rating to reflect our view that the risks associated with weakening fiscal strength as well as external and economic pressures were offset by the strength of the government's balance sheet.

CAPMARKETSAFRICA: *Many commentators have argued that Africa is rising because of the emerging middle class. But other critics argued that the traditional concept of the middle class does not exist in Africa. What is your view and what reforms should be implemented to help the poorer population and give them access to this growing prosperity?*

DAVID ROGOVIC: Countries with stronger macroeconomic policies are better able to ensure the gains from economic growth are distributed across all segments of the population. Whether it's public sector management or the quality of social protections and safety nets, the quality of institutions and policy making are important factors in determining the resiliency of an economy and help to make growth more inclusive. As macroeconomic and fiscal vulnerabilities increase, countries with more robust institutional frameworks are better able to respond to economic shocks. What we've seen over the past few years however is a deterioration across a range of indicators for institutional and policy strength, which has coincided with a period of stagnant or declining standards of living for large parts of Africa's middle class.

CAPMARKETSAFRICA: *Thank you very much for granting this interview.*

IDENTIFYING AND MANAGING RISKS OF DOING BUSINESS IN NIGERIA

By **Ijeoma Uju**, Partner, Templars Law, Nigeria

Nigeria is Africa's most populous country with an estimated population of 186 million people and emerged Africa's largest economy in 2014.[1] It is projected that Nigeria will be one of the top 11 economies in the world by 2050.[2] Ordinarily, these indices (amongst others) should bolster investment in Nigeria and induce domestic trade on a scalable level. This has however not been the case; with the recent crash in the global oil price and security risks from militancy and terrorism, Nigeria's economy consistently contracted until early September 2017, when a GDP growth of about 0.55% was reported[3].

Currently, Nigeria ranks 169th in the World Bank's Ease of Doing Business Ranking 2017 and the World Bank has identified major drawbacks to include a sloppy taxation system, infrastructure deficit, difficulties in registering property and regulatory bottlenecks to starting business. The following paragraphs set out the primary risks investors grapple with and measures adopted to mitigate the impact of such risks as well as recent reforms initiated by the government towards mitigating such investment risks.

Infrastructure Deficit remains a critical Nigerian market risk with core infrastructure estimated to be a dismal 35% – 40% of GDP. Currently, the infrastructural deficit (to cure short term deficiencies) is said to be at least N2 trillion[4]. While there has been significant capital expenditure as well as varied restructuring of the operating model(s) to induce efficiency, getting electricity remains a major cost to investors and significant enough to impact business continuity.

In close connection with the infrastructure deficit is the weakness of institutions responsible for social/business administration. The average investor identifies lack of government support as a major reason for divestment. Some regulators are at the least peremptory and sometimes showing a significant lack of understanding of the regulated businesses. Corruption by public officers also spikes up the risks with simple business services protracted by administrative delays, prohibitive costs and bribery.

Political instability, sabotage of oil facilities by militants, insurgency and tribal dissent are also primary factors which have in recent times aggressed the stability of the business environment in Nigeria. With this uncertainty as well as erratic policy changes, investors are unable to project or guarantee the security of their investments.

In addition, uncertainty of projected commercial returns and/or benefits plunge the Nigerian market further down investors' ratings. Although Nigerian law guarantees foreign investors ownership of their investment in Nigeria and prohibits expropriation except in accordance with the law, this is of little consequence in a business environment which has fostered insecurity with investors recording significant income shavings from foreign exchange disparities, scarcity of foreign currency, inability to repatriate income/interest payments on loan efficiently, inflation and the recession.

More pertinent is the enforcement of contractual rights by the investor in court. Currently the lead time for completion of commercial suits is indeterminable and arbitrarily delayed. The judicial system is plagued with gross inefficiency arising from poor infrastructure, short staffing and corruption.

A large part of these issues require government intervention and legislative overhaul. The issues notwithstanding, investors have continued to consider Nigeria as a prime investment destination due to her huge potentials, market size, growth prospects, abundant resources (human and otherwise), and other enormous opportunities. To fully tap these opportunities, both the government and investors in Nigeria have overtime taken steps which mitigate the impact of the attendant risks and attract/secure investments. The paragraphs below outline some of these steps.

Pre-Investment Due diligence: Investors must as a first step, endeavour to get holistic information of legal requirements applicable to business in the sector within which they seek to invest. Knowledge of applicable requirements and commercial realities relevant to the sector will enable thoughtful structuring of transactions and adequate provision for attendant risks. A good understanding of the market is also a great advantage when collaborating with third parties as it enables protection of investors' interest and efficient allocation of responsibilities. It is imperative that investors engage qualified personnel with proven knowledge of doing business in the specific sector to guide on the legal, commercial and financial investigations into the market.

Reinforcing commercial agreements: Investors' interests in transactions are usually set out in commercial agreements and the security of such investments is largely dependent on the extent of protection provided in

1. Nigeria Emerges Africa's Largest Economy available at http://africanleadership.co.uk/nigeria-emerges-africas-largest-economy/ last accessed September 8, 2017.
2. The World in 2050: Will the shift in global economic power continue? Available at https://www.pwc.com/gx/en/issues/the-economy/assets/world-in-2050-february-2015.pdf last accessed 06 September 2017.
3. Finally, Nigeria Exits Recession, Reports 0.55% GDP Growth in Q2: https://www.thisdaylive.com/index.php/2017/09/05/finally-nigeria-exits-recession-reports-0-55-gdp-growth-in-q2/ last accessed September 8, 2017
4. https://guardian.ng/business-services/how-to-bridge-nigerias-2-trillion-infrastructure-deficit-by-experts/

such agreements. To this end, reinforcing commercial contracts is a vital part of risk mitigation. The inclusion of extensive warranties and indemnities help protect investor's interests, re-allocate risks and provide outlets for compensation where there is breach. Also, stabilization clauses could be included to offer protection from material adverse changes and political risks.

Where collaborating with third parties, for example in a joint venture with a local partner, involvement in the compliance process enables investors ascertain compliance with regulatory steps which offer protection; registration of agreements in transactions transferring property or technology to give effect to the transaction, involvement in such processes mitigate loss from negligence or non-compliance on the part of the local partner.

As a precautionary measure, investors include anti-corruption provisions which require compliance with stringent anti-corruption legislation such as the UK Bribery Act or the Foreign Corrupt Practices Act (FCPA) to deter corruption and ensuing risks of administrative fines or reputational damage. These laws offer more adequate protection from risks arising from corruption which is rife within the Nigerian market.

Finally, investors adopt foreign governing law and jurisdiction to protect their interests especially with respect to novel commercial transactions which may not be adequately addressed by Nigerian law. Also, investors may adopt alternative dispute resolution (in particular, arbitration) to manage risks arising from dysfunctionalities in the judicial system and prevent protracted adjudication of matters.

Guarantees and Insurance: Guarantees provide further assurance of compliance with the terms of agreements undertaken in commercial contracts. Guarantees could take varied forms including, financial bank guarantees, performance guarantees, and commercial guarantees amongst others. Depending on the nature of the investment, investors' are able to collaborate with banks, government and/or relevant third parties to structure guarantees which are fit for the purpose and adequately address potential risks. One of such guarantees is the Partial Risk Agreement (PRG) issued by the World Bank for power and gas projects undertaken by investors in Nigeria. The PRG has induced significant investor interest and investment in the power sector in Nigeria.

Adopting best practices: To a large extent (and subject to the requirements applicable to the sector in which the investment is to be made), investors are able to determine the governance structure for companies into which they invest. As an additional protective measure, investors align with corporate governance best practices to mitigate risks of mismanagement and negligence by unqualified personnel. Advanced internal control and audit structures aid management in identifying, quantifying and minimizing risks arising in the course of their investment.

Fund Hedging: Foreign investors must in the course of investment in Nigeria exchange foreign currencies for the Naira when transacting with receivables/payables (as the case may be), at the present exchange rate in Nigeria. Consequently, investors are subject to the risk of unfavourable changes to the exchange rate before payment is made or received in the subject currency. Where not properly managed, significant loss could be borne by investors.

In practice, investors hedge their risks in collaboration with banks/financial institutions using appropriate derivative products such as Futures, Swaps, Options, Forward contracts and the FMDQ Non-Deliverable Forward to prevent losses from foreign exchange disparities and devaluation.

Legislative monitoring: Some investors get involved in the legal process via campaigns and lobbying for policies which enhance the ease of doing business in Nigeria and protect their interests. It is useful to add that to mitigate volatility risks and anticipate any sudden changes of rules that could impact markets, investors should consider dedicating resources to legislative monitoring to ensure preparedness for changes as they occur.

The government on its part has also inaugurated the Presidential Enabling Business Environment Council (PEBEC). This is a committee constituted by the current government for the purpose of devising policy amendments which would result in the ease of doing business in Nigeria. Some recent policy changes include, introduction of expedited immigration visas, consolidation of permits, digitization of application processes, reduction in applicable regulatory fees. Also, the enforcement of the law by anti-corruption agencies and the promulgation of cybercrime, data protection and updated intellectual property legislation should in the long run give investors additional comfort. There are also plans to introduce specialised courts to enhance judicial processes and speed up the lead time within which disputes are resolved.

In conclusion, while there remain significant risks that impact doing business in Nigeria, investors are still able to thrive within the Nigerian market and actually induce change, and collaborate with the government to enact enabling laws which provide further assurance and stability for businesses.

Contributor's Profile
Ijeoma Uju is a Partner in the Corporate and Commercial practice group of Templars Law, Nigeria. She advises clients on Nigerian law and policy affecting the operation of businesses, the establishment of foreign businesses, foreign investments in Nigeria, company/business laws and regulations. She also provides corporate governance and compliance advice to clients in connection with local and international transactions.

CURRENCY RISK CAN BE MANAGED

By **Elaine Mabiletsa,** Senior Specialist: Currency Derivatives at the Johannesburg Stock Exchange

Africa's trade with the rest of the world has increased fourfold over the past twenty years and the continent is increasingly doing business with other developing regions. This is according to a joint report released earlier this year by the African Development Bank, the Organisation for Economic Co-operation and Development and the United Nations Development Programme.

Although the European Union remains Africa's largest trading partner, trade between Africa and Asia expanded fivefold between 2000 and 2015 and now accounts for 25% of the continent's total trade. China and India have become Africa's top trading partners by country, while its trade with the United States have been declining for the past six years.

As more goods and services flow between Africa and a wider range of destinations, the flow of currencies to and from the continent has also increased and become more complex. Exchange rates can be volatile and so increased levels of trade have also increased the need for ways to manage currency risk. The staggering growth of the JSE's Currency Derivatives Market can be attributed in part to the growing appetite among importers and exporters to find ways to protect themselves against exchange rate movements.

Both the total value and total number of contracts traded on this market has more than doubled every year since the launch of the market in 2007. Over the past decade it has shown an average annual growth rate of around 160% in the total value of contracts, while the average annual growth rate in the number of contracts traded during this period has been over 140%. An average of almost 240 000 currency derivative contracts, with an average total value of R3,2 billion, are traded on the JSE every day. So far this year the market has seen an increase in value and contracts traded of 17% and 34% respectively, compared to the same period last year.

The creation of the JSE's Currency Derivatives market moved currency trading exclusively from over the counter transactions to a transparent and regulated platform and provided a more easily accessible and cost effective way for retail and institutional investors, as well as importers and exporters, to hedge their currency risk.

Movement in African exchange rates are not only driven by these economies or the events that take place in them. Currency trade always takes place between the currencies of two countries. This means that factors like geopolitical tensions between the United States and North Korea or an interest rate announcement by the US Federal Reserve will impact the relative value of the dollar compared to other currencies, also representing currency risk. The rand/dollar currency pair remains the most actively traded currency pair on the JSE and constitutes around 80% of the total trade in the Currency Derivatives market. Although trade between the United States and Africa is declining, the US dollar remains an important de facto business currency in many African countries.

Volatility in exchange rates can eat away at profits even before goods arrive at the destination and can have an enormous impact on the ultimate cost of large infrastructure development programmes. Although currency futures and options cannot completely eliminate the risk associated with currency movements, it can help to create more certainty about the amount of cash a business will receive when concluding a foreign transaction. This can be crucial for planning purposes and managing cash flow to ensure funds are available for scheduled payments like taxes or annual employee bonuses. The ability to manage cash-flow can be more important to the survival of a business – especially in the case of smaller businesses – than taking the risk that the exchange rate will move in your favour.

Currency futures contracts help to provide businesses with greater certainty as they represent an agreement that gives the investor the right to buy or sell an underlying currency at a fixed exchange rate at a specified date in the future. One party to the agreement agrees to buy (longs it) the currency at a specified exchange rate and the other agrees to sell it (shorts it), at the expiry date of the contract.

Suppose a company is importing goods from the United States valued at $100 000 and this order is set to arrive in South Africa in three months. At the moment the rand/dollar exchange rate is at R13.00 and the importer would pay R1 300 000 if the order were to arrive today. However, he faces the risk that the rand/dollar exchange rate may be weaker by the time the order arrives, which means that it will cost more in rand terms. This is because at a weaker exchange rate the importer will need to pay more in rand for every dollar he has to buy to pay his supplier in the United States.

"As more goods and services flow between Africa and a wider range of destinations, the flow of currencies to and from the continent has also increased and become more complex."

The importer can use currency futures contracts to hedge against this risk. He would buy 100 currency futures contracts. Each contract represents an agreement to buy $1000 at R13.50 per dollar after three months. This would be the future price quoted to him as an indication of where the bank currently prices the exchange rate in three months. This future price is not a guarantee of where the exchange rate will be, but where the bank agrees to sell rands to the importer months from now. The exporter has therefore bought R1350 000 in exposure to the rand/dollar exchange rate.

Three months pass and when the order arrives the exchange rate has indeed weakened to R13.75 against the dollar. However, the futures contract means the importer has an agreement in place which allows him to still buy dollars at R13.50. He can now sell these dollars in the immediate dollar spot market for R13.75 and realise a profit that covers the extra cost the weakened exchange rate would have forced him to incur.

One of the greatest advantages of using exchange traded currency futures, is having the ability to gain a leveraging opportunity through margin. This means that the importer does not need to invest R1350 000 in futures contracts to get R1350 000 worth of exposure to the exchange rate, allowing him to hedge at a minimal cost.

With each contract entered into, the JSE does not require the full amount necessary to pay for the dollars the contract agrees to buy. Instead the JSE requires a 'deposit of good faith' referred to as margin. The current margin requirement is R1310 per contract. So for each $1000 in exposure, you only need to have R1,310 in your margin account. This margin requirement is reviewed and updated every two weeks.

Every day the JSE runs a valuation process called Mark to Market (MtM), which determines the value of each client's portfolio of currency futures. The value of each portfolio changes every day as the exchange rate changes. As the value of the portfolio changes the margin required to cover the exposure it represents also changes. The JSE requests this variation margin from its clients.

The importer above would have posted margin of R131,000 for R1,350,000 in exposure. As a result, he would have made a return of 19% if the exchange rate was at R13.75 when his futures contracts expire. If he had to invest the full amount of R1,350,000, he would have made a return of only 1.85%. This means the gearing he enjoyed from using the futures contract is 10.3 as his return was 10.3 times larger.

"Currency futures contracts provides businesses with greater certainty as they gives the investor the right to buy or sell an underlying currency at a fixed exchange rate at a specified date in the future."

From the above example it is clear that if the exchange rate had moved in the opposite direction, the importer would have made a loss. However, this loss would be offset by the cheaper price in rand he would be able to pay for dollars in the spot market. This means that ultimately the importer would not be any worse off than if the exchange rate had stayed the same. Although hedging therefore means that the importer forfeits the possible discount he would enjoy if the rand strengthens, he can now plan ahead as he has certainty about the maximum amount his order will cost when it arrives three months from now.

In response to demands for an instrument that can allow companies to hedge their currency risk with even greater precision, the JSE also launched "Any Day Expiry" contracts in 2011. These contracts allow traders the flexibility to pick the expiry date of the contracts they trade, allowing importers and exporters to match expiry dates with those of the delivery of goods.

The exchange created Quanto Futures which track the movement of both the euro/dollar and British pound/dollar exchange rates, but are settled at a fixed rate in Rands and the funds used to buy them stay in South Africa. This allows investors to get exposure to the world's most popular currency pairs without making use of their offshore allowance or exposing themselves to movements in the Rand.

In 2014 the JSE expanded its offering to include a range of African currency pairs. These futures and options offer exposure in the movement between the rand and the Kenyan shilling, the Zambian kwacha and the Botswana pula. The JSE also offers futures which track the movement in the Rand exchange rate to the US, Canadian and Australian dollars, the Chinese Renminbi, the Turkish Lira, the Swiss Franc and the Japanese Yen.

"Africa's trade with the rest of the world has increased fourfold over the past twenty years and the continent is increasingly doing business with other developing regions."

Contributor's Profile

Elaine Mabiletsa is a Senior Specialist: Currency Derivatives at the Johannesburg Stock Exchange (JSE). Elaine is responsible for managing the Currency Derivatives Market in terms of client and regulatory relations, product design and the daily coordination of processes to ensure that the market functions efficiently. She previously worked as a Foreign Exchange trader and on the FX Sales desk of a major bank. Elaine holds a BComm degree in Corporate Finance and Investments from the University of the Witwatersrand.

THE EFFECT OF GLOBAL AND REGIONAL ISSUES ON AFRICAN TRADE FINANCE

By **Simon Cook,** Trade & Export Finance Partner at Law Firm Sullivan & Worcester (UK LLP) in London

Who would have thought that nearly a decade after the financial crisis of 2007/2008, the global financial services industry would still be feeling the effects? Global trade and capital flows are yet to recover to pre-2008 levels and many believe that this is unlikely to happen in the short to medium term. At a time when the leader of the world's largest economy is attempting to scale back the very globalisation that has helped international finance to prosper, this is a worrying trend.

The main focus of this article is the effect on the financing of trade in Africa of certain global, macroeconomic and regional issues. In addition to looking at causal effects, this article will also address what the future may hold, and what those operating in Africa can do to adapt to what many consider to be the "new normal" for trade finance.

The period since the start of the 2007/2008 financial crisis has seen regulators requiring banks to take a far more robust and conservative approach to risk, both in terms of increased capital requirements and enhanced due diligence/compliance. The net effect of this change is that the cost of doing business in emerging markets in particular, has significantly increased at a time when banks need returns to increase in order to balance the effects of increased capital requirements and transactional costs.

This is not the only issue facing the banks though. General trade volumes have fallen. According to a recent report by the management consulting firm McKinsey, there has been a 65 per cent fall in gross cross-border capital flows since 2007 with $4.3 trillion dollars flowing across the globe in 2016, compared with $12.4 trillion in 2007. There is simply less trade to finance and this is equally true in Africa where trade figures are also much reduced.

There is an element of chicken and egg here – would there be more trade if there was more finance available – but this is not the only factor contributing to the drop in trade finance. If we look at Africa, whilst there are a few large syndicated deals, much of the trade that requires finance is being carried out by second tier players and by the SME market. It is exactly these types of entities that are proving more difficult and costly for banks to finance from a due diligence/compliance/capital requirements perspective than previously, with the result that many of these deals do not get financed despite otherwise being "good deals".

As noted above, the increased regulation and compliance issues affecting banks operating in the trade finance market is not the only driver for the fall in trade finance levels. The global fall in commodity prices has also taken its toll. Most notably, the price of a barrel of oil is at present around a third of the value at its 2008 peak. The price reduction can be explained in part by the 'shale revolution' in the United States and in part by reduced demand from China as it rebalances its economy away from manufacturing and towards consumption. In addition, Saudi Arabia has arguably kept production at steady levels (therefore ignoring reduced demand) to retain market share and outflank its resurgent rival Iran.

In terms of other commodities (most notably copper and iron ore), falling prices have been felt most severely in Africa. Whilst it is certainly possible to finance commodities at low prices (think of the Russian oil financings of the late 1990s when oil was at $14 per barrel or even lower) and it can provide borrowers with an opportunity for cheaper credit, the margins become that much thinner for both banks and borrowers.

At a time when bank returns need to increase to offset additional regulatory costs, the low prices erode yield, put pressure on borrower cashflows and make many deals uneconomic. This has led to various African economies once touted as examples of economic growth, facing severe economic problems due to reduced revenues and insufficient liquidity from the banking market. Growth has stagnated, for example, in Angola, Kenya, Nigeria and Sierra Leone.

As well as a lack of liquidity in the global financial markets generally, Africa faces other more regional issues. First of all, there is still a perception, particularly amongst those less familiar with operating on the continent, that Africa is a riskier place to do business in comparison with other emerging markets. Whilst the reality is somewhat different, the situation is not helped by individual overt examples of instability and corruption.

Nigeria has faced an Islamist insurgency from the Boko Haram group since 2009 in the country's north-eastern Borno State. The insurgency has affected the oil producing regions to an extent, but it is also seen as a destabilising factor.

The same is true for the Democratic Republic of Congo (DRC), where intermittent violence is a disruptive influence. If President Kabila does not step down from power before the end of 2017 (as he has promised) renewed violence is highly likely.

In Kenya, the result of the recent Presidential election has been rescinded with a re-run scheduled for 26 October.

Commentators are concerned about potential civil unrest depending on the result of the re-run. These are the types of issues which cause lenders (or more particularly their credit committees) and companies with substantial interests in the continent to consider the potential downside of doing business on the continent.

Considering the size of the continent, the level of instability overall is no greater than elsewhere in the emerging markets and actually far less in most African jurisdictions. There is however an inability to dispel the perception which many still hold.

Second, according to the McKinsey report referenced above there has been a noticeable decline since 2011 in correspondent banking relationships globally.

For banks involved in trade finance in African countries where they do not have a physical presence, this trend certainly applies to a greater extent than in other emerging markets. The trend could be explained by increased regulatory requirements (such as money laundering, sanctions, know your customer (KYC) etc) to which international lenders are subject. The requirements on their correspondent banks on the continent are not necessarily at the same level and this obviously leaves lenders with potential regulatory and reputational risks. For some of the international banks, this is simply a risk not worth taking and without these correspondent institutions it becomes increasingly difficult for them to do business where they are not on the ground. This seems to be the position disproportionally in Africa and has resulted in a significant gap in funding options.

Third, the perception of corruption still exists. Again, whilst the position has improved significantly in recent years and the number of instances causing concern is relatively small in the context of the volume of business done on the continent, there are still some examples which feed the perception that Africa has more problems than other emerging markets. A case in point is the ongoing investigation of a former oil minister and several large Western multinationals in Nigeria in relation to payments made in exchange for oil contracts. These high profile cases give a distorted view of the continent and seem to cause more consternation amongst international banks than equivalent issues elsewhere.

In terms of the future for Africa, it doesn't look like the issues discussed above are likely to change any time soon. So how can Africa overcome the difficulties it faces? In order to make a real difference, there should be two main objectives – increase sources of funding and seek better yields through increasing the value of what is produced. As regards the latter point, countries that produce large amounts of commodities such as the DRC, Cote D'Ivoire and South Africa are still only extractors. They do not possess the infrastructure to turn commodities into consumer products or products higher up the value chain which would provide them with enhanced cashflows and put them in a more advantageous position when seeking finance.

As regards seeking out additional sources of funding, in an environment of low prices, it is likely that new players will move into the market. This is particularly relevant for non-bank financial institutions such as investment funds. They are well placed to plug the funding gap and in particular the SME market. They don't have all of the same issues that bank funders have, in particular the capital requirements and the risk of significant fines from the regulator in the USA. In many instances, they can also move more quickly and provide more bespoke structures than the banks on lower value deals. Chinese lenders with large foreign reserves are also able to step in to replace the lost funding from the international banks, though it remains to be seen whether African borrowers would welcome such a move if they have the choice.

Looking forward, a rise in commodity prices would help but this is based on a number of factors falling into line which are difficult to predict, though an increase in demand from China amongst others is likely to be critical to this – this is quite timely as it comes at a pivotal time as the Chinese Communist Party convenes for its 19th National Congress in October. On a macroeconomic level, threats and rhetoric from North Korea present challenges as does the unpredictability of the current US administration. This looks an unlikely source of comfort at least in the short term.

The paradox to understand is that although many African economies continue to grow, global financial conditions and systemic risk present challenging conditions for both lenders and borrowers in Africa. As ever, the risks in Africa tend to be overplayed and perhaps attempting to educate those less familiar with the continent (and those credit committees that should be familiar with it) is one way forward. Either way, improving the position is likely to be a steady rather than a transforming process.

Contributor's Profile

Simon Cook is a partner in the Trade & Export Finance Group in law firm Sullivan & Worcester's London office. He has experience in a wide variety of banking and finance transactions, including structured trade finance, trade finance, commodity finance, project finance, invoice discounting facilities, warehouse finance, supply chain finance, ECA finance and borrowing-base facilities. He advises on transactions across Africa, the Middle East, Asia and the CIS. His work covers a range of financings acting for both lenders (including multilateral agencies, development finance institutions and investment funds, as well as commercial lenders) and borrowers notably in the oil, telecoms, soft commodities and metals sectors in Africa and the Middle East, where he was based for four years. Simon also acts for industry bodies such as the International Trade and Forfaiting Association (ITFA).

Simon has recently authored a chapter on Trade Finance in Globe Law and Business' new book entitled Oil and Gas Trading and chapters for Sweet & Maxwell's book entitled A Practitioner's Guide to Trade and Commodity Finance. In Chambers UK, 2017 Simon is a Ranked Lawyer for Commodities: Trade Finance and in the UK Legal 500, 2016 he is recognised as a Leading Individual.

ALTERNATIVE DISPUTE RESOLUTION TO GO MAINSTREAM

By **Bowmans**, South Africa

Alternative dispute resolution is set to emerge from the sidelines and go mainstream

Xorbitant legal costs and lengthy court delays have put access to justice out of the reach of many South Africans – but a turning point could be coming. This could see more and more citizens and businesses turning to mediation, arbitration and other alternative dispute resolution (ADR) methods to settle civil and commercial disputes, says conflict resolution veteran John Brand.

"The build-up of frustration among citizens over thwarted access to justice could come to a head – possibly with some positive results," says Brand, consultant to pan-African law firm Bowmans and director of Conflict Dynamics.

These positive results could take the form of an increase in demand for ADR services, which up to now have been slow to take off in civil and commercial disputes in South Africa. Brand says there was a strong sense at the 2017 Johannesburg Global Pound Conference on dispute resolution that the time has come for ADR to take root in South Africa's civil and commercial dispute resolution spheres.

Vasu Gounden, founder of the African Centre for the Constructive Resolution of Disputes (ACCORD), made a bold prediction: "I think we will reach a turning point in the next 10 years because of two factors: one, the population explosion; two, rapid urbanisation. Caseloads will grow exponentially as a result, and ADR will go mainstream."

The Johannesburg conference, hosted by Bowmans, was part of a global series of dispute resolution discussions that took place in 29 host cities, including Amsterdam, Mexico City, New York, Sao Paulo, Sydney and Toronto. "In Johannesburg, speaker after speaker made the point that something has to give in our overloaded and largely adversarial justice system of winners and losers," says Brand.

High costs of adversarial conflict

As things stand, the financial and relationship costs of adversarial dispute resolution are high, said Constitutional Court Judge Edwin Cameron, keynote speaker at the Johannesburg Global Pound Conference. He referred to a United Kingdom study, showing that conflict in British business cost about GBP 33 billion a year in 2006.

Apart from the legal costs and delays in adversarial litigation, there are other costs that are often not quantified at all. These include the costs of management time and focus, not to mention the anger, grief and other emotions invested in win-lose conflict resolution, he said. "Combined, these costs are an enormous financial drain on an economy."

ADR processes such as mediation, on the other hand, have the advantage of speed, cost-effectiveness and mutually acceptable outcomes.

"Between 70% and 80% of commercial disputes mediated in London each year are settled in one to two days, and a further 10% to 15% within a few weeks of mediation," Judge Cameron said. "This is usually achieved at a significantly reduced cost and without further damaging relationships already under strain as a result of a dispute."

The case for ADR is even stronger in South Africa, he said, where access to justice is out of the reach of most citizens and many businesses. The establishment of commercial ADR would also be an incentive for foreign investors, who require comfort about the protection of their rights in disputes. South Africa has fallen behind countries such as Mauritius, Namibia and Nigeria, and urgently needs to catch up.

Time for SA to catch up

"That starts with having a good, solid ADR framework within South Africa itself, and encouraging - or perhaps compelling - the legal community and parties to disputes to take ADR more seriously," says Brand.

The Labour Court has been leading the way in encouraging mediation, he says, as it can refuse to adjudicate a dispute unless it is convinced that the parties have attempted mediation. "No such requirement is in place for civil High Court matters, despite notorious case backlogs and bottlenecks."

The idea of compelling parties in civil or commercial disputes to attempt mediation before litigation met with mixed reactions at the Johannesburg Global Pound Conference.

Cautioning against mandatory mediation, Nadine Fourie, an advocate turned mediator, said making mediation a procedural requirement could result in an impoverished version of the process. "Instead of falling into the trap of thinking that ADR is only an alternative to litigation, the

legal community should be thinking of it as a way to defuse disputes before they clog up the courts," she said. On the other hand, Ebrahim Patelia, founder and CEO of Mediate Works, said there was no harm in forcing people through mediation, and pointed to the access to justice that the Commission for Conciliation, Mediation and Arbitration (CCMA) had brought to poorly resourced workers.

Brand says the answer perhaps lies in finding a happy medium between compelling parties to attempt ADR and encouraging them to do so voluntarily. "There are certain disputes that cry out for mediation rather than adjudication and vice versa, and the challenge is to find an appropriate balance."

One obstacle to the growth of ADR in South Africa, however, is that many misconceptions exist about ADR methods such as mediation and conciliation.

Myths and misconceptions

"Misconceptions abound," says Brand, using the example of a marital dispute where the legal representative of one party suggested conciliation as a way to resolve it. "The lawyer for the other party replied curtly, 'My client does not want to reconcile with your client.' The assumption was that mediation is only for restoring relationship whereas it is just as useful in achieving an agreed end to relationships."

This level of confusion is perhaps not surprising given that ADR is so underrepresented as a learning area. Dr Ali Chicktay, senior lecturer in the faculty of law at Wits University, said the legal fraternity had an obligation to change the type of lawyer being produced. New lawyers should not just be rights-focused, but also interest-focused, he said, referring to an approach to law that favours collaboration and negotiation as opposed solely to a legal competition.

Brand agrees. "University law faculties and business schools sometimes pay scant attention to ADR in their curricula, and students, if they study it at all, tend to see it as an easy credit."

He says the suggestion has been made that South African children should be taught about mediation and other ADR methods at school, perhaps as part of Life Orientation. "The earlier, the better. There is much that children can learn, for instance, about how to share resources in the playground."

"There are certain disputes that cry out for mediation rather than adjudication and vice versa, and the challenge is to find an appropriate balance."

The legal profession and ADR

If the predictions that ADR will come into its own in the near future turn out to be true, lawyers need not fear that they will be sidelined. Instead of losing clients and shedding work to others, lawyers could find themselves gaining, according to the views expressed at the Johannesburg Global Pound Conference.

Speakers' comments confirmed that they see a place for lawyers in dispute resolution of all kinds. The point was also made that ADR is not limited to mediation and includes arbitration and hybrid dispute resolution mechanisms such as med-arb, arb-med and expedited adjudicative processes.

"There are certain disputes that cry out for mediation rather than adjudication and vice versa, and the challenge is to find an appropriate balance."

Michael Murray, in-house legal counsel of Anglo American, said the determining factor for him in deciding what dispute resolution method was warranted was the nature of the dispute. Some disputes lend themselves to litigation and others to mediation.

Neels Claassen, retired judge and now chairperson of the South African Medico Legal Association, said the presence of attorneys on behalf of parties at medical negligence mediation was "a huge blessing. They understand the processes and protect clients' interests," he said, adding that there is considerable scope for lawyers in the field of mediation. "Instead of losing their bread and butter, they might even grow their practices assisting parties in mediation."

At this point in time, mediation and other ADR mechanisms are not nearly as familiar to South Africans as courtroom processes, says Brand. Yet, as caseloads escalate and frustration builds over the obstacles standing in the way of access to justice, citizens are likely to become increasingly receptive to the notion of alternatives.

"However long it takes for ADR to reach critical mass, change is inevitable," he says. "Access to justice depends on it and demands it."

All in all, hopes are high that ADR will emerge from the sidelines sooner rather than later, expanding South Africans' options for resolving civil and commercial conflict and bringing much-needed peace of mind to foreign investors seeking to protect their rights in the event of disputes.

AFRICA REAL ESTATE: EMERGING RISKS AND OPPORTUNITIES

By **Selwyn Blieden**, Head, Africa Coverage, Commercial Property Finance, Barclays Africa Group

All sources of value and all risks in the property market need to be considered with reference to specific assets, projects, companies and situations. Property fundamentals hold as much in Africa as they do elsewhere. So, as a property financier, we, at Barclays Africa, focus our attention on opportunities where we can understand the specifics of each potential transaction and monitor the fundamentals that support or challenge these specifics. That said, there are some broad trends that we can note. Both risks and opportunities are evolving as our market evolves. A key conclusion for us is that the opportunity in African real estate persists but needs to be appreciated in a more nuanced way than has historically been the case.

African Real Estate's Recent Risk History

Over the past years we have seen some unique risk situations playing out. In countries such as Mozambique, Angola and Nigeria, we have faced the challenges of currency availability. Such a risk would not easily have been foreseen by those operating in these previously dollar-flush commodity producers. The impact of hard-currency shortages has been severe. It has constrained the capacity of developers to import materials, pay service-providers, or remit returns to investors and debt providers. For other jurisdictions, Ghana and Zambia for example, currency volatility has taken its toll on the sector and challenged rental affordability and tenant planning. In addition, and partly as a consequence of macro-economic and currency risks, we have seen several instances of tenant failure or retreat. These include the withdrawal of major South African tenants from some markets such as Woolworths and Truworths exiting Nigeria. The combination of factors behind this risk landscape, particularly the commodity downturn and reflex regulatory responses to this, should not occur again any time soon. We do not, therefore, expect this harsh risk environment to persist.

However, even if we consider that we have witnessed quite a unique set of risks over the past years, in many markets there are specific risks that will not evaporate. These include risks that result from the fact that we have not yet graduated from the pioneering phase of the real estate market. In particular, rentals and expenses are denominated in hard currency for many markets. This means that some currency volatility risks need to be considered and these risks affect development budgeting and leasing. In addition, there is generally only a shallow pool of potential tenants to replace existing incumbents, leaving us with lingering leasing risk, even if tenants are not actively exiting from the market.

The Opportunity

Claims about the supply-demand mismatch were presented to raise private equity funds in the past. In essence such claims are correct. However, they need to be nuanced. Each project and each property business must tailor itself to the real needs of the market or it flirts with ultimate failure. Opportunities remain in all segments of the property market and there are some particular segments that have been manifestly under-served and offer the greatest opportunity. Industrial property (including logistics and light industrial properties) as well as residential property (covering the broad range of lower to upper-middle income housing) seem to offer vast scope across the markets that we are serving.

There will be benefits for the property market from new capital sources provided through capital markets and from institutional investors such as pension funds who are currently under-invested in the market. Effective participation of new funding sources depends on a good set of investible assets and property companies. So, in effect, there is the possibility of a positive self-perpetuating process being initiated, starting with the creation of suitable assets and the building of sustainable property businesses.

An Approach to the Market

As a major African financier, Barclays Africa has a long-term strategic horizon. Our products and service offerings are tailored to serve clients in the dynamic markets in which they operate. This requires us to build our capabilities and systems in order to support our clients, as they build resilient property businesses with strong assets and management systems.

These market players have benefited from the lessons learnt in riskier times and are active at managing those risks that persist. Importantly, they are better placed to mitigate new risks. In addition, they also stand to benefit from the improved access to sources of capital by establishing track-records and management structures needed by institutional investors.

We are using our local footprint in our 12 presence markets, to allow for direct management of risks and being near the sources of opportunity. Only by being close to our clients and understanding the regulatory and market moves that are sources of their risks and opportunities, can we adequately serve them. For us this is one of the lessons of the recent volatile past: only those who actively attempt to understand their market can understand and survive its risks and benefit from the rewards for taking such risk. For financiers with a long term outlook, the great opportunity should be in deepening our relationships and assisting credible market participants to build the robust property businesses that our markets need.

WHAT'S AN ICO? LIKE AN IPO BUT WITH DIGITAL COINS: QUICKTAKE Q&A

From Bloomberg Business News

An IPO, or initial public offering, offers a chance to make big money quickly by getting in on the ground floor of the next new Google or Facebook. An ICO, or initial coin offering, offers a chance to make big money quickly by getting in on the next new money. It's a formula that's led to over $2 billion being raised so far this year for a range of startups issuing digital tokens, a faster pace than any other early-stage venture capital funding. The rise of ICOs has prompted the U.S. Securities and Exchange Commission to issue cautions to investors and startups. China has gone further, banning ICOs entirely.

What's the goal of an ICO?

It's a way to raise money for new ventures trying to follow in the footsteps of digital currency pioneers bitcoin and ether. Despite controversies arising from fraud, theft and volatile speculation, they and their imitators have shown that it's possible to develop communities of users willing to try unconventional forms of money. An ICO lets start-ups bypass the venture-capital process by turning to something comparable to a Kickstarter campaign. Those putting up the money get access to technology companies that are usually the realm of only institutional or high-income investors. Plus, there may not be a need for an investor to wait years to cash in (as is true with most IPOs), so long as they can find a buyer for the coins they've bought.

How many ICOs have there been?

According to CoinSchedule.com, there were 46 in 2016 and 140 this year through Sept. 14. The pace slowed after the SEC warning in July. There are many more flavors of digital coins -- CoinMarketCap.com lists 1,109 -- but only a small group of start-ups have issued tokens that caught investors' imaginations. About half of the money raised in ICOs has gone to the 10 largest ventures. Filecoin, a data storage network, raised $257 million, while Tezos, which has developed its own secure block chain infrastructure, raised $232 million.

How do these digital currencies work?

Most are made to be used as a means of exchange inside an application. TakeBrave Software, which is developing a web browser in which readers are paid if they choose to view ads. Transactions will take place on a block chain, the digital ledger technology first developed for bitcoin and popularized for other uses by Ethereum. Since you can't stuff quarters into a block chain, Brave created a unit of exchange that it dubbed a Basic Attention Token, or BAT, which is a digital currency issued by the company.

What do ICO investors receive?

They get a virtual credit or token, which can mean different things in different ICOs. For instance, the buyers of BATs can wait and use them on the Brave browser when the system is up and running. That kind of token, with a specific use in an application likely to attract users, is known as a utility token. Holders of tokens can hang onto them not to use but in the hope of capital gains -- betting that increased demand will lead to the kind of price rise seen by bitcoin, which this year hit a high of more than $4,000. The proliferation of ICOs untethered from concrete uses, and confusion over which type of offer is a token and which is a security, prompted the SEC to issue its guidance.

How did Brave's ICO go?

It put 1 billion BAT up for sale in May. They were all sold in less than a minute, raising $35 million for the company.

Was that as extraordinary as it sounds?

Yes and no. Silicon Valley is full of companies that raise large sums while in their infancy. But usually the buyers are experienced venture capitalists. The ICO market is far more wide open, and the success of companies like Brave attracted investors of all sorts. Gnosis, a prediction market application based on the Ethereum block chain, raised $12.5 million in 12 minutes on April 24, resulting in a market value of almost $300 million despite having generated no revenue and having little more than a white paper describing what it intends to do. Its tokens, which would allow users to bet on things such as election outcomes, soared 200 percent over the summer.

What did the SEC say?

In an investor bulletin, it warned of the potential for fraud, scams and hacking -- one site had $7 million stolen during its ICO -- and said recovering any stolen funds can be difficult.

How serious is the risk?

There's certainly plenty of weirdness for potential investors to wade through. The long list of projects offering new currencies include ones endorsed by Paris Hilton and Floyd Mayweather, plus one to "help measure demand for synthetic rhino horn aphrodisiac pills."

What did the SEC do?

It said it will treat some ICOs as IPOs -- as security offerings, in other words, with all the registration requirements that entails, unless "a valid exemption applies." The SEC didn't lay out exactly what will trigger that designation. The issue, the agency said, is that some ICO promoters may be leading investors "to expect a return on their investment or to participate in a share of the returns" from the project -- which would make the ICO a security offering. To avoid running afoul of the law, ICO issuers can try to establish a clear link between the rights attached to a token and its usage and performance on the block chain platform. Companies can also impose a lock-up period during which the tokens can't be exchanged, or ban conversion entirely. The SEC was also said to be monitoring some pending ICOs, including one for a token called ParagonCoin that cannabis firms or nonprofits could use to pay rent at co-working spaces.

Why did China ban ICOs?

ICOs have been deemed a threat to China's financial market stability as authorities struggle to tame financing channels that sprawl beyond the traditional banking system. Widely seen as a way to sidestep venture capital funds, investment banks and capital controls, they have also increasingly captured the attention of central banks that see digital currencies as a threat to their reign.

WHAT ANALYSTS ARE SAYING ABOUT AFRICA'S ECONOMIC OUTLOOK

EGYPT: Reforms progressing but face challenges. The International Monetary Fund (IMF) considered that Egypt's reform program is on track following the transition to a flexible exchange rate regime, the elimination of foreign currency shortages and the substantial rise in the Central Bank of Egypt's (CBE) foreign currency reserves. It said that market confidence is returning, capital inflows are increasing and the balance of payments is improving. But it projected real GDP growth to accelerate modestly from 3.5% in the fiscal year that ended in June 2017 to 4.5% in FY2017/18. It noted that the CBE's foreign reserves rose from $17.1bn, or 3.1 months of import cover at end-June 2016, to $31bn, or 5.4 months of imports at the end of June 2017 and projected them at $30.2bn, or 5.1 months of import cover at end-June 2018. As the same time, the Fund indicated that the government immediate priority is to reduce the inflation rate of 32.8% at end-June 2017, which poses risks to macroeconomic stability.

SUDAN: Economic outlook dependent on deeper reforms and lifting of U.S. sanctions. The International Monetary Fund (IMF) indicated that economic conditions in Sudan remains challenging in the context of subdued activity, an elevated inflation rate, persistent fiscal deficits and U.S.-imposed economic sanctions. It also added that the country's growth prospects continue to be constrained by limited access to external financing and the withdrawal of foreign correspondent banking relationships. It noted that Sudanese authorities have implemented several reforms to restore macroeconomic stability and strengthen growth, such as allowing for greater exchange rate flexibility and reducing energy subsidies. However, the fund hinted that the country's medium-term outlook is contingent on implementing bold and broad-based reforms, as well as on improvements in the external environment. In this context, the IMF projected Sudan's real GDP growth to decelerate from 3.5% in 2016 to 3.2% in 2017.

NIGERIA: Sovereign ratings affirmed, outlook 'stable'. S&P Global Ratings affirmed at 'B' Nigeria's long- and short-term foreign and local currency sovereign credit ratings, with a 'stable' outlook. It noted that the ratings are supported by the country's low public debt level and modest fiscal deficit, but are mainly constrained by policy responses that could be difficult to predict. It projected the country's real GDP to grow by 1% in 2017 and by an average 3% during the 2017-20 period, compared to a contraction of 1.5% in 2016, supported by rising oil and agriculture production, and a gradual easing of foreign currency liquidity conditions. It expected the external financing needs to be covered by credit lines from the World Bank, the African Development Bank and from international capital markets.

Ghana: Sovereign ratings affirmed, outlook 'stable'. Fitch Ratings affirmed at 'B' Ghana's long-term foreign and local currency Issuer Default Ratings (IDRs), with a 'stable' outlook. It indicated that the ratings are supported by improving macroeconomic stability, which is driven by the authorities' commitment to put public finances on a sustainable path. However, it said that the ratings are constrained by high public debt levels, existing weaknesses in public finances and low GDP per capita. It forecast real GDP growth to accelerate from 3.5% in 2016 to 6% in 2017, driven by growth in hydrocarbon sector activity. It also pointed out that the decrease in the inflation rate from 15.4%. Fitch added that the country's external position is supported by its $915m Extended Credit Facility from the IMF, which allows the country to have access to other official financing sources and to international capital markets.

MOROCCO: Currency band to widen despite drop in foreign currency reserves. Fitch Ratings indicated that Bank Al-Maghrib plans to widen the Moroccan dirham's floating bands from +/- 0.3% to +/- 2.5%, despite the decline in the level of foreign currency reserves in the second quarter of 2017. It said that Morocco's net international reserves (NIR) dropped to their lowest level in two years to reach $20.9bn on July 7, 2017, which prompted authorities to postpone the broadening of the floating bands, initially planned for June 2017. Also, the agency anticipated that a further widening of the bands would have a limited impact on economic stability and the banking sector, given the banks' low foreign currency exposure and high share of dirham-denominated debt.

EGYPT: Agency takes rating actions on eight banks. Capital Intelligence Ratings upgraded from 'B-' to 'B' the long-term foreign currency ratings (FCRs) of National Bank of Egypt, Banque du Caire, Commercial International Bank, QNB ALAHLI, Bank of Alexandria, Arab African International Bank, Arab International Bank and the Export Development Bank of Egypt, with a 'stable' outlook. It also affirmed at 'B' all the banks' short-term FCRs. It attributed the upgrade to its similar action on Egypt's short- and long-term sovereign ratings, reflecting the high degree of correlation between the banks' FCRs and the sovereign's creditworthiness. It added that any improvement in the country's creditworthiness would have a corresponding effect on the banks' FCRs.

NIGERIA: Banks to benefit from decline in foreign currency lending. Moody's Investors Service considered the decline in foreign currency lending in Nigeria to be credit positive for local banks, as it would ease the pressure on their asset quality, capital adequacy and foreign exchange funding. It noted that banks reduced their foreign currency loans in an effort to de-risk their balance sheets and preserve foreign currency through the repayment of loans, non-renewal of expired facilities and conversion of loans from foreign currency to the naira. It expected banks to continue to face asset and foreign currency risks until 2018, due to the remaining high level of outstanding foreign currency loans. It said that the non-performing loans ratio rose from 5.3% at end-2015 to 14% at the end of 2016, and anticipated that asset quality would continue to deteriorate but at a slower pace.

AFRICAN EQUITY MARKET INDICATORS AS AT 30-SEPTEMBER-2017

Country Name	Index Name	Index at 30-September	1-month % Δ	YTD % Δ	1-Year % Δ	1-Year Low	1-Year High	30 Days Volatility %
Botswana	BSE DCI	8,930	-0.21	-5.00	-8.84	8,913	9,799	2.518
BRVM	IC Comp	236	-2.29	-19.20	-16.80	231	293	8.435
Egypt	EGX 30	13,889	5.25	12.50	76.23	7,873	13,970	10.936
Ghana	GSE ALSI	2,326	-1.11	37.71	31.09	1,508	2,458	15.585
Kenya	FTSE NSE15	162	-6.10	21.65	19.26	120	173	21.314
Malawi	MSE ALSI	19,920	0.87	49.55	44.94	12,861	20,127	10.701
Mauritius	SEMDEX	2,230	1.55	23.30	22.26	1,795	2,235	4.672
Morocco	MORALSI	12,140	-1.24	4.26	21.09	10,001	12,951	8.482
Namibia	Local	1,121	-3.78	4.92	7.50	982	1,170	13.402
Nigeria	NIG ALSI	35,440	-2.01	31.87	25.46	24,547	38,242	14.174
Rwanda	RSEASI	132	5.41	3.50	2.79	124	132	12.528
South Africa	JSE ALSI	55,615	-1.41	9.80	5.54	48,936	56,897	9.606
Swaziland	SSX ALSI	397	0.37	4.40	7.84	368	397	1.118
Tanzania	DAR ALSI	2,117	-3.32	-3.71	-14.15	1,979	2,535	16.859
Tunisia	TUNIS	6,181	-2.87	12.61	15.91	5,318	6,386	6.524
Uganda	USE ALSI	1,722	-5.90	16.55	14.16	1,331	1,837	17.899
Zambia	LuSE ALSI	4,974	2.39	18.54	13.03	4,010	5,029	13.693
Zimbabwe	IDX (USD)	418.39	83.17	189.48	321.85	99	418	48.917

SELECTED AFRICAN CURRENCY EXCHANGE Vs. US DOLLAR AS AT 30-SEPTEMBER-2017

Country Name	Currency Name	Index at 30-September	1-month % Δ	YTD % Δ	1-Year % Δ	1-Year Low	1-Year High	30 Days Volatility %
Algeria	Dinar	113.02	-2.76	-2.32	-3.05	107.60	113.59	3.592
Angola	Kwanza	167.17	0.32	0.66	-0.63	164.88	169.65	6.572
Botswana	Pula	0.10	-1.92	3.95	2.31	0.09	0.10	7.103
CFA Franc	CFA Franc	570.85	-2.74	10.35	3.55	547.82	636.39	12.239
Egypt	Pounds	17.64	0.09	2.83	-49.65	8.86	19.67	1.505
Ethiopia	Birr	23.60	-0.66	-5.14	-5.68	22.02	23.65	2.776
Ghana	Cedi	4.40	0.57	-3.75	-9.89	3.89	4.82	7.384
Kenya	Shillings	103.15	0.06	-0.62	-1.75	100.95	104.18	1.929
Malawi	Kwacha	726.20	-0.14	0.17	-0.67	715.00	730.00	1.818
Mauritius	Rupee	33.92	-3.86	6.05	4.22	31.84	36.47	9.939
Morocco	Dirham	9.42	-0.89	7.48	3.30	2.75	10.32	5.535
Mozambique	Metical	61.23	0.09	16.59	26.61	58.58	79.38	8.873
Nigeria	Naira	355.49	1.28	-11.30	-11.32	304.38	369.50	14.996
Rwanda	Franc	845.21	-0.31	-2.75	-4.69	425.00	852.00	2.281
South Africa	Rand	13.49	-3.80	1.83	2.97	12.31	14.65	10.151
Tanzania	Shilling	2,234.70	0.24	-2.40	-2.36	2,137.00	2,272.50	4.630
Tunisia	Dinar	2.47	-0.96	-6.20	-10.76	2.17	2.58	8.726
Uganda	Shilling	3,602.13	0.00	-0.16	-6.08	3,383.00	3,655.41	1.130
Zambia	Kwacha	9,725	-6.9409	2.19	1.29	8,766	10,175	9.209

SELECTED AFRICAN GOVERNMENT INTERNATIONAL BONDS AS AT 30-SEPTEMBER-2017

Country Name	Maturity	Price at 30-September	Mid-Yield at 30-September	1-month Yield Chg (%)	YTD Price Change (%)	Price 1-Year Low	Price 1-Year High	Amount Outstanding (US$ M)
Angola	12-Nov-25	107.594	8.197	-0.100	10.606	86.206	109.254	USD
Cameroon	19-Nov-25	118.679	6.503	-0.138	9.900	100.807	119.358	USD
Congo	30-Jun-29	80.604	8.663	-1.043	25.585	63.766	81.661	USD
Cameroon	19-Nov-25	118.679	6.503	-0.138	9.900	100.807	119.358	USD
Egypt	30-Apr-40	97.211	7.125	0.024	11.006	85.885	100.750	USD
Ethiopia	11-Dec-24	102.938	6.112	-0.192	11.180	87.394	103.513	USD
Gabon	16-Jun-25	99.951	6.956	0.036	6.050	81.889	102.405	USD
Ghana	14-Oct-30	130.276	7.141	-0.285	9.606	106.494	130.388	USD
Kenya	24-Jun-22	102.575	6.395	0.367	8.020	91.157	105.080	USD
Ivory Coast	31-Dec-32	98.375	6.006	0.063	5.850	88.498	100.264	USD
Morocco	11-Dec-42	112.043	4.680	0.076	9.692	100.880	116.038	USD
Namibia	29-Oct-25	101.916	4.958	0.012	3.556	98.076	106.312	USD
Nigeria	12-Jul-23	104.935	5.368	0.075	8.061	89.886	106.818	USD
Rwanda	02-May-23	104.724	5.626	-0.108	5.087	95.826	105.367	USD
Senegal	30-Jul-24	107.098	5.008	-0.116	6.911	96.756	108.197	USD
South Africa	24-Jul-44	97.190	5.578	0.162	-1.455	91.188	111.310	USD
Tanzania	09-Mar-20	105.112	5.263	-0.106	-0.158	102.708	106.272	USD
Tunisia	19-Sep-27	109.883	6.863	-0.051	3.416	106.090	110.396	USD
Zambia	30-Jul-27	108.961	7.653	0.033	9.866	89.124	110.965	USD

Compiled by Capital Markets in Africa

FMO

Entrepreneurial
Development
Bank

EMPOWERING PROGRESS

FMO IS THE DUTCH DEVELOPMENT BANK. FMO HAS INVESTED IN THE PRIVATE SECTOR IN EMERGING MARKETS FOR MORE THAN 45 YEARS.

Our mission is to empower entrepreneurs to build a better world. We offer our capital and knowledge to ambitious entrepreneurs, financial institutions and infrastructure and energy projects – so that today's emerging markets can become tomorrow's thriving ones.

Follow us:

www.fmo.nl
info@fmo.nl

Into Africa!

Delivering Bespoke Analysis, educative Articles and Intelligent Reports **INTO AFRICA** provides you with Insightful Commentaries from the world's top Economists, Analysts, Researchers, Policymakers and Opinion Leaders.

Packed with In-depth Reviews, unbiased Opinions, views and Exclusive Interviews **INTO AFRICA** is the platform for discovering the African Markets.

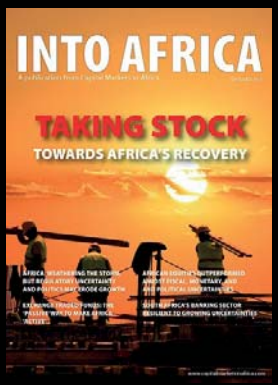
Uncover Africa's hidden potential as well as emerging threats today get **INTO AFRICA!**

Capital Markets in Africa

Makes Africa's markets accessible

To subscribe to **INTO AFRICA** send an email to intoafrica@capitalmarketsinafrica.com

To place adverts, sponsored features or Commentaries in **INTO AFRICA** or on our website www.capitalmarketsinafrica.com please contact theeditor@capitalmarketsinafrica.com



IntoAfrica

a publication from

CAPITAL MARKETS in Africa