

Lex Mundi in Africa: Key Market Developments

Volume 1, Issue 2

LexMundi
World Ready

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.



Your World Ready Partner in Africa.

Lex Mundi is World Ready for Your Opportunities and Challenges in Africa.

Whether entering African markets or seeking to expand across jurisdictions, a thorough understanding of emerging legal frameworks is critical.

With on-the-ground presence in 16 African countries and 500+ experienced legal advisors doing business across the continent, Lex Mundi member firms offer an unrivaled network of expertise with deep local insight and a flexible approach to legal solutions.

Together Lex Mundi member firms provide extensive coverage and are committed to delivering streamlined multijurisdictional solutions anywhere your business needs to go in Africa.

LexMundi
World Ready

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

To locate a Lex Mundi member firm in Africa: www.lexmundi.com/africa

Lex Mundi in Africa: Key Market Developments

About This Publication

This guide details key business and legal developments of interest to investors across major jurisdictions in Africa. Lex Mundi member firms with deep local roots and extensive on-the-ground capability have provided this information to help in-house counsel as well as other corporate and financial decision makers stay apprised of important trends within industries, law and regulation, and transactional activity.

The guide will be updated as additional submissions become available from Lex Mundi member firms. For the most up-to-date version, please visit the Africa Group page from the Lex Mundi website (www.lexmundi.com/Africa).



Lex Mundi is World Ready for Your Opportunities and Challenges in Africa

Whether you are entering African markets or seeking to expand across jurisdictions, a thorough understanding of emerging legal frameworks—both national and supranational—is a critical starting point. Complying with rising standards for corporate conduct and governance while navigating the multifaceted risk environment presents many unique challenges to doing business in Africa. In this context, the ability to respond to the accelerating pace of competition requires not only deep insight about local conditions but a flexible and innovative approach to negotiations.

Indigenous Insight

With more than 500 lawyers on the ground in 16 African jurisdictions, Lex Mundi's member firms have experience working together to provide investors coordinated legal advice and service covering all relevant areas of commercial and financial law, including mergers and acquisitions, dispute resolution, antitrust and competition, compliance and tax.

Seamless Cross-Border Services

Broad expansion into key sectors in Africa requires seamless cross-border legal service coupled with an understanding of the legal systems at work across the continent. Guided by Lex Mundi's seamless service protocols, member firms can assemble experienced client teams to deliver streamlined multijurisdictional solutions. These teams allow you to work with a single member law firm while benefiting from the broad, deep local expertise, know-how and connections of multiple Lex Mundi member firms.

Lex Mundi's member firms are working on transactions across the African continent. Together they provide extensive coverage and are committed to working together to provide on-the-ground expertise anywhere your business needs to go in Africa.

Lex Mundi Member Firm Contacts for Africa

Algeria

Samy Laghouati
laghouati@gide.com
Gide Algeria, established by
Gide Loyrette Nouel
Member firm for France with office in
Algeria
Tel 213.21.23.94.94

Angola

Catarina Levy Osório
catarinaosorio@angolalegalcircle.com
Angola Legal Circle Advogados,
a member of the MLGTS Legal Circle,
established by Morais Leitão, Galvão
Teles, Soares da Silva & Associados
Member firm for Portugal with
associated office in Angola
Tel 351.213.817.400

Democratic Republic of Congo (DRC)

Aimery de Schoutheete
a.deschoutheete@liedekerke.com
Thibaut Hollanders
t.hollanders@liedekerke.com
SAS Liedekerke Africa,
established by Liedekerke Wolters
Waelbroeck Kirkpatrick
Member firm for Belgium with office
in the DRC
Tel 243 854 854 854
Tel 243 84 84 39 330

Egypt

Khaled El Shalakany
kshalakany@shalakany.com
Emad El Shalakany
ess@shalakany.com
Aly El Shalakany
aly.shalakany@shalakany.com
Shalakany Law Office
Member firm for Egypt
Tel 202.272.88.888

Ghana

Ace Anan Ankomah
aaankomah@belonline.org
Bentsi-Enchill, Letsa & Ankomah
Member firm for Ghana
Tel 233.30.222.1171

Kenya

Philip Coulson
p.coulson@coulsonharney.com
Richard Harney
r.harney@coulsonharney.com
Bowmans
Member firm for Kenya
Tel 254.20.289.9000

Mauritius

Malcolm Moller
mmoller@applebyglobal.com
Appleby
Member firm for Bermuda with office in
Mauritius
Tel 230.203.4301

Morocco

Wacef Bentaibi
bentaibi@gide.com
Jean-François Levraud
levraud@gide.com
Gide Loyrette Nouel
Member firm for France with office in
Morocco
Tel 212.5.22.27.46.28

Mozambique

Fabricia de Almeida Henriques
fahenriques@mlc.co.mz
Mozambique Legal Circle Advogados,
a member of the MLGTS Legal Circle,
established by Morais Leitão, Galvão
Teles, Soares da Silva & Associados
Member firm for Portugal with
associated office in Mozambique
Tel 258.21.344000

Namibia

Josias Andries Agenbach
agenbach@koep.com.na
Koep & Partners
Member firm for Namibia
Tel 264.61.382800

Nigeria

Daniel Agbor
dan.agbor@uubo.org
Myma Belo-Osagie
myma.belo-osagie@uubo.org
Udoma Udo Udoma
udoma.udoma@uubo.org
Udo Udoma & Belo-Osagie
Member firm for Nigeria
Tel 234.1.4622307.10/8970622

Seychelles

Malcolm Moller
mmoller@applebyglobal.com
Appleby
Member firm for Bermuda with office in
Seychelles
Tel 248.429.5281

South Africa

Jonathan Lang
j.lang@bowman.co.za
Jonathan H. Schlosberg
j.schlosberg@bowman.co.za
Peter Whelan
p.whelan@bowman.co.za
Bowmans
Member firm for South Africa
Tel 27.11.669.9000

Tunisia

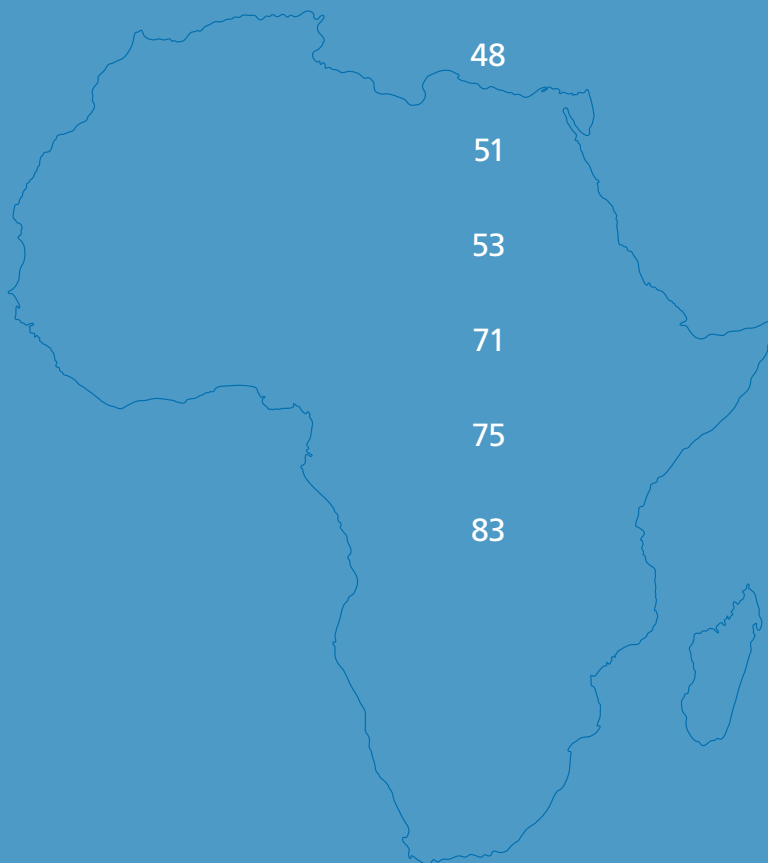
Samy Laghouati
laghouati@gide.com
Amina Larbi-Ezzine
larbi@gln-a.com
Gide Loyrette Nouel
Member firm for France with office in
Tunisia
Tel 216.71.891.993

Uganda

David Mpanga
dfkm@afmpanga.co.ug
Bowmans
Member firm for South Africa and Kenya
with office in Uganda
Tel 256.41.425.4540

Contents

Algeria	7
Angola	10
Democratic Republic of Congo	13
Egypt	19
Ghana	23
Kenya	30
Mauritius	37
Morocco	43
Mozambique	48
Namibia	51
Nigeria	53
Seychelles	71
South Africa	75
Uganda	83



Algeria

Prepared by Gide Algeria, established by Gide Loyrette Nouel,
Lex Mundi Member Firm for France with office in Algeria



Main trade partners are the **European Union**, the **NAFTA countries** and **China**.

Main imports are **equipment**, **food products** and **consumer goods**; it exports almost exclusively **oil, gas and their by-products**.

Dealing with construction **permits** requires **17 procedures**, takes **204 days** and costs **90 percent of warehouse value**.

Trends and Projects

Algeria's New Grand Mosque

The construction of the new Grand Mosque in the bay of Algiers is the most emblematic project of the country.

The new Grand Mosque is built by a Chinese consortium and will take approximately seventy-six months to complete.

The new Grand Mosque in Algeria will be third on the list of largest mosques in the world, and its minaret tower will definitely be the biggest of its kind. The large mosque will also be able to accommodate a staggering number of 120 thousand worshippers and will feature a wide variety of other facilities. The new Grand Mosque will have a beautiful, green recreational park and many grassy areas scattered around the complex.

There will also be a luxury hotel, religious buildings, a cultural science center, libraries, a shopping center, restaurants, conference room, laboratory, amphitheater, Quran house and media centers.

Project of the New Commercial Port

The project of the new commercial port planned on the site of El Hamdania in Cherchell (the province of Tipaza), will be constructed within seven years by an Algerian-Chinese consortium, but will be gradually put into service within four years.

The commissioning of the port infrastructure will connect Algeria with Southeast Asia, the Americas and Africa. As a result, entry of new world-class ship owners is expected to increase the volume of maritime traffic.

In order to serve national shipping trade, the future port will constitute a "hub" for regional trade. The port will have 23 docks with a processing capacity of 6.5 million containers and 25.7 million tons/year of general merchandise. El Hamdania is also an industrial development center, connected to the rail and motorway networks, benefiting, in its immediate vicinity from two sites totaling 2,000 hectares intended to industrial projects.

The new port will also be included in the circuits of international shipping in order to drain significant traffic. According to forecasts of the transport sector, port traffic in the country's center is expected to reach 35 million tons of goods/year by 2050, and two million 20-foot containers a year.

The project, worth USD 3.3 billion, will be financed through a Chinese long-term loan.

Legislative News

Finance Law for 2016

The *Finance Law for 2016* released on 31 December 2015 provides for an improvement on investment incentives and encouragement mechanisms such as the reduction from 100 percent to 30 percent of the share of profits which corresponds to tax exemptions or rebates obtained to be reinvested.

Finance Law for 2016 (cont'd)

The offer of land to economic operators is increased, which allows all private natural and legal persons to create, fit out and manage industrial or activity parks on non-agricultural land that belongs to them, under conditions defined by a specifications document drafted by the ministry in charge of investment, in line with the national development plan. Such plots of land may be the subject of ownership transfers.

In addition, except for investments conducted in the center and the south of the country, and job creation assistance mechanisms that remain unchanged, the interest rate subsidies granted by the Treasury for loans granted by banks and financial institutions to finance investment projects are now limited to 3 percent of the interest rate (as opposed to 2 percent previously for certain types of investment), and their duration is limited to 5 years.

Lastly, the *Finance Law for 2016* sanctions a measure to apply higher tax to imports of finished products that are similar to those manufactured in certain industrial sectors (in particular mechanic, automotive, food-related or pharmaceuticals), as well as to imported products that are concerned by the new licensing and quota systems.

New Regulation Applicable To Liaison Offices

The Algerian government released in December 2015 a *Ministerial Order* defining the new regime applicable to the liaison offices of foreign companies in Algeria. There was a lot of expectation around this text which aims to clarify the conditions under which liaison offices can open and operate in Algeria.

The *Order* confirms the temporary and the non-commercial nature of these representation structures of foreign companies, which are prohibited from performing any economic activities.

The opening of a liaison office remains subject to approval of the Ministry of Commerce, which has imposed stricter conditions including:

- payment of a registration duty of DZD 1,500,000 (approximately EUR 13,000), up from the previous amount of DZD 100,000;
- increase in the amount of blocked deposit during the existence of the liaison office, from USD 20,000 to USD 30,000;
- opening of a "CEDAC" bank account in the name of the liaison office, which must be credited with at least USD 5,000.

The approval is granted for two years by the Ministry of Commerce and is renewable.

In addition, consulting and customs declarant companies are expressly excluded from the possibility of creating a liaison office in Algeria.

New Regime Applicable to New Vehicles Dealers

The Algerian government has decided to significantly modify the regulations applicable to the importation and the distribution of vehicles in Algeria with the view to promote the development of a local manufacturing car industry in Algeria.

For the purpose of developing the Algerian automotive industry and national manufacturing, new vehicle dealers have now the obligation to invest in an industrial/semi-industrial activity in Algeria, or any other activity having a direct link with the automotive sector (on the mechanical sector as regards dealers of new machines and equipment). Existing dealers have a maximum of three years from 1 January 2014 (i.e. until 1 January 2017) to comply with this investment obligation. For new dealers, this three-year period runs from the date of delivery of the final agreement.

The most recent measure sets in place a specific importer license system that is similar in type to that of the World Trade Organization. An executive decree released in December 2015 sets out the application terms and conditions for the merchandise import and export license regimes.

New Regime Applicable to New Vehicles Dealers (cont'd)

In January 2016, the Ministry of Trade set the quota of vehicles admitted to importation in Algeria in 2016 to 152,000 units and has confirmed that these quotas would be allocated by taking into account the prior imports made by the applicant during the past three years.

Gide Algeria's Highlights

Gide Algeria is a member of the Gide international law firm, which operates from 14 offices in 12 countries.

Gide was the first international law firm to open a local office in Algeria (end of 2003). From then, the Algiers Office of Gide has built a leading position in assisting foreign corporations in their investments in Algeria and has been involved in the major M&A transactions and partnerships that have animated the Algerian market over the past 10 years.

We also assist foreign corporations in the negotiation and implementation of joint-venture project as well as in dispute resolutions matters in international arbitration procedures.

Our recent Project and M&A transactions include assisting on:

- An international private equity fund in the context of setting up of a SME private equity fund in partnership with an Algerian State owned bank.
- The UAE private equity fund, Abraaj, in two investments in Algeria in the logistics sector, Flèche Bleue Algérie in (2014), and in the paper transformation industry (Cepro) in (2015).
- The Russian telecommunication group Vimpelcom in the sale of its 51 percent interest in the leading mobile operator Djezzy (Orascom Telecom Algérie) to the Algerian sovereign fund (Fonds National d'Investissements) for several billion dollars, it was one of the most important M&A transactions in 2015.
- The Emirates sovereign wealth fund, Aabar Investments PJS, on the setting up of joint-ventures in the automotive sector in partnership with a German industrial consortium composed of Daimler, Ferrostaal, Rheinmetall, MTU and Deutz, on one side, and the Algerian Ministry of Defence and the National Company of Industrial Vehicles (SNVI), on the other side (2014).

Lex Mundi Member Contact



A **LexMundi** Member

Samy Laghouati - laghouati@gide.com

Gide Algeria, established by Gide Loyrette Nouel

Member firm for France with office in Algeria

Tel: 213.21.23.94.94

Angola

Prepared by Angola Legal Circle Advogados, a member of the MLGTS Legal Circle, established by Morais Leitão, Galvão Teles, Soares da Silva & Associados, Lex Mundi Member Firm for Portugal with associated office in Angola



Its main exports

are **crude oil**, diamonds, refined petroleum products, coffee, sisal, fish and fish products, timber, and cotton.

Foreign investment primarily directed

toward the

oil sector.

Main export partners

include **China**, the **United States**, **India**, and **South Africa**.

Trends and Projects

Energy

Angola will quintuple its energy capacity production by the year 2017. Due to a growth of approximately 12 percent per year in the consumption, Angola needs to more than duplicate its capacity for the production of electricity. In this context, the strategy for the enhancement of the capacity for production of electricity in the country includes, until 2017, the expansion of Cambambe's Dam, and the construction of Laúca's Dam and the combined cycle power plant dam of Soyo.

According to the Angolan State Budget for 2016, the energy sector GDP is expected to grow 20 percent.

Oil Production is expected to rise to 1.89 million barrels per day in 2016. In fact, some projections for the Angolan economy point that the growth of Angola's real GDP will be of 3.3 percent based on a 4.8 percent raise in oil production.

Reference shall finally be made to a major development program that is currently under way to increase production in the Block 0 concession, offshore Cabinda, which is expected to have substantial developments in 2016.

Mining Industry

In 2015 most of the Angolan productive sectors saw an economic slowdown due to the oil crisis which severely affected the country's economy. However, the diamonds sector was a stand out.

Latest predictions indicate that the Angolan mining industry will be worth USD 7.5 billion in 2018. However, the Angolan State Budget for 2016 predicts that the low production levels expected for the Catoca Project, which represents 60 percent of the diamond production, will result only in a minor growth of the mining and geology sector (estimated to be about 1.0 percent in 2016).

Banking and Insurance

Angola has seen interesting growth of its financial sector. The growth of the financial sector is mainly supported by banking as the insurance sector and capital markets are still underdeveloped.

However, it shall be noted that the insurance sector is expected to see a significant development, due to the increasing enforcement of insurance regulations in Angola that demand, for instance, motor insurance and work accidents insurance.

Regarding the banking sector, in the early 2000's the financial sector comprised just nine banks, and it now includes over twenty with private owned banks claiming a dominant share of the market. Bank branches proliferated throughout the country, extending even to remote and rural areas.

The capital markets sector is also undergoing a significant development. The chief of International Monetary Funds department for Angola recently highlighted the progress made by the Comissão do Mercado de Capitais (CMC) / Capital Markets Commission – the regulatory entity responsible for the capital markets sector. According to the chief of International Monetary Funds department for Angola, the creation of Bolsa de Dívida e Valores de Angola (Bodiva) / Angolan Stock and Debt exchange (BODiVA) represented a key step towards the diversification of the fund sources for the Angolan companies.

Infrastructure

Since the end of the civil war, the Angolan government has been making efforts to recover the infrastructure sector. The construction of a deep water port in Cabinda which began in June 2015 and the rehabilitation of a 1,344 km section of the Benguela railway between the Port of Lobito and the Democratic Republic of Congo are two good examples of significant infrastructure development.

The transportation network is being strengthened. A good example in the transports sector is the building of a new international airport near Luanda, along with a highway project connecting Luanda to the new airport.

Private Investment

According to the report from the 1st trimester of 2015 issued by National Agency for Private Investment (ANIP) (now extinguished), the total amount of private investment performed in Angola during said timeframe was of USD 272,037,689.67. It shall be highlighted that the Private Investment Regime suffered a major reform, which comprised, inter alia, the transfer of ANIP's responsibilities, as the former entity responsible for approving and supervising private investments, to the Ministerial department responsible for monitoring the dominant business sector.

Stock Exchange

Between May and November 2015 the Angolan Stock and Debt Exchange, which was recently created, registered a negotiation of approximately 500,000 treasury bonds, representing a total transactions volume of KZ 78.4 billion.

Legislative News

Financial Legal Framework

On the 17th of June 2015 the *Framework Law of Financial Institutions* was published in the *Angolan Official Gazette (Diário da República)*, setting forth the new legal framework applicable to activity of financial institutions in Angola. The *Framework Law of Financial Institutions* sought to suit the legal framework applicable to financial institutions to the demands of the international economic system, and to the increasing complexity of Angolan financial market.

The *Securities Code*, enacted on the 31st of August 2015, sets forth the legal framework applicable to the Capital Market and Derivative Instruments and the rules applicable to the supervision and regulation of securities, issuers, public takeover bids, regulated markets and correspondent infrastructures, prospectuses, services and investment activities in securities and derivatives, and the applicable sanctioning regime.

Corporate

Companies Incorporation Simplification Law, enacted in 17th of June 2015, introduces significant amendments that go beyond the incorporation of companies. In fact, this legislation aims to streamline, simplify and reduce the bureaucracy of several actions relevant to the everyday activity of enterprises in Angola.

Litigation

The new *Law on the Organization and Operation of the Judicial Courts*, enacted in the 2nd February 2015, establishes the principles and general rules on the organization and operation of the judicial courts, aiming to better adapt the administration of justice to the new *Constitution of the Republic of Angola* and the fundamental principles of the judiciary organization therein established, namely, the principle of right of access to the law and the courts, of administrative and financial autonomy of the courts, of independence of the judges, of public hearings at the courts and of the enforceability of court decisions.

Private Investment

The general legislation governing private investment in Angola has recently been amended, namely by the entry into force on the 11th of August and the 30th of September 2015, respectively, of the new *Private Investment Law* (“LIP”) and the respective *Regulation*. Contrary to what happened under the previous regime (which required a minimum investment of USD 1 million), the new *LIP* applies to foreign investment of “any amount”, reflecting the intention of the Angolan State to attract foreign investment, including that carried out by small and medium enterprises.

General Labour Law

The new *General Labour Law (LGT)* was enacted on the 15th of June 2015, repealing in its entirety its predecessor. Although labour legislation is scattered among several items of legislation, the main legislative instrument at this time is *LGT*, which sets out the principles and rules governing the employment relationship in Angola.

Angola Legal Circle’s Highlights

AIC’s is formed by lawyers experienced in business law practice, including foreign private investment, having assisted international clients in some of the most important and innovative projects in Angola of the past few years. The AIC team is actively involved in several foreign investment projects but also provides advice to local companies on a regular basis. AIC is particularly strong in M&A projects in respect of petroleum assets and other natural resources and has a solid and reputable practice associated with advice on banking, insurance, real estate and labor related matters.

We have recently advised:

- On the very first Angolan public venture capital fund and its implementation has been the source of extended interest both in Angola and elsewhere. This particular venture is a key project to the development and diversification of the Angolan economy.
- A major oil company within the context of a worldwide restructuring of clients operations in Angola including the transfer of participating interests in several oil blocks, and assisted on tax, labour and contractual issues. AIC is currently advising yet another major oil company within the context of a transfer of participating interests in two oil blocks.
- The promoters of the first retail luxury shopping centre in Luanda which entailed advice on investment structures and real estate issues.
- Several clients in ongoing agricultural projects and associated investment structures. AIC assists several clients with foreign investment and foreign exchange issues in several industries (most notably, environmental, hydro-electrical, retail).

Lex Mundi Member Contact



A **LexMundi** Member

Catarina Levy Osório - catarinaosorio@angolalegalcircle.com
Angola Legal Circle Advogados, a member of the MLGTS Legal Circle, established by Morais Leitão, Galvão Teles, Soares da Silva & Associados
Member firm for Portugal with associated office in Angola
Tel: 351.213.817.400

Democratic Republic of Congo

Prepared by SAS Liedekerke Africa, established by Liedekerke Wolters Waelbroeck Kirkpatrick, Lex Mundi Member Firm for Belgium with office in the Democratic Republic of Congo



Top three export

partners are **China, Belgium and Finland.**

80 million hectares

of arable land and over **1,100 minerals** and **precious metals** identified.

Economic growth

is expected at 8 percent, due to increased **investment** and **growth** in the extractive industries and the contributions of public works and tertiary sectors.

Trends and Projects

Construction

Since mid-2015, after the government increased the number of DRC provinces from 11 to 26 as mandated by the 2006 constitution, the main copper-producing region – Katanga – has been split into 4 separate provinces. The 400 kilometers (249 miles) journey from Kolwezi to the Zambian border now crosses 2 provinces – Haut- Katanga and Lualaba – instead of just one. Miners in Africa’s biggest copper producing region and in the world’s largest source of cobalt will soon have to deal with new provincial governments and possibly new local taxes. However, these changes could also spur upgrades to infrastructure such as roads and power lines. A huge project for the construction of new transport routes by rail and road to Angola and Zambia could reduce costs for miners.

Legislative News

Securities

The Uniform Act Organizing Collective Proceedings for Wiping off Debts (the UACP) was amended on 10 September 2015, and this amended version came into force on 24 December 2015. The new UACP is widely influenced by international best practices, including the *Model Law on Cross-Border Insolvency* of the *United Nations Commission on International Trade Law of 1997*, the *UNCITRAL Legislative Guide on Insolvency (2004)* as well as the French and Belgian laws on collective proceedings.

The new version of the *UACP* has clarified several aspects. The application scope has been extended, a specific section on defining key terms is added, and in particular a definition of the term insolvency is inserted. All these clarifications contribute to easing the comprehension and application of the *UACP*.

Another significant amendment is the introduction of an additional preventive proceeding, i.e., a confidential “conciliation proceeding”. This type of proceeding, besides the preventive regulation, serves to secure and foster extra-judicial solutions.

There are several amendments that reduce or lengthen the timelines of a procedure (including the duration of an expert’s mission). They are meant to address (and fill in) several gaps that were identified in the original *1998 UACP* and will be adapted and become amendments to the *Uniform Act Organizing Securities*.

Insurance

The Act No.15/005 of 17 March 2015 relating to the *Insurance Act* entered into force on 17 March 2016 (*the Act*). As from that date, the insurance sector in DRC has been liberalized. This means the National Insurance Company (SONAS) will lose its 40-year monopoly position in the market. The insurance sector is one of the driving sectors that foster the economic and social development of modern countries, so such liberalization can be seen as a huge step forward for DRC.

Insurance (cont'd)

This reform was necessary in order for the DRC to fulfil its international commitments relating to insurance. Insurance products must be exchanged on a free market, so the involvement of the State must remain minimal.

One of the main roles of the State is to determine the conditions applicable to the new insurance companies and insurance broker companies. Based on these conditions, it can grant them a license to operate in the insurance sector. One of the conditions set forth by the *Insurance Act* is that the insurance company must be incorporated either as a public limited liability company (société anonyme) (with more than one shareholder) or as a mutual insurance company (non-profit association) with a registered office in DRC. Insurance companies taking the form of a public limited liability company must have a minimum share capital of FC 10,000,000,000 (i.e. +/- EUR 9,090,000), and mutual insurance companies must have a minimum capital of FC 3,000,000,000 (i.e. +/- EUR 2,727,000).

Insurance brokers must be of good repute. This requirement means the broker must not have been ordered an irrevocable criminal sentence, declared personally bankrupt, etc. There are capacity requirements for individuals (age, having Congolese nationality), and requirements in terms of qualification and experience also.

Starting 17 March 2016, the SONAS and the insurance brokers, which are currently operating in DRC, will have to submit a request to the yet-to-be-set-up regulatory authority, ARCA, for regulatory purposes, in accordance with the *Insurance Act*.

Therefore, the State still has to adopt the relevant ordinances-law and decrees relating to the creation, organization, and functioning of the institutions so that it can urgently set up the regulatory and control authority (the so-called ARCA) as laid down in the *Insurance Act*. The State must also train the agents who will be in charge of carrying out regulatory supervision of the DRC insurance market.

Mining

At the beginning of 2013, the Congolese government initiated a review of the *2002 Mining Code*. This was provoked by some international institutions, such as the Carter Center and the World Bank, which pointed out several flaws in the *Code*. The review is also in line with a trend in African countries, such as Ivory Coast and Gabon, to deeply reform their legal frameworks on natural resources, in an attempt to address their “paradox of plenty.”

Contrary to the *2002 Mining Code*, the draft *New Mining Code* does not seek to increase the competitiveness of the Congolese mining sector. According to its explanatory statement, the *New Mining Code* aims to enhance the government’s control over the mining sector. We introduce some current provisions and look at the impact of this draft *New Mining Code*, some recent developments and a changing economic outlook on ongoing projects.

- **The “Bonus De Signature” – Signing Bonus**

The current provisions of the draft bill introduce the notion of “bonus de signature”. This signing bonus to be paid by the bidder (any bidder, not just the successful one) to the DRC State when it submits a tender relating to a mine that is documented by and belonging to the State. The draft bill does not specify how this bonus should be calculated, however, so this affects the level of predictability of the mining regime. It is therefore expected that specific additional regulations on this will be addressed.

- **The “Pas-De-Porte”**

The provisions of the current draft bill also introduce a second notion: the “pas-de-porte”, which is a non-refundable tax that the State is entitled to receive as remuneration for either its initial efforts in exploring an orebody that is considered as having been studied and documented by the State, or for recovering an orebody after the extinction of a mining exploitation right. This clause in fact merely institutionalizes an existing practice and constitutes an additional remuneration to the State for a site studied or documented by and belonging to the DRC State.

Mining Exploration Permits

The current provisions of the draft bill harmonize the validity period for mineral substances' research permits by setting a 5-year term on them, with a possibility of a one-time renewal. In addition, the draft bill requires candidates to secure a financial guarantee whose amount is five times more than the amount of the guarantee required by the *2002 Mining Code*. This change was recommended by the World Bank in 2010 as a way for the DRC State to increase profits gathered through mining resources.

New Mandatory Structure for Active Mining Companies

Mining companies wishing to obtain an exploitation permit in the DRC must incorporate a Congolese company. Thereafter, these companies are obliged to enter into a joint-venture with either the state-owned Gécamines Company (which already holds the largest number of permits) or a Congolese company with a mandatory stake assigned to the DRC State.

The draft bill increases this mandatory DRC stake from 5 to 10 percent, in line with the rates applied in the Ivorian and Gabonese *New Mining Codes*. (Note that the first version of the draft bill amending the *2002 Mining Code* disclosed in 2013 provided for a free and mandatory State participation of 15 percent. It seems like the Congolese government has been sensitive to the criticism expressed by various players in the mining sectors, such as the employers' union, hence the reduction in the percentage of the mandatory stake requirement.)

Operation Permits

The draft bill reduces the (renewable) validity period of exploitation permits from 30 to 25 years. By comparison, the *Gabonese Mining Code of 2015* provides for a validity period of 5 years, whereas in Ivory Coast sets it at 20 years.

The draft bill further toughens the conditions for exploitation permit renewals by introducing the requirement that there must be a mandatory 5 percent stake assignment to the DRC State for each permit renewal. In the long term, this new requirement could allow the DRC State to reach a critical 25 percent participation in mining companies. This hypothesis is far from being likely, but it demonstrates the increasing control that the DRC State wishes to seize on mining companies' profits. In this respect, it could have been more efficient and more predictable in terms of revenues gathered by the State if it imposed the mining companies to pay a fixed sum for each renewal. And this fixed sum could be calculated by using an objective parameter, such as the mine's value or the company's turnover.

Royalties

The draft bill substantially amends the system concerning royalties owed to the DRC State. Royalties will no longer be calculated based on the sales value of the relevant mineral (reduced by certain costs), but they will be based on its gross commercial value instead. This is defined in principle as being the average value of the product on the international market one month before its release.

Furthermore, the mining royalty rates will triple, on average, under the draft bill and compared to the rates imposed by the *2002 Mining Code*. Royalties will be due when the market product is released from the manufacturer after either treatment or transformation.

Introduction of Tax on "Super Profits"

The draft bill introduces a 50 percent tax on "super profits" gathered by mining companies. This tax will apply when market prices exceed 25 percent of those indicated in the feasibility study, which is the document demonstrating that the ore deposit is economically exploitable.

It could be that this amendment seeks to address shortcomings identified by the Congolese government in the *2002 Mining Code* with regard to the issue of the supplementary profits made by mining companies as a result of exceptional increases in market prices. Although this rule does not exist in the recent mining legislation of some central African countries, such as Ivory Coast or Gabon, the principle underlying this amendment can as such be

Introduction of Tax on “Super Profits” (cont’d)

considered legitimate on the DRC State side. However, the 50 percent rate applicable to “super profits” is way too high, and it is regrettable that the Congolese government does not provide any explanation on this rate.

More importantly, the current formulation of the section introducing the super profits allows for an unprofitable company to still be liable for the “super profits” tax.

Impact of the draft New Mining Code on ongoing projects

Current investors have legitimate concerns with regard to this draft *New Mining Code*, its entry into force, and the impact it will have on their current and potential investments. In this respect, the current *Mining Code* provides for a 10-year stability guarantee.

This stability guarantee provides that rights attached to valid mining rights at the promulgation date of the *Act* amending the *Mining Code* will remain untouched and vested for a 10-year period.

This period will start from either:

- the date of entry into force of the *Act* amending the *Mining Code*, which apply to mining rights that are valid at that time, or
- the date a mining right has been granted, provided it has been granted under a valid research permit that existed at the time of the entry into force of the *Act* amending the *Mining Code*.

However, the draft bill reduces the guarantee period of the stability clause from 10 to 5 years.

Because mining projects require considerable long-term investment, this is highly problematic in view of the DRC’s obligation to guarantee a stable investment environment under international investment law. The reduction of this stability guarantee could make the DRC mining sector considerably less attractive to potential investors.

Note, however, that this time period is more investor-friendly than the stability clause of the 2013 draft bill, which provided for a reduction from 10 to 3 years.

In September 2015, Glencore suspended its copper production in Katanga for 18 months in order to put pressure on market prices. This decision has had dramatic consequences for the DRC’s economy. Glencore was producing around 15% of the total copper production and has paid around USD 300 million in taxes in 2014.

Reduced demand for metal commodities in China, which represents the bigger share of the market, is reflected in metal prices consistently below past expectations in 2015.

These low metal prices have proved to be a difficult hurdle to overcome. Some major mining groups and plant manufacturers have engaged themselves in significant divestment and/or cost-cutting plans. This clearly shows that the situation is difficult.

The outlook for 2016 remains vague as forecasting Chinese demand is not easy at this stage. Whether the overall market situation will lead to major changes on the African mining scene and in the DRC, in particular, remains to be seen. Some movement can be expected, however, especially in the mines that produce and process lesser quality ore.

Defending National Interests through International Arbitration Proceedings

2015 marked an increased presence of the DRC in defending its interests in a few major international arbitration proceedings brought against the State by former service providers or joint-venture partners.

This increased effort in the DRC’s defending itself against claims is a direct consequence of the entry into force in early 2015 of the New York Convention on the Recognition of Foreign Arbitral Awards. Coupled with the State’s intention to review some major pieces of legislation, such as the *Congolese Mining Code*, this demonstrates an increased awareness in safeguarding national interests as well as their will to increase the (enforcement of) foreign investment regulations in the country. We anticipate this trend to continue in 2016.

Exemptions To The Percentages of Foreign-remunerated Workers as Regulated by DRC's Labor Law Code

A *Labour Law Code*, which applies to all employees and all employers operating in the DRC, was introduced on October 16, 2002. DRC labour law promotes the hiring of nationals. Therefore, protective regulations towards national workforce have been laid down, and expatriates are treated differently than nationals with respect to hiring conditions. Extra formalities, such as work cards and resident permits, must be complied with when hiring expatriates.

Moreover, the maximum percentage of foreign-remunerated workers allowed to work in a company operating in DRC is fixed by the *Labour Law Code*. This is 15 percent of the total workforce within the company and may not be exceeded. A *Ministerial Decree* dated October 26, 2005 has fixed the maximum authorized percentage of foreign workers per sector and per category of workers:

Sectors

Sectors	Categories I to V of the general classification of workers (percent)	Supervisory position (percent)	Managerial position (percent)
Agriculture	2	2.5	2
Extractive Industries	2	2.5	2
Industrial Industries	2	2.5	2
Construction and Public Works	2	2.5	2
Electricity, water and sanitary	2	2.5	2
Commerce	0	2	2
Banking, Insurance, and Real Estate	0	2	2
Transport	0	2	2
Services	0	2	2
New Technologies (ICT)	0	2	2

However, exemptions to the percentages above may be granted by the Minister of Employment and Social Foresight by means of a decree, based on a corresponding and reasoned advice issued by the National Commission of the Employment of the Foreigners, and on condition that the percentage of foreign employment requested does not exceed 50 percent of the legally authorized maximum. Liedekerke Africa regularly assists companies in fulfilling those special labour law formalities.

Liedekerke Africa's Highlights

To seize commercial opportunities in Africa, local insight and strong partners on the ground are essential. From our Brussels and London office, our Africa desk has developed long-standing relationships with companies and other stakeholders active across Francophone Africa especially the DRC over the last 30 years.

In 2014 Liedekerke incorporated its subsidiary Liedekerke Africa in the DRC. In January 2015, Liedekerke Africa opened up an office in Kinshasa to provide local administrative support and operational assistance to clients. This Kinshasa office also serves as an entry point for clients wishing to do business in all OHADA countries on the continent.

Our team collaborates closely with Me Lisette Bewa (Bewa & Associates), a renowned Congolese business lawyer, and is supported by a permanent lawyer on the ground in Lubumbashi, the DRC's second largest city and mining hub.

Lex Mundi Member Contact

Liedekerke
Africa

A **LexMundi** Member

Aimery de Schoutheete - a.deschoutheete@liedekerke.com

Thibaut Hollanders - t.hollanders@liedekerke.com

SAS Liedekerke Africa, established by
Liedekerke Wolters Waelbroeck Kirkpatrick
Member firm for Belgium with office in the
Democratic Republic of Congo

Tel: 243 854 854 854

Tel: 243 84 84 39 330

Egypt

Prepared by Shalakany Law Office, *Lex Mundi Member Firm for Egypt*



Main exports are

oil, mineral, chemical, and agricultural products, livestock, and textiles, including **cotton.**

Major

export

partners are **Italy,**

Spain, France,

Saudi Arabia,

India and Turkey.

Others include the

United States,

Brazil and

Argentina.

Steady

Population

growth is an intrinsic driver

for **economic growth.**

Legislative News

The most important new law passed and recently amended is the new *Tax Law*, reviewed and explained by our Senior and Managing Partner, Dr. Khaled El Shalakany, as follows:

Taxation Bill

The new *Tax Law Number 91* for the year 2015 (as amended) drastically simplified the Egyptian taxation system. Generally speaking, there are now seven types of taxes currently applicable in Egypt pursuant to *Law 91* and other specific tax laws (note that an eighth type, a 'Value Added Tax', is being contemplated but not yet issued):

- Tax on Company Profits
- Income Tax on Individuals
- General Sales Tax
- Real Estate Tax
- Withholding Tax on payment of Royalties and Fees abroad
- Tax on Local Dividends
- Capital Gains Tax on Sale of Shares and Stocks

These types of taxes are briefly outlined below.

Tax on Company Profits is applicable to the profit realized by all juristic persons operating in Egypt. This tax is also applicable to banks and public sector companies and units, as well as foreign banks and companies operating in Egypt, whether directly or through branches registered in the country. The tax rate is 22.5 percent of the net profits with two exceptions:

- The profits realized by oil exploration and production companies are subject to a higher tax rate of 40.55 percent; and
- The profits realized by the Suez Canal Authority, the Egyptian Petroleum Authority, and the Central Bank of Egypt are subject to a higher tax rebate of 40 percent of their profits.

An additional 'temporary' tax of 5 percent applicable for profits that exceed £E 1 million was added for tax on company profits by virtue of *Law No. 44 of 2014*. Recently a *Presidential decree no. 96* for the year 2015 limited the application of the additional tax to 1 year as of the current taxation year.

Income Tax on Individuals

The tax on income is, in general, applicable to the income of natural persons resident in Egypt for a cumulative period of over 183 days during the year. The tax covers four sources of income:

- Income from commercial and industrial activity;
- Salaries and wages;
- Income from non-commercial professions
- Income realized from real estate property.

Income Tax on Individuals (cont'd)

Generally, this is a progressive tax rate that reaches 22.5 percent for annual net income over £E 200,000 and exceptionally an additional five percent for net income above £E 1 million.

Income from Commercial and Industrial Activity

Tax from commercial and industrial activity includes the net profit realized from any commercial or industrial activity, even if such activity is limited to one transaction.

It includes profits realized by brokers and agents and, in general all profits realized by any person, agency, or office that acts as a broker, mediator, or agent for the sale, purchase, or lease of real estate property or any kinds of goods, services, or stocks. It also includes profits realized from real estate development, and rental of commercial and furnished property.

Salaries and Wages

Salaries and wages tax covers salaries, wages, bonuses, and annuities, excluding pensions and social insurance payments paid to individuals residing in Egypt or individuals residing abroad on account of services rendered in Egypt.

Income from Non-Commercial Professions

Tax on income from non-commercial professions includes net profits realized from the professions where the income is basically generated by the taxpayer's non-commercial work.

This also includes profits realized from professional work abroad if the main or permanent center for the taxpayer's professional practice is in Egypt. This category in effect includes revenue derived from any profession or activity not expressly covered by the *Law*, i.e., this is the default tax category.

Income Realized from Real Estate Property

Tax on revenue from real estate wealth includes revenue from exploitation of agricultural land and buildings.

Deductions

The categories outlined above include a number of deductions, exemptions and the like, and these should be reviewed individually. Income tax is payable on the excess of £E 6,500 of the total net income realized by the resident taxpayer during the year.

The tax rates on the net annual income of natural persons are as follows (in brackets):

- More than £E 6,500 and up to £E 30,000: 10 percent;
- More than £E 30,000 and up to £E 45,000: 15 percent;
- More than £E 45,000 and up to £E 200,000: 20 percent;
- More than £E 200,000: 22.5 percent

An additional 'temporary' tax of 5 percent applicable for profits that exceed £E 1 million was added for income tax on individuals by virtue of *Law No. 44 of 2014*. This temporary tax applies for 3 years, from 2014 to 2016.

General Sales Tax is applicable. The tax applies to the sale of goods (some goods are exempted) and certain types of services (mainly touristic, telecommunications, and entertainment services). Goods imported from abroad for commercial purposes are also subject to the tax. The tax rate for goods ranges from 10 percent (the general rate) up to 50 percent for certain specified goods. The tax rate for services ranges from five to 15 percent. The tax is added to the price of the goods or services in question, i.e., is payable by the consumer at the point of sale and remitted by the billing entity to the tax authorities.

Another exception is the Tax on States with regard to Contracting Works. Pursuant to an agreement between the Sales Tax Authority and the Egyptian Federation for Construction and Building Contractors, a circular setting out the rules and the bases of accountancy of the tax on sales with regard to contracting services has been adopted.

Deductions (cont'd)

The circular defines the different sectors of contracting works (e.g., buildings sector, electro-mechanic and building equipment sector, petroleum sector). Furthermore, the circular determines, firstly, the different percentages applicable to the different sectors of contracting works, and, secondly, the circular determines the base for computing the tax, namely, the added value of the works. It is to be noted that the rates of the tax differ if a sub-contractor exists and is used by the main contractor: the tax rates in the case of the existence of a sub-contractor vary from 2 percent to 3 percent.

The *Real Estate Tax law* was adopted in 2008, as amended, to be applicable, annually, on certain real estate property. This tax is applicable to owners and holders of usufruct and exploitation rights with regard to buildings, apartments and other built real estate they may own or hold title to.

It should be noted that this tax is primarily applicable on buildings, but also applies on exploited vacant lands. The tax is 10 percent on the rental of the property in question, after excluding 30 percent of the rental value for properties that are used for residential purposes and 32 percent of the rental value for properties that are used for nonresidential purposes.

Withholding Tax is for payments to entities and persons abroad on account of royalties and fees for services. The withholding tax is 20 percent on the whole amount (no deductions for costs), subject to reduction arising from any double taxation treaties that may be applicable.

Tax on Dividends is a new tax applied to natural persons (individuals) resident in Egypt on what they receive from dividends, whether locally or abroad in whatever form. The tax is 10 percent and is reduced to five percent if the shareholding in the company making the distribution exceeds 25 percent of the capital or voting rights – provided that the shares have been held for at least two years.

As for juristic persons, whether resident or not, and non-resident natural persons (individuals), they also pay 10 percent tax on the dividends realized from investment funds and stock in entities in Egypt. The tax is reduced to five percent if the held shares are 25 percent or more of the capital or voting rights – and have been held for at least two years; this tax will be subject to any applicable double taxation treaties. Dividends received by resident juristic persons from other resident juristic persons are exempt. Also, dividends in the form of free shares are exempt.

Capital Gains Tax on Sale of Shares and Stocks This applies to net profit realized and will be subject to the progressive rate applicable to Income Tax on Individuals that reaches 22.5 percent above £E 200,000 and the additional 5 percent for profits above £E 1 million. However, if the shares and stocks are listed in the Egyptian Stock Exchange, the rate would be only 10 percent. Recently a *Presidential decree no. 96* for the year 2015 suspended the application of Capital Gain Tax on listed securities for two years as of May 17, 2015.

Shalakany Law Office's Highlights

Shalakany Law Office continued to organize and sponsor important events for our clients and the public:

Tax Seminar

The Firm held a seminar on the updates to the *Taxation Law* in November 2015 at the Four Seasons – Nile Plaza Hotel in Cairo. Messrs. Emad El Shalakany and Mahmoud Shedid, both Senior Partners at Shalakany, along with representatives from PricewaterhouseCoopers, Ernst & Young, and KPMG spoke to the audience on Base Erosion and Profit Shifting, Tax Challenge Procedures, and Problems Encountered in the Course of Undertaking Litigation

Procedures for Tax Challenges. They also discussed the Tax Treatment of Dividends and Capital Gains in the Double Tax Treaties, and Dividends, Capital Gains, and Withholding Taxes on Payments to Non-residents as well as Transfer Pricing.

Banking Workshop

In February 2016, Shalakany Law Office sponsored a very successful Banking Workshop at the Conrad Hotel in Cairo regarding the *New Law on Taking Security on Moveable Assets*. The workshop included representatives from various financial institutions and they provided their perspective on the pros and cons of the *New Law*. They also presented their views on the potential impact the *New Law* will have on the provision of finance to various types of borrowers. Speakers and panelists attended from IFC, EBRD, BNPP and Linklaters as well as Shalakany's Mr. Aly El Shalakany, Senior Partner.

Mooting

Shalakany Law Office continues in its efforts to promote and develop mooting in Egypt. This year more than 30 students from various Egyptian law schools are participating in the third annual national arbitration moot in Cairo, organized and sponsored by Shalakany, which will be held later this spring. For the second year in a row, Shalakany also sponsored and coached a team of four top students from last year's national arbitration moot for an international mooting competition. For 6 months, Shalakany trained the team in legal research, writing and oral advocacy. The Shalakany sponsored team was the only team from Africa to compete in the Vis (East) International Commercial Arbitration Moot in Hong Kong, China just held at the beginning of March of this year. The team had strong competitions against teams from India, the United States, Germany and Indonesia.

News about our Partnership

We would like to announce some news about the partnership at Shalakany Law Office:

New Partner

Shalakany Law Office is pleased to announce that Mr. Hatem Darweesh, previously with Baker and McKenzie, has joined the Firm as a partner in the Dispute Resolution practice. Mr. Darweesh brings with him a wealth of experience in domestic and international dispute resolution legal practice and will be a very positive and dynamic addition to our partnership. He joined Shalakany Law Office as a new partner as of April 2016.

Promotion to Senior Partner

Dr. Moataz El Mahdy was promoted to Senior Partner as of January 2016.

Exit from Partnership

Shalakany Law Offices announces that Mr. Sameh Zein ElDin, after many years of excellent contribution to the Firm's practice, has exited the partnership effective March 1, 2016. The Firm is grateful for Mr. Zein ElDin's efforts and input over the years and we wish him the best of luck in his future endeavors.

Lex Mundi Member Contact



A **LexMundi** Member

Khaled El Shalakany - kshalakany@shalakany.com

Emad El Shalakany - ess@shalakany.com

Aly El Shalakany - aly.shalakany@shalakany.com

Shalakany Law Office

Member firm for Egypt

Tel: 202.272.88.888

Ghana

Prepared by Bentsi-Enchill, Letsa & Ankomah, *Lex Mundi Member Firm for Ghana*



Economy supports a population of **28.1 million** and relies on cocoa and oil production.

The country's **main export partners** are **South Africa, India, UAE, France, Vietnam, Italy and Switzerland.**

Trends and Projects

Oil and Gas

The Atuabo Gas Processing Plant commenced full commercial operation in 2015. The plant has the capacity to process 120 million standard cubic feet (mscf). The completion of the plant will help implement Ghana's no flaring of gas policy. The second Floating Production Storage Offloading vessel of the country for the Tweneboa-Enyenra-Ntomme (TEN) Field arrived in Ghana in March 2016, thus TEN is on course to commence production in July - August 2016. Government also completed all commercial contracts in 2015 for the commencement of production of non-associated gas from the Sankofa-Gye Nyame (SGN) Field. Production in SGN is expected to commence in 2017.

Power

The country is taking marked steps to help improve the power situation and the general trend is towards more private sector involvement in the generation of power. Ghana's installed generation capacity has increased from 2,100 MW in 2014 to 2,831 MW at the beginning of 2016. This was assisted by independent power producers commencing production. It is expected that an additional 1,000 MW will be added to the installed capacity by the end of 2016.

The commencement of commercial operation of the Atuabo Gas Processing Plant has helped to make power generation more economical by reducing reliance on oil, which is comparatively more expensive. The Atuabo plant currently supplies about 80 million standard cubic feet (mscf) of gas to the Volta River Authority's (VRA) Aboadze Thermal Plant which is generating about 320 MW.

Furthermore, to help solve high electricity transmission losses and distribution problems faced by the government owned distribution companies, government has started the process of implementing the Millennium Challenge Account Ghana Compact II which is geared towards increasing private sector investment in power generation, strengthening the distribution sector and improving access to electricity.

Taxes

The income tax laws of Ghana have been revised and consolidated into one tax code, the *Income Tax Act, 2015 (Act 896)* ("the ITA"). The ITA, which came into force on 1 January 2016, has widened the tax base by making Ghana's income tax rules applicable to the world-wide income of tax-resident companies, and restricting the utilization of capital allowance with respect to depreciating assets to the year to which the allowance relates. Any part of that capital allowance that is not utilized within the year is written off. Previously, the scope of application of income tax rules was limited to income accruing from a source in Ghana, and any part of capital allowance that was not utilized could be carried over for up to five years. Further, the ITA has removed the flat rate tax of 15 percent applicable to capital gains and gifts. Capital gains and gifts must now be included in the category to which they relate (e.g. investment income, employment income or business income). The gain or gift is then taxed at the rate of the relevant category. So, capital gains incurred upon realization of an asset will be taxed as business income, and any

Taxes (cont'd)

losses incurred upon realization of an asset will be offset against business income. Gifts given to employees must be included in that employee's employment income and taxed accordingly. Similarly, gifts received by a company must be included in the company's business income and taxed accordingly.

The thin capitalization rules, which define the debt-to-equity ratio above which interest payments on all forms of debt shall not be tax deductible, has increased from 2:1 to 3:1. Also, the limits on the applicability of the thin capitalization rules have been removed and so the rules now apply to all debt, not just shareholder and related party loans.

The *ITA* seeks to streamline the taxation regime of certain extractive industries and, to this end, it has introduced certain new concepts that apply to companies engaged in mining and petroleum operations. Some of these include the new requirement to include capital gains in the income of petroleum operations, the requirement that a mineral or a petroleum operation be treated as an independent business for income tax purposes if it pertains to a specific mine or petroleum right or where the mineral or petroleum operation shares a processing facility (a "separate mineral operation" or a "separate petroleum operation". Each separate mineral or petroleum operation is treated separately and tax liability calculated as if each operation was a separate business entity.

Another new concept is ring-fencing, which precludes the deduction of expenses wholly or exclusively incurred in relation to one mine from revenue derived from another mine. The *ITA* gives companies conducting mining and petroleum operations specific tax reliefs for certain expenditure incurred during the pre-production stages. Companies can now capitalize all capital and revenue expenditure incurred during reconnaissance and prospecting, or exploration and development. Deductions from the pool are not permitted, as pooled expenditure does not form part of the cost of a mining or petroleum asset. Capital allowances in respect of the pool may be utilized only when production commences.

Tax exemptions under the *ITA* include:

- Money in a decommissioning fund that is not surplus (any surplus decommissioning fund must be added to income and be taxed accordingly);
- Dividends paid by a resident company to another resident company that directly or indirectly controls at least 25 percent of the voting power in the paying company; and
- Gains from mergers, amalgamations, re-organizations provided that there is at least 50 percent continuity in underlying ownership of the asset.

The *ITA* also specifies different tax rates for various industries. These include:

No.	Industry	Tax Rates (percent)
1.	Hotel industry	22
2.	Food and beverages ¹	25
3.	Education	a. Private educational institution - 25 b. Public educational institution – 0
4.	Pharmaceuticals	25
5.	Cocoa farming	0

¹ This applies to business such as distribution, grocers, restaurants, etc

² *Non-traditional goods include:* Horticultural products; Processed and raw agriculture products grown Ghana; Wood products other than lumber and logs; Handicrafts; and Locally manufactured goods.

Taxes (cont'd)

No.	Industry	Tax Rates (percent)
6.	General agribusiness	25
7.	Export of non-traditional goods ²	8
8.	Manufacturing companies located outside Accra and Tema	This is based on the location of the manufacturing company: a. Regional capitals – 75 of rate of income tax applicable to other income; and b. Elsewhere in the country other than in Accra-Tema – 50 of the rate of income tax applicable to other income.
The <i>ITA</i> also grants certain tax concessions or holidays to specified industries. Under the <i>ITA</i> , industries entitled to the tax concessions are subject to tax at the rate of 1 percent during the period of tax concession.		
Tax concessions:		
9.	a. Tree crop farmers - 10 years tax concession; b. Cash crop or livestock farming - 5 years tax concession; c. Cattle rearing – 10 years tax concession; d. Agro-processing company – 5 years tax concession; e. Cocoa-by-product company – 5 years; f. Waste processing company – 7 years tax concession; g. Free zones –10 years	1 during period of tax concession

Parliament has also promulgated the *Energy Sector Levies Act 2015, (Act 899)*. This *Act* introduces an energy debt recovery levy of between 3 Ghana pesewas and 41 Ghana pesewas per litre on all petroleum products sold in the country. The levy is to help pay debts arising from previous subsidies on electricity and to help fund power infrastructure in the country.

The *VAT (Amendment) Act, 2015 (Act 890)*, which took effect in 2015 introduced a flat rate mechanism to account for tax payable on the supply of immovable property by real estate developers at a flat rate of 5 percent. Sale of immovable property by estate developers is now subsumed under supply of taxable goods.

Aviation Services

Major expansion works have resulted in the expansion of the existing floor area of the arrival hall of the Kotoka International Airport (“KIA”) by 5,148 m². This has reduced the long queues and decongested the arrival hall. Two new baggage handling equipment types have been installed bringing to four the number of baggage carousels in the arrival hall. The immigration booths have been increased by 14, bringing the total number of booths to 26. As part of the expansion works, the air condition system at the arrival hall has also been replaced. Work on the arrival hall is expected to be completed in October, 2016.

Security systems with ultra-modern IP based real time cameras with video analytics to provide 24-hour surveillance for both airside and landside have been installed to upgrade security at the airport. Phase 3 of the airport expansion project is ongoing and includes the reconstruction of taxiway, rehabilitation and extension of fuel mains and the provision of aeronautical ground lighting. There are plans to build a new international terminal—Terminal 3 to cater for the increasing volume of international traffic. Another important feature of the airport expansion project will be the construction of a business center which will involve, among others, the construction of a five-story airline offices complex, the construction of a transit hotel, the construction of four and five star hotels, the construction of a multi-story car park, the construction of offices for rental and the construction of a shopping mall.

Renovations work on the Kumasi Airport was completed in 2015. The renovation of the Kumasi Airport saw the installation of aeronautical ground lights which has resulted in domestic and regional airlines commencing night flights to Kumasi.

Work on the upgrading of the Tamale Airport as an alternative international airport to KIA has begun. The runway construction and installation of the air ground lighting system are on-going.

The Government has also announced plans to construct an aerodrome in Ho to be funded by the Ghana Airport Company Limited.

Ports and Harbors

Meridian Port Services which is a joint venture between Meridian Port Holdings Limited and the Ghana Ports and Harbors Authority has commenced a port expansion project to construct a 550,000 ton capacity state of the art container terminal at the Tema Port.

Following the ratification of a commercial agreement between the Government of Ghana, Lonrho Ports Ghana Limited and Atuabo Free Port Company (“AFP”) Limited for the facilitation of the Ghana Oil and Gas Free Port Project, AFP is set to commence construction of a port in Ghana.

Health Care Infrastructure

Government has vigorously embarked on the development of infrastructure to expand access to health care in all parts of the country. The following hospital construction works are currently ongoing:

- 600-bed University of Ghana Teaching Hospital;
- 420-bed Ridge Hospital expansion;
- Dodowa District Hospital Expansion project;
- Fomena District Hospital;
- Kumawu District Hospital;
- Abetifi District Hospital;
- Takoradi European District Hospital;
- Tamale Teaching Hospital; and
- Upper West Regional Hospital projects.

Legislative News

The Ghana Export/Import Bank (EXIM) Bill

The Parliament of Ghana has passed *EXIM Bill*. The passage of the *EXIM Bill* grants the government the power and authority to establish an EXIM Bank which will be a quasi-government institution that will act as an intermediary between national governments and exporters to issue export financing.

The Exim Bank is envisaged to be a non-deposit-taking institution, will assist exporters to compete internationally by providing insurance and finance facilities to support their overseas activities. The *EXIM Bill* is awaiting presidential assent for it to become law.

The Commodities Exchange (GCX) project

The government of Ghana has launched the GCX project to transform Ghana's agriculture through the establishment of the first modern commodity exchange in Ghana. The GCX project, which will become operational by the end of 2016, will establish state of the art, transparent and professional market institutions to promote the activities of Ghana's small-scale producers and all others in the marketing chain.

Customs Act, 2015 (Act 891) (the "Customs Act")

The *Customs Act* is a new legislation which consolidates all laws on the imposition of customs duties and provisions on customs operations into a single legislation and provides for other related matters. The *Customs Act* empowers the Customs Division of the Ghana Revenue Authority to conduct customs controls which will include random checks based on risk management with the objective of identifying and evaluating risks and to develop counter-measures. The *Customs Act* now gives the Commissioner-General of the Ghana Revenue Authority the power to select an area or a person based on the risk profile of that area or person and conduct a post-clearance audit to ascertain compliance with the customs laws. Under the *Customs Act*, the Commissioner -General is required to appoint authorized economic operators and register such persons in accordance with Regulations to the *Customs Act* and set up a customs laboratory, the functions of which however, are yet to be prescribed by the Regulations to the *Customs Act*. The *Customs (Amendment) Act, 2015 (Act 905)* amends section 1 of the *Customs Act* by replacing the Harmonised Commodity System Code with the Harmonized System - Common External Tariff and Other Schedules, also known as the ECOWAS Common External Tariff (the "ECOWAS CET"). The ECOWAS CET is a 5-band tariff system which was adopted by the Authority of Heads of State and Government, 29th session, adopted per Decision A/DEC.17/01/06, the ECOWAS CET for ECOWAS Member States.

The 5-band tariff structure of the ECOWAS CET is as follows:

Category	Description	Rate (percent)
0	Essential commodities	0
1	Essential commodities, raw materials, capital goods	5
2	Intermediate products	10
3	Consumer goods	20
4	Specific goods for economic development	35

The Excise Duty (Amendment) (No.2) Act, 2015 (the “Amendment No.2”)

Amended the list of goods liable to excise duty and has increased the rate of duty payable on excisable goods. For example, in the production of a malt drink where the quantity of local material that is used in the production is less than 50 percent of the total raw materials, an excise duty of 17.5 percent of the ex-factory price will be paid. Where the quantum of local raw materials used is between 50 percent and 70 percent, an excise duty of 10 percent of the ex-factory price will be paid. When the quantum of local raw materials is above 70 percent of the local materials used, an excise duty of 7.5 percent of the ex-factory price will be paid.

In the Production of beer stout other than indigenous beer, where the local materials used in the production is less than 50 percent, an excise duty at the rate of 47.5 percent of the ex-factory price will be paid. Where the local material used is between 50-70 percent, an excise duty at the rate of 32.5 percent of the ex-factory price will be paid. Where the local material used is above 70 percent, an excise duty at the rate of 10 percent of the ex-factory price will be paid.

Under the *Amendment No.2*, a new commodity, that is, cider beer has been included and the rate of duty payable is 17.5 percent of the ex-factory price.

Bentsi-Enchil, Letsa and Ankomah’s Highlights

Bentsi-Enchill, Letsa and Ankomah (“BELA”) is the leading corporate and commercial law firm in Ghana with in-depth expertise and experience in providing first-rate legal services for international and local clients in all sectors of the economy. BELA was founded in 1990 by Kojo Bentsi-Enchill. It is currently divided into seven partner-led practice groups namely: Energy and Natural Resources; Construction, Infrastructure and Transportation; Litigation and Dispute Resolution; Financial Services and Capital Markets; Business and Industry; Technology, Media and Telecommunications; and Employment, Pensions and Immigration.

- BELA has advised a major Asian bank on Ghanaian law issues relating to financing the setting up and the working capital requirements of an integrated farming project in Ghana.
- BELA has also reviewed a USD 200M Engineering Procurement Construction (EPC) Contract between the Government of Ghana and a foreign construction company for the construction of affordable housing. BELA’s role included reviewing the loan agreement and EPC Contract, consideration of off-taker requirements and providing assistance on procurement issues.
- BELA is advising on the entire project for the development, financing, design, procurement, engineering, manufacture, construction, completion, commissioning, ownership, operation and maintenance any additional facilities required to support a free port for the hydrocarbons industry in Ghana and the wider Gulf of Guinea Region including without limitation, (i) the fabrication of barges and vessels, (ii) an independent power producer and (iii) any additional project which the Developer deems necessary that is related to or supports the petrochemicals and/or hydrocarbons industry, the provision of the Port Services, the development of any infrastructure, buildings and facilities required in relation to the Free Port Complex or in order to provide the Port Services and any subsequent Port Expansion. We advised on the structure, governance, creation of an SPV, regulatory issues including parliamentary approval of Concession Agreement and negotiation of the Construction and Direct Agreement.
- BELA is advising on a port expansion project in Ghana as well as the expansion of connecting roads to a major port in Ghana. BELA’s advice includes conducting a legal due diligence exercise on the status of the land on which new facilities will be built in relation to the Port’s properties, and applicable regulatory compliance advice.
- BELA has acted on a number of shipping matters including ship finance, mortgages, charter party agreements, carriage of goods, claims for short landing of cargo, ship arrest and release etc. The firm has also represented clients in customs procedures and liability under the Fisheries law.
- BELA has worked on most of the high profile energy and natural gas deals in Ghana in recent years.

Bentsi-Enchil, Letsa and Ankomah's Highlights (cont'd)

- BELA has acted for and advised a range of companies from major multinationals to indigenous SMEs in the oil and gas sector regarding petroleum agreements, upstream and downstream restructuring, share/asset acquisitions and farm-in agreements, project finance and related security agreements (e.g. Government consent and support agreements, multilateral guarantees and insurance) and general compliance issues.
- The firm has worked on a range of the leading power projects in Ghana, both in traditional electricity generation and in renewables. Some highlights include providing a major international power company with general legal representation in respect of the proposed construction of a 1,000 MW combined fuel power plant in Ghana, advising on a proposed development of 650 MW wind farms in Ghana and providing an analysis of the risks affecting a power project in Ghana, advising on the development of various photovoltaic projects in Ghana, from 20 – 155 MW, including providing input into the obtaining of licenses, joint venture agreements, power purchase agreements and due diligence.
- BELA has acted for many international and local mining as well as mining services companies across the whole gamut of legal issues affecting the sector.
- BELA has in-depth experience in international arbitration and specializes in complex commercial arbitrations and post-award enforcement. We have acted as Ghanaian counsel for a number of multinational companies in international arbitration.

Lex Mundi Member Contact



A **LexMundi** Member

Ace Anan Ankomah - aaankomah@belonline.org

Bentsi-Enchill, Letsa & Ankomah

Member firm for Ghana

Tel: 233.30.222.1171

Kenya

Prepared by Bowmans, Lex Mundi Member Firm for Kenya



Economy

relies on industries including small-scale consumer goods, agriculture products, horticulture, oil refining, aluminum, steel, lead, cement, commercial ship repair and tourism.

Main exports are **tea**, horticultural products, coffee, petroleum products, fish and cement.

Largest export countries include **Uganda**, **Tanzania**, **Netherlands**, **United Kingdom** and the **United States**.

Trends and Projects

Energy and Power

The energy sector in Kenya is among the most active in Africa and continues to grow with installed electricity capacity increasing from 1600 MW in 2009 to 2298 MW in 2015. According to Vision 2030, Kenya's development blueprint, the Kenyan government plans to increase electricity generation capacity to 23,000 MW by 2030. A critical component of this sector is renewable energy for which several projects are underway.

Institutional and Policy Reforms

The recent injection of an additional 280 MW produced in Olkaria to the national grid in December has lifted Kenya's global ranking as the eighth largest producer of geothermal energy. Kenya's installed steam power capacity now stands at 579 MW, ahead of giant economies such as Japan, Russia, China and Germany. The additional generation of geothermal power will contribute to lowering the cost of doing business by displacing thermal power and adds to Kenya's green energy initiatives. The USD 1.3 billion Olkaria project is Africa's largest steam project. Studies indicate that Kenya has the potential to produce about 10,000 MW of geothermal power from the Rift Valley basin. The state-funded Geothermal Development Company (GDC) has in this regard signed a deal with three independent power producers (IPPs) - Ormat Technologies, Quantum Power and Sosian Energy - who will each build a 35 MW steam power plant under a build-own-operate (BOO) model.

In relation to solar energy, Kenya ranks 46th in the world in the generation of solar energy. The Kenyan Government has in the recent past jointly invested USD 1.2 billion with the private sector to build solar power plants across the country. Solar products have been made even more accessible to customers in "off-grid" areas with the removal of 16 percent VAT, which had previously been introduced on all solar products.

The Government of Kenya has estimated that 500 MW of wind capacity will be installed in Kenya over the coming years and aims to have 2 GW of installed wind capacity by 2030. In order to encourage independent investment in the wind sector, the Government has introduced a feed-in tariff (FIT) similar to those that exist in Europe in order to attract investments in the wind sector. There is in fact a FIT policy on wind energy in place. On wind energy projects currently underway, the Lake Turkana Wind Power Project, which is the largest single wind power project to be constructed in Africa, recently received the first disbursement of funds. The KES 300 million project is set to produce 310 MW beginning the year 2017 and will comprise approximately 20 percent of Kenya's currently installed generating capacity.

On the fossil fuel front, a consortium led by Centum Investment and Gulf Energy won the bid to build the Lamu Power Plant, which will initially produce power using coal sourced from South Africa and later on switch to local coal mined from Kitui County's Mui Basin.

In addition to the pursuit of robust energy projects, efforts are being made to reduce the cost of energy by between 25 - 30 percent so as to stimulate the manufacturing and the industrial sectors. The government is working towards creating a conducive environment through favorable regulatory frameworks such as the formulation of the National Energy and Petroleum Policy from June 2015.

Institutional and Policy Reforms (cont'd)

which seeks to ensure competitively priced energy while protecting the environment. According to this policy the government explores and adopts financing options from local and international sources for cost-effective utilization of all energy resources.

Financial Sector

The Kenyan economy has experienced significant growth in the financial sector. This growth can be attributed to among others the introduction of new vehicles to promote investment.

Against the backdrop of the enactment of the *Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013*, the Nairobi Securities Exchange in October 2015 became the fourth African bourse to launch the Real Estate Investment Trust (REITs) market. The launch of REITs further enhances financial inclusion in Kenyan capital markets as the target, average investors belonging to the growing middle income segment, will now be able to invest in large-scale commercial, residential and industrial properties, without requiring large sums of money. Kenya's property market has seen exponential growth over the years. Kenya's property values have grown to become among the highest in the world. The spill-over effect of this is high cost of putting up developments. The market is however still facing extreme under-supply especially in housing for the lower segment of the populace. Investors stand to gain from both the income and capital appreciation of the portfolio of properties a REITs fund is invested in. The real estate sector also stands to benefit immensely. Groups and cooperatives will be able to invest in the market. Individuals will also be able to get a stake in real estate with investments of sums of as low as KES 5,000 depending on the structure of the specific REIT. Specialized REITs will be encouraged especially those relating to the low and medium cost residential properties. This will allow for more development of housing for this particular group which is under-supplied. In addition, In order to further attract investors, REITs are exempt from certain taxes including stamp duty on the transfer of properties.

The *Central Bank of Kenya Act* has been amended to allow retail investors to participate in the Government debt market, in smaller denominations. In addition, bids can now be submitted.

Also, to encourage confidence and enhance the positioning of Kenya as a premier investment destination, the Capital Markets Authority signed a memorandum of understanding with the Chartered Institute for Securities & Investment for the introduction of international certification standards in the industry.

Legislative News

Laws relating to Business Associations

Several enactments from 2015 are expected to change Kenya's business landscape. These include the *Companies Act*, the *Insolvency Act*, the *Special Economic Zones Act*, the *Business Registration Service Act*, the *Companies and Insolvency Legislation (Consequential Amendments) Act 2015* and *Finance Act amendments 2015*. The new laws will go a long way in reducing the bureaucratic procedures that characterized the previous regime.

Companies Act (2015)

A new *Companies Act* was recently enacted with the aim of bringing the law into the reality of current business practices. There are several provisions that have been introduced that show a marked movement from the previous regime.

The process of incorporation can be said to have been eased to a large extent. There are less documentation requirements under the new *Act*. These include the following;

- articles of association;
- the model memorandum depending on the company type, e.g. if it is a company with share capital then a special form is to be used (CR2);
- statements to be submitted to the registrar that include the statement of capital and initial shareholdings, statement of officers of the company and statement of registered office;

Companies Act (2015) (cont'd)

- notice of residential address of director(s); and
- statement of nominal capital.

What is notable in the process of incorporation is the abolition of the requirement for an objects clause. This means that companies can engage in a wide variety of business activities without having to provide for any and every conceivable object in its incorporation documents. The *Act* provides that objects of a company are unrestricted unless the articles of the company expressly restrict the objects of the company.

Under the new regime it is now possible for a company to have one member as opposed to the previous minimum membership of 2. This is possible for both public and private companies and does away with the need for nominee members holding shares in trust.

The new *Act* recognizes the growing young Kenyan population and hence lowers the minimum age for directorship from 21 to 18 years of age.

There is also no need to engage professionals in the incorporation process as one can pursue incorporation individually.

It is notable that the new *Companies Act* entails fewer compliance requirements than the previous *Act* as it provides that there is no need for private companies to appoint auditors or provide audited financials. They are only required to file annual returns on the anniversary date of incorporation. There is also no requirement for private companies to hold AGMs.

The new *Act* recognizes that the wide use of electronic communication in the conduct of business and allows companies to make its public announcements and send notices to its shareholders through company websites.

Insolvency Act (2015)

The *Insolvency Act, 2015 (the "Act")* was assented into law on 11th September 2015. It consolidates procedures relating to bankruptcy of natural persons and corporate insolvency matters, bringing them under one *Act*. Winding-up of companies was previously provided for under *Part VI* of the old *Companies Act*, while the insolvency of natural persons was covered in the *Bankruptcy Act*. The *Act* adopts a rehabilitation approach in dealing with insolvency as unlike previous legislations, the *Act* seeks to redeem insolvent companies through administration as opposed to subjecting them to liquidation. The *Act* focuses more on assisting insolvent natural persons, unincorporated entities and insolvent corporate bodies whose financial position is redeemable to continue operating as going concerns so that they may be able to meet their financial obligations to the satisfaction of their creditors. This includes, in the case of companies, the introduction of rights to conduct restructurings and bankruptcy work-outs under an administration process. In the case of bankruptcy of natural persons, the *Act* provides for alternatives to bankruptcy in line with the purport of the *Act* of rehabilitating debtors in dire financial conditions. These alternatives include making a proposal to creditors on how he/she will settle the debts, entering a summary instalment order where he would pay the debts in installments, or entering the no asset procedure where he states that he has no realizable assets.

The new *Act* is of great significance to investors who have been in operation in the country and may want to close down their Kenyan subsidiaries.

The *Insolvency Act* also grants the force of law to the *UNCITRAL Model Law on Cross Border Insolvency* as set out in the *Fifth Schedule to the Act*. The *model law* is designed to assist States to equip their insolvency laws with a modern, harmonized and fair framework to address more effectively instances of cross-border insolvency which include cases where the insolvent debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

The *Act* creates the office of Insolvency practitioners regulated and approved to work as such by an Insolvency Practitioners board, also created under the *Act*. This seeks to ensure adherence to certain minimum standards and thus prevent the abuse of the profession as used to happen in the past where persons acting as liquidators, receivers and administrators ended up misusing their positions to the detriment of debtors. The regulation of the profession and the institution of a code of conduct under the *Act* is also informed by the need to ensure that

Insolvency Act (2015) (cont'd)

insolvency practitioners do not overcharge their fees for services against the debtors, and then leaving them to continue to drown in debt as this goes contrary to the intent of having insolvency laws.

The amounts in the *Act* have also been amended to reflect prevailing economic conditions. Previously one could be deemed unable to pay their debts if they failed to pay an amount of KES 1,000. The No Asset procedure provided for in *section 14* of the *Act* is one such example where a debtor with no realizable assets to state so to the court and his creditors, and thus be discharged of his debts if at all they are between KES 100,000 and not in excess of KES 1 million. This provision is meant to ensure that a business is not dissolved owing to some small debts and adopts the debt forgiveness concept.

Special Economic Zones Act (2015)

1. *The Special Economic Zones Act* was assented into law in September 2015 and came into force in December 2015. The new *Act* defines special economic zone as a designated geographical area where business enabling policies, integrated land uses and sector-appropriate on-site and offsite infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory and wherein the benefits provided under the *SEZ Act* apply.
2. While under *Export Processing Zones Act* ("*EPZ Act*") the activities of *EPZ* enterprises are limited to manufacturing, commercial and service activities, the *SEZ Act* provides a long non-exhaustive list of activities that includes agricultural activities, business processing outsourcing, manufacturing and processing; livestock marshalling and inspection, refrigeration, deboning, value addition; and services and activities to facilitate tourism and recreation sector. A notable difference between the *EPZ* and *SEZ* regimes can be seen from the addition of agricultural and livestock activities within the scope of *SEZ* activities that was not there before. This includes farmers and horticulture industry players in the list of beneficiaries under the new regime.
3. As was the case with *EPZs*, *SEZs* are considered to be outside Kenya for taxation, goods taken out of the country into the *SEZ* are deemed to have been exported from Kenya, and the same is true of services. Conversely, goods taken out of the *SEZ* into Kenya is deemed to be imported. *Section 29* prescribes that the benefits enjoyed by *SEZs* are as listed under *Part IV* of the *Act* and include extensive provisions protecting the interests of foreign investors such as full protection of property rights against all risks of nationalization or expropriation and the right to fully repatriate all capital and profits, without any foreign exchange impediments. In addition, all licensed special economic zone entities are exempt from all taxes and duties payable under the *Excise Duty Act*, the *Income Tax Act*, *EAC Customs Management Act* and the *VAT Act* and *Stamp duty* the execution of any instrument relating to the business activities of special economic zone enterprises, developers and operators. Under the *Income Tax Act* as amended by the *Finance Act 2015*, *SEZs* will be corporate tax-free for the first 10 years following commencement of operation. Both *EPZs* and *SEZs* are subject to the non-resident withholding tax rates on payments they receive but *SEZs* are specifically exempt from taxes on their dividend income.
4. The *SEZ Authority* is established under the *SEZ Act* and is the body granted with the mandate to license *SEZ* developers, operators and enterprises. An entity that wants to be licensed by the *SEZ Authority* established under the *Act* shall meet the following requirements;
 - a) is incorporated in Kenya whether or not it is one hundred percent foreign owned;
 - b) proposes to engage in any activity or activities eligible to be undertaken by a special economic zone enterprise in the special economic zone;
 - c) does not have a negative impact on the environment or engage in activities impinging on national security or presenting a health hazard; and
 - d) Conducts business in accordance with the laws for the time being in force save for any exemptions under the *SEZ Act*.

Special Economic Zones Act (2015) (cont'd)

5. The SEZ Authority is required to render a decision on an application for a licence to be an SEZ entity within one month following submission of an application and accompanying documentation.

Business Registration Service Act

This Act was enacted to ensure effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms. To this effect it establishes the Business Registration Service ("BRS"). The service shall conduct the registrations under the Act maintain registers, data and records on registrations carried out amongst other functions. It shall be based in Nairobi but will have established branches in every county for easy access. The BRS would be headed by the Registrar-General who shall be responsible for the overall operations of the Service and its staff.

Public Procurement and Asset Disposal Act

The *Public Procurement and Asset Disposal Act 2015* was assented to on 18 December 2015 and came into force on 7 January 2016. The Act was passed for the purpose of giving effect to *Article 227* of the *Kenyan Constitution (2010)* which makes provision on the manner in which a state organ or a public entity should contract for goods, that is, in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. The new Act repealed the *Public Procurement and Disposal Act of 2005*. While several provisions in the old Act were retained, the Act makes several additional provisions. The application of the Act does not extend to asset disposals under any bilateral or multilateral agreements between the Government of Kenya and any other foreign government, agency or entity or multilateral agency.

The Public Procurement Regulatory Authority (the "PPRA" or the "Authority") is established under the Act and has prescribed functions that include, inter alia, to investigate and act on complaints received on procurement and asset disposal proceedings from procuring entities, tenderers, contractors or the general public that are not subject of administrative review. Part of their mandate is also to create a central repository on complaints made by procuring entities, market prices for goods services or works and any information relating to procurement that may be necessary for the public.

The National Treasury is also granted mandate under the Act with respect to oversight and public procurement that concerns the development of public procurement and asset disposal policy. The National Treasury functions are devolved to County Treasury to ensure the monitoring and compliance of the public procurement system at County level.

Where a candidate or a tenderer, claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the *Regulations*, the Act provides that they may seek administrative review. A review board is set up for this purpose. The parties to a review shall be the person who requested the review, the accounting officer of a procuring entity, the tenderer notified as successful by the procuring entity and such other persons as the Review Board may determine. The Act aims to have the review process be expedient by providing that the review board complete the process within twenty one days. In addition, while one may have the right to request a review under the Act, the right is in addition to any other legal remedy a person may have. A person aggrieved by a decision made by the Review Board may seek judicial review by the High Court.

Bowmans' Recent Highlights

Bowmans is one of Africa's premier corporate law firms. The Group is well represented in what are considered to be the hub jurisdictions in the key regions of the African continent. Through these offices, we are able to coordinate advice on transactions, and offer a seamless service to our clients, making the execution of cross border transactions less cumbersome, time-consuming and costly and hence more efficient.

Our 400 lawyers are some of the best practitioners in their respective jurisdictions, with significant "on-the-ground" understanding of the business environment in the jurisdictions in which they operate.

Bowmans' Recent Highlights (cont'd)

At the recent Cell C Deal Makers Annual Awards held in Johannesburg, Bowmans won the Africa Legal Advisers category by both deal value and number of transactions in Africa (excluding South Africa). Bowmans' total deal value in this category of USD 4.627 million constitutes 14.84 percent of the market share while the 41 reported transactions equals 36.61 percent of market share.

Bowmans, one of the largest law firms in Kenya, has a proven track record of delivering first-class technical advice to clients in a coherent and relevant way, resulting in their rapid move up the rankings of international legal directories such as Chambers Global, Legal 500, PLC and International Financial Law Review, with a number of its partners being ranked in tier 1.

Bowmans' Kenya office currently has sixteen partners, including the vastly experienced and well-recognized founding partners, Richard Harney and Philip Coulson. The firm is also home to a wealth of talented senior lawyers and associates with local and international qualifications.

During 2015, Bowmans' Kenya office was involved in a number of noteworthy M&A and ECM transactions, which demonstrate our depth of expertise, and ability to provide flexible, solutions-orientated and strategic advice. A summary of recent firm highlights is set out below.

Real Estate and Construction

Bowmans' real estate and construction team continues to grow from strength to strength. Some key recent assignments are highlighted below:

- Bowmans' does over 90 percent of all conservancy work in Kenya. Most recently, it advised The Nature Conservancy (through a wholly Kenyan-owned trust) on the acquisition of a 56,000 acre ranch in Laikipia and arrangements with an exclusive tourism partner for purposes of operating a high class tourism accommodation facility on the Ranch.
- Advised on the Kenyan real estate aspects of GSK's three pronged purchase, sale and joint venture with Novartis.
- Advising Carrefour and Virgin Atlantic on their leases over retail space Nairobi's Two Rivers Development and The Hub in Karen, Nairobi.
- Advising LSG SkyChefs on the development and construction of the second inflight catering kitchen at the Jomo Kenyatta International Airport Nairobi.

Corporate Commercial

Our experience in Corporate Commercial matters covers aspects in capital markets, finance, acquisitions, take-overs, joint ventures, investments including those by private equity funds, corporate re-organizations as well as general commercial contracts. Some key recent assignments are highlighted below:

- Counsel to the private equity investors and other shareholders on the sale of a controlling stake in one of East Africa's biggest composite insurance groups, UAP Holdings, to Old Mutual;
- We acted for AfricInvest, a leading pan-African mid-cap-focused private equity firm, in its investment in Silafrika Plastics and Packaging International Limited, the leading East African plastics and packaging group with operations in Tanzania, Kenya, Ethiopia, Uganda and India.
- Counsel to Brookside Dairy on the group restructuring and sale of 40 percent of the shares to Compagnie Gervais Danone.
- Acquisition of a majority interest by Swiss Re in Apollo Investments Limited, the holding company of Life & General Insurance Company in Kenya and East Africa.
- Advised BRITAM on its acquisition of 25 percent stake in Housing Finance Company from Equity Bank Limited and then on the acquisition by BRITAM of further shares in the issued share capital of Housing Finance, which increased BRITAM's current shareholding in the company to approximately 49 percent.

Financial Services Sector

- Advised East African Breweries Ltd on its KES 11 billion corporate bond listed on the Nairobi Securities Exchange.
- KES 3 billion loan advanced by Kenya Commercial Bank Limited to County Government of Nairobi.
- USD 150 million Structured Oil Import Finance Facility advanced by Standard Bank Limited to Mogas International.
- Advised on the listing of the entire issued share capital of Flame Tree Group Holdings Limited on the Growth Enterprise Market Segment of the Nairobi Securities Exchange.

Intellectual Property

- Advertising dispute before the High Court of Kenya in High Court (Nairobi) *Case No. 370* of 2013 against Unilever who argue that PG's television and billboard detergent advertising campaign, the so-called Ariel One Wash campaign, was disparaging of their Omo product and contravenes the *Code of Advertising Practice and Direct Marketing* published by the Advertising Standards Body of Kenya. Unilever argue that campaign amounts to comparative advertisement and is without substantiation.
- We successfully acted for Barclays in overturning an official action refusing registration of PRESTIGE BANKING trademark.
- Acting for Finline Industries in a dispute currently pending before the High Court of Kenya on design registrations and the rights that attend the owner of such a registration.

Oil and Gas

- A.P. Möller-Maersk Oil (local counsel) in its acquisition of half of Africa Oil Corporation's participation in three blocks in northern Kenya.
- Apache Corporation on the regulatory regime governing the oil and gas sector in Kenya.
- CAMAC Energy on establishing a presence in Kenya and generally in relation to oil and gas blocks.
- CEPESA (Compañía Española de Petróleos) when it farmed-in for a 55 percent participating interest in Block 11 A. Our role included, conducting a due diligence, providing regulatory and competition advice, liaising with Government Agencies, drafting documents and generally bringing the deal to a close.

Telecommunications

- Advised Safaricom Limited on its acquisition of all (452) telecommunication towers and infrastructure previously owned by Essar Telecom.
- Advising Eaton Towers in respect of its acquisition of the tower infrastructure of Bharti Airtel in 6 African countries.

Lex Mundi Member Contact



A **LexMundi** Member

Philip Coulson - p.coulson@coulsonharney.com

Richard Harney - r.harney@coulsonharney.com

Bowmans

Member firm for Kenya

Tel: 254.20.289.9000

Mauritius

Prepared by Appleby, Lex Mundi Member Firm for Bermuda with office in Mauritius



Trade partners

are **France, United Kingdom, the United States, UAE, South Africa, India, China** and **Vietnam**.

The government **promotes diversification** of information, communications technology, **financial**, business services, seafood processing and **exports**.

Services and tourism

remain the **intrinsic economic drivers**.

Legislative News

The Stock Exchange of Mauritius Ltd (SEM)

The Stock Exchange of Mauritius Ltd (SEM) was incorporated in Mauritius on March 30, 1989 under the *Stock Exchange Act 1988*, as a private limited company responsible for the operation and promotion of an efficient and regulated securities market in Mauritius. Since 06 October, 2008, SEM became a public company. The Stock Exchange of Mauritius operates two markets today: the Official Market, the Development & Enterprise Market (DEM). Currently, there are 51 companies listed on the Official Market representing a market capitalization of nearly USD 5.6 billion as of 29 February 2016. The DEM has been launched on 4 August 2006 and there are presently 43 companies listed on this market with a market capitalization of nearly USD 1.2 billion as of 29 February 2016. SEM can list, trade and settle equity and debt products in USD, EUR, GBP, ZAR besides the local currency MUR. Local investors account for about 60 percent of the daily trading activities, and foreign investors account for the 40 percent remaining. 75 percent of that local volume is generated by institutions like mutual funds, pension funds and insurance companies. Investment dealers operate on the Mauritius Bourse.

SEM has been working closely with the Central Bank and Commercial Banks to set up a platform to trade medium and long-term government securities on the Exchange. The operational framework of this market has already been finalized. Commercial Banks which have been licensed as Primary Dealers by the Central Bank will act as Market Makers on the SEM platform to ensure liquidity. This initiative will contribute to the creation of a yield curve and act as a lynchpin to the creation of an active secondary Bond market for private issuers. SEM set up in 2006 the Development & Enterprise Market (DEM), which is a market designed for Small and Medium-sized Enterprises (SME's) and newly set-up companies which possess a sound business plan and demonstrate a good growth potential. It is meant for companies wishing to avail themselves of the advantages and facilities provided by an organized and regulated market to raise capital to fund their future growth, improve liquidity in their shares, obtain an objective market valuation of their shares and enhance their overall corporate image.

In line with its internationalization strategy, the SEM has, in recent years, revised its listing framework to cater for the listing of a wider and more diversified range of products by introducing new Rules for the listing of Exchange Traded Funds and listing of Exchange Traded Notes and Structured Products. To give an important twist to its internationalization strategy, the SEM introduced in 2015, new Rules to capture the listing of Structured Products with equity as well as debt underlyings. As a result of this initiative, and the above-mentioned initiatives, investors can today not only invest in Mauritian companies, but also in a wide spectrum of foreign products. The SEM is one of the only two African Exchanges on which investors can invest in Structured Products. From a foreign investment perspective, the Mauritius Bourse attracted strong foreign investor interest particularly over the last decade, generating positive investment inflows on many listed companies.

The Stock Exchange of Mauritius Ltd (SEM) (cont'd)

Foreign investors currently account for about 40 to 45 percent of the daily trading volumes on the Exchange. SEM has also been designated by the United Kingdom's Her Majesty's Revenue and Customs (HMRC), as a "recognized Stock Exchange", as a result of which, securities traded and listed on the Official Market of the SEM meet the HMRC interpretation of "listed" as set out in section 1005 (3) (a) and (3) (b) *Income Tax Act 2007*. SEM is also regarded as a 'recognized Stock Exchange' for Inheritance Tax purposes. This designation confers several potential benefits for SEM. In the first place, UK pension schemes will be permitted to hold securities listed on the Official Market of the SEM, giving companies and funds listed on SEM access to a larger market of sophisticated, well-capitalized investors.

The designation reinforces SEM's attractiveness as a listing venue for global funds and specialized products. Securities listed on the Official Market of the SEM may be held in tax advantaged Individual Savings Accounts (ISA's) and Personal Equity Plans (PEP's) by UK investors. Holders of debt securities satisfying the Eurobond exemption and listed on the Official Market of the SEM are exempted from withholding tax on distributions underlying these debt securities. Inheritance tax advantages may accrue to UK holders of securities listed on the Official Market of the SEM.

Technology and Infrastructure

The objectives of the Government of Mauritius are particularly to transform Mauritius into a 'truly forward looking, environmentally sustainable, economically vibrant and innovative country with modern infrastructure, global connectivity, high skills and technology'. As part of its plan to therefore achieve such development which has been termed as the 'Second Economic Miracle and Vision 2030', the Government has presented various plans and projects, some of which are mentioned below:

Road Developments

In view of helping attract Mauritius diaspora back to the country, the Government has presented its main projects which are anticipated to spread over a period of six (6) years, with the ground-breaking ceremony taking place in July 2016. Those projects include the construction of new fly-overs and bridges, and this, in view to alleviate traffic congestion along the main arteries and to finally create a modern land transport.

Smart Cities

The Government has announced its plan to create eight (8) smart cities namely, the Mauritius Yihai Garden Smart City, Medine Smart City, Roche Noir Smart City, St Felix Smart City, Mont Choisy Smart City, Omnicane Airport City, Cap Tamarin and the Heritage City. The 'Heritage City' shall be constructed with the help and expertise of the Emirati's government. The Arab Emirates (UAE) shall therefore devise the master plan and design the new administrative city which shall equally accommodate for the Parliament, the Prime Minister's Office and other similar governmental offices. Further, several hubs are intended to be instituted namely, the Convention Hub, the IT Business Centre and Education Hub, the Wellness Hub, and an Incubation Hub.

Financial Environment

The Government is contemplating taking various actions in view of revitalizing private investment in existing pillars of the economy with an emphasis on greater business facilitation and improvement of the investment climate. It is therefore intended to position the Stock Exchange of Mauritius as an attractive capital-raising platform for international and African focused financial products. As part of her speech on "Achieving Meaningful Change", the President of the Republic of Mauritius, Mrs. Ameenah Gurib-Fakim announced amongst others, that multinationals shall be encouraged to set up their regional headquarters in Mauritius with more back office activities and investors shall be encouraged to make use of the Mauritian jurisdiction for their investments into and out of Africa. Further, the Government of Mauritius is contemplating entering into double taxation treaties with various other countries.

Legislative News

- **The Financial Services Act 2007: Competency Standards** issued under section 7 (1) (a) of the *Financial Services Act 2007* in October 2014 and the *Circular Letter (CL030615)* dated 03 June 2015 - FSC Mauritius issues Amendments to the *Competency Standards* with respect to Designated Officer for CIS Managers, that with effect from 1st January 2016, a CIS Manager is no longer required to appoint a Designated Officer. The *Competency Standards* formalize the minimum technical competencies in terms of knowledge and skills which specific licensees need to have in order to be licensed by the Commission. The *Competency Standards* provide an indication to the licensees on how to demonstrate and maintain the minimum technical competencies. A phased approach was adopted for the development of the *Competency Standards* for the different sectors in the non-banking financial industry. The *Competency Standards* align the standards of practice in the non-banking financial services sector in Mauritius with international standards and international best practices.
- **The Captive Insurance Act:** On the 11th December 2015, the *Captive Insurance Act (the "Act")* has been passed by the Mauritian National Assembly, with the aim of providing a specific legislative framework for the development of the captive insurance sector in Mauritius. Different sections under the *Act* shall come into operation on such dates as shall be fixed by proclamation. The *Act* only applies to "pure captives" meaning the business of undertaking liability restricted to the risks of parent and affiliated corporations. The *Insurance Act 2005* which has now been amended was previously governing captives but unfortunately not in a satisfactory manner. Captive insurers will be regulated by the Financial Services Commission and can also be licensed as Global Business Companies Category I. The *Second Schedule* to the *Act* amends the *Income Tax Act* to provide for an attractive tax holiday on income derived by captive insurers for a period not exceeding ten years. The licensed captive insurer being a resident of Mauritius, will also benefit from the *Double Taxation Agreements* and the *Investment Protection and Promotion Agreements* enjoyed by Mauritius internationally.
- **The Good Governance and Integrity Reporting Bill:** This *Bill* has already been voted for and amendments have equally been brought to the same. Under the *Bill*, it is sought to, among others, encourage and inculcate a culture of good governance in the country, to stimulate a culture of integrity in both the public and the private sector and make room for more transparency, accountability, efficiency and effectiveness.
- **Declarations of Assets Bill:** Under this new *Bill* which is anticipated to be introduced in due course, the public shall have the opportunity to view the list of assets of parliamentary members thereby creating a degree of transparency with the general public.
- **The Security of Payment Bill:** The *Bill* shall provide, among others, a legal framework for alternative dispute resolution processes in the construction industry as well as secure arrangements for payment regarding work performed or material supplied.
- **The Fisheries and Marine Resources Bill:** This new *Bill* is intended to be introduced in view of incorporating international norms and practices for modernizing the fisheries sector.

Appleby's Highlights

The firm has experience advising major international corporations and organizations in high-value matters. Of particular note, in 2014 Appleby advised:

- Standard Chartered Bank in connection with the joint acquisition by ONGC Videsh (OVL) and Oil India (OIL) of Videocon's 10 percent stake in a giant Mozambique gas field, estimated to hold as much as 65 trillion cubic feet of gas for about USD 2.5 billion. The Rovuma field-1 of Mozambique covers about 2.6 million acres in the deep-water Rovuma Basin and the acquisition would mark the entry of OVL and OIL into the largest gas discovery in offshore East Africa.

Appleby's Highlights (cont'd)

- Lagos-based Asset & Resource Management Company Limited (as sponsor of the fund) in connection with structuring, incorporation and launch of a Mauritius-based Infrastructure Fund (ARM - Harith Infrastructure Fund (International) Limited) for investment exclusively in a variety of infrastructure projects across a range of sectors including energy, transport, ICT, water and utilities in West Africa, with a particular focus on Nigeria.
- In the structuring and establishment of closed end fund, the Pan-African Infrastructure Development Fund 2, and its investment manager to invest in infrastructure projects in all African countries. The Fund will focus on the energy, transportation, water and sanitation and ICT sectors as well as making investments in the health sector, resources and general private equity transactions. Investors include the Development Bank of Southern Africa and Development Bank of Southern Africa, amongst others.

Appleby is one of the world's largest providers of offshore legal advice and services. We have over 470 people, including 60 partners, operating from 10 offices around the globe. We advise global public and private companies, financial institutions, and HNWIs, working to achieve practical solutions, whether in a single location or across multiple jurisdictions.

Our Origins

The firm of Appleby has its origins in a number of jurisdictions. The original Appleby practised in Bermuda and was established by Major Reginald Appleby, who commenced practice in the late 1890s. In the same decade the law firm Bailhache & Bailhache was formed by brothers; Bois & Bois was formed by father and son in Jersey; and Dickinson Cruickshank was formed by William Dickinson and James Cruickshank in the Isle of Man. Each of these four practices was entirely local and focused on the local community and its need for legal services.

Expansion in Bermuda & Cayman

In Bermuda, Major Appleby was joined in 1938 by Dudley Spurling to form Appleby & Spurling which, in 1949, became Appleby Spurling & Kempe when William Kempe joined the practice following his service in the Second World War. After the War, following the death of Major Appleby, the then Dudley Spurling (later Sir Dudley) and William Kempe joined lawyers from the only other large Bermuda firm and representatives of Bermuda's major banks and undertook a sustained programme to market and develop Bermuda as an international business centre. Jointly they forged a complete transformation in Bermuda's business environment and created an international business community from the business they brought to the jurisdiction. In 1945, Clifton Hunter began practising law in Bodden Town and in 1965 formed the firm of Hunter & Hunter with his son Arthur Hunter. That firm (the first law firm in the jurisdiction) grew steadily and was instrumental, alongside other Cayman firms, in the development and marketing of the financial services industry in the Cayman Islands and the creation of the Cayman Islands as a leading international financial centre.

Crown Dependencies

In 1950, Perrier Labesse was formed in Jersey by Jacque Perrier and Jacque Labesse and, under the leadership of Jacque Labesse, working with other Jersey firms, began to promote Jersey as an international business centre. In 1984, Perrier Labesse merged with Bois & Bois to become Bois Labesse. They, in 1994, merged with Bailhache & Bailhache to become Bailhache Labesse, which continued its local and international practice. In the Isle of Man, Dickinson Cruickshank began, in the 1970s under the leadership of Martin Moore, a sustained drive to develop the island as a significant offshore financial centre, developing a strong international practice alongside its local practice. In 1999, the firm merged with Morris Maddrell and continued its leading role, promoting the island and developing its reputation as a significant offshore centre.

Crown Dependencies (cont'd)

In 1979, Appleby Spurling & Kempe established its first external office, a fiduciary company in Guernsey. In 1990, it established a Hong Kong office. At this point, the other constituent parts of Appleby were otherwise located only in their home jurisdictions.

Building a Leading Global Firm

In 2004, Appleby Spurling & Kempe, in pursuit of the goal of creating a leading global offshore firm, combined with Hunter & Hunter in the Cayman Islands to become Appleby Spurling Hunter. After establishing an office in the British Virgin Islands in 2005, it combined in 2006 with Bailhache Labesse to become Appleby Hunter Bailhache and then just Appleby. After establishing offices in Mauritius (2007) and Seychelles (2009) Appleby combined with Dickinson Cruickshank to enter the Isle of Man in 2009, before opening an office to provide full legal services in Guernsey in 2010. Appleby's latest office opening sees it venture further into China with an office opening in Shanghai in April 2012, offering a full range of fiduciary and administration service to clients in mainland China and internationally. This has resulted in a combined enterprise of 200 lawyers and over 500 employees, including accountants, trust and corporate administrators as well as business services and support staff.

Appleby today is a truly global organization, based in eight significant offshore financial centers and a presence in major international financial centers. It has a profile, in terms of the range of jurisdictions and the services that it is able to supply, unequalled by any other offshore law firm. Appleby is engaged with governments, regulatory bodies and industry representative bodies, as well as professional bodies and associations, in all our offshore financial centers. In particular Appleby participates in discussions on law and regulatory reform, the development of new products and responding to the challenges faced by each of those financial centers in an ever-changing international business environment. Appleby Partners have been members of the elected legislatures, and ministers in governments in a number of our offshore financial centers. Members of the firm have gone on not only to political office but also in a number of centers (Bermuda, Jersey, the Isle of Man and Cayman) to senior judicial office. Appleby represents combined ingenuity and talent taken from all of the most significant international offshore financial centers, and is focused on the development of new products and the provision of effective service to its many international clients.

The Republic of Mauritius

The Republic of Mauritius is experiencing dramatic growth. This offshore location provides options for international clients, particularly those with an interest in business into and out of African and Asian markets. Mauritius is a member of the WTO, the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC), and has the effective commercial and legal infrastructure required supporting the development of a global business network. It is also party to a number of double taxation agreements and is listed on the OECD "white list". Since independence from Britain in 1968, Mauritius has diversified its economy with growing industrial, financial, and tourism sectors. For most of the period, annual growth has been in the order of 5 to 6 percent. With a population of 1.2 million and a highly educated workforce, the government is successfully encouraging the introduction of external financial institutions to stimulate investment and diversify the economy.

Appleby was the first global, offshore law firm to provide legal services from the Republic of Mauritius. Our clients are diverse, ranging from banks and state owned enterprises, to investment funds, listed companies and high-net-worth individuals. They come to us for help and advice that reaches across more than eight offshore jurisdictions: expert advice that is delivered in a timely and commercially-minded way, and is always set in the context of understanding how to do business in India, Asia, or Africa. Our corporate and commercial practice has consistently earned top-tier ranking in leading publications such as Chambers Global and IFLR 1000.

The Republic of Mauritius (cont'd)

Our lawyers advise on all aspects of Mauritius law. This includes the establishment of investment funds, special purpose vehicles and structured finance products, insurance companies and insurance products, securitization, financing transactions and public and private holding companies. Our team can also facilitate the provision of legal advice in Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey and the Seychelles. We are an award-winning team. And we have a track record of advising clients on the most complex and market leading deals and structures. Clients get the very best and most experienced advice, which makes us both efficient and knowledgeable. We are one of the only offshore firms in Mauritius that has the ability to assemble a team for each matter with expertise from across more than eight offshore jurisdictions, regardless of the location of your transaction. We ought also to mention that most of our lawyers in Mauritius are fluent in English and French.

Africa's economic growth is projected to accelerate to 4.8 percent in 2014 and 5 to 6 percent in 2015, while its total Gross Domestic Product (GDP) is expected to reach USD 2.6 trillion by 2020. However, divergent cultures, business landscapes and unique legal, regulatory and political environments can make investment in these economies particularly challenging. We have advised Australian, US, European and Asian companies expanding their businesses and investing into various countries on the continent. In order to assist our clients, whether already established in Africa or wanting to explore the abundant investment opportunities Africa has to offer, Appleby law firm has established a dedicated Africa focused legal and investment team that covers a wide variety of investments and structures, with a specific focus on investments into African mining and infrastructure development projects.

Our Africa Group comprises an integrated team of legal specialists from Appleby law firm and fiduciary specialists. Working together these lawyers and fiduciary professionals draw on each other's strength to assist clients (many of them external investors into Africa) in coordinating the set up and running of operations in Africa. Our presence as a leading offshore firm in the Indian Ocean jurisdictions of Mauritius and the Seychelles, enables us to efficiently and knowledgeably access the African Continent. Our in-depth understanding of the major offshore legal, regulatory and commercial environments, combined with a clear focus on international, financial, corporate and capital markets, enables us to deliver the right solutions for our clients to explore the abundant investment opportunities Africa has to offer.

Lex Mundi Member Contact

The logo for Appleby, consisting of the word "APPLEBY" in a bold, purple, sans-serif font.

A **LexMundi** Member

Malcolm Moller - mmoller@applebyglobal.com

Appleby

Member firm for Bermuda with office in Mauritius

Tel 230.203.4301

Morocco

Prepared by Gide Loyrette Nouel, *Lex Mundi Member Firm for France*
with office in Morocco



Economy supports
a population of
34.8
million.

Relies on
**phosphate
rock
mining**
and processing,

food processing,
leather goods, textiles,
construction, energy, and
tourism.

Legislative News

Amendment to the existing legal framework applicable to Moroccan joint stock companies (sociétés anonymes)

The new Moroccan law n°78-12 promulgated by *Dahir n°1-15-106* dated July 2015, 29, (hereinafter referred to as “Law 78-12”) amends and supplements the law n°17-95 relating to joint stock companies.

Law 78-12 mainly aims at improving governance and transparency in the management of a joint stock company by, for instance:

- strengthening the regime of prior disclosure and approval of related-party agreements (conventions réglementées): Law 78-12 provides for an obligation to communicate to the chairman of the board of directors (or of the supervisory board) a list of the related-party agreements (conventions réglementées) entered into within the ordinary course of business under ordinary terms and conditions (there was no obligation under the previous legal framework to inform the chairman of the board about those “ordinary” agreements);
- offering the possibility to submit electronically the annual accounts to the local authorities and extending the time-period allotted to complete the aforementioned filing (within two months (instead of one month) from the date of approval of the annual accounts by the shareholders’ meeting).

Law 78-12 also provides for new rules to achieve greater transparency for listed companies, including:

- Obligation to set-up an internal audit committee namely in charge of monitoring the accuracy of the accounting and financial information. This audit committee is placed under the supervision of the supervisory board or the board of directors; and
- Obligation to have a website on which information and documents pertaining to the meetings of the corporate bodies of the company shall be published.

Law 78-12 also offers the possibility for listed companies to buy out their own shares in order to transfer these shares (with or without consideration) to their employees or managers, directors (the previous legal framework limited this possibility to a buy-out to stabilize the share price on the market). This operation is now subject to a prior information document to be submitted to the Moroccan market authority.

Sale in future state of completion (vente en l’état future d’achèvement)

The law n°107-12 promulgated by *Dahir n°1-16-05* dated February 3, 2016 (hereinafter referred to as “Law 107-12”) amends and supplement the law n°44-00 relating to the sale in future state of completion (vente en l’état future d’achèvement). It entered into force in Morocco on February 18, 2016.

Sale in future state of completion (vente en l'état future d'achèvement) (cont'd)

Law 107-12 intends to remedy the problems encountered by the buyers and sellers of buildings sold in future state of completion and strengthen the guarantees offered to the buyers. A sale in future state of completion still requires the execution of (i) a preliminary agreement for sale and (ii) a final notary deed for sale upon completion of the building.

The main changes made to the prior legal framework governing sales in future state of completion may be summarized as follows:

- A preliminary agreement for sale may be entered into upon the obtaining of the construction authorization (the parties do no longer have to wait for the completion of the foundations works on the ground floor to enter into this preliminary agreement for sale);
- *Law 107-12* provides for a list of mandatory terms/clauses to be included in the aforementioned preliminary agreement for sale (e.g. identification of the parties, date and reference number of the construction permit, the final purchase price per square meters, the payment and delivery terms, etc.);
- *Law 107-12* provides for the possibility to enter into a "reservation agreement" whereby an advance payment is made by the buyer to the seller even before the execution of the preliminary agreement for sale. The amount of the advance payment cannot exceed 5 percent of the total purchase price and shall be put into escrow. *Law 107-12* further provides that the duration of this "reservation agreement" shall be limited to 6 months (with no possible renewal). At the end of this period, the parties shall execute the preliminary agreement for sale;
- the buyer is entitled to terminate the agreement and cancel the contemplated sale within one month from the execution date of the "reservation agreement";
- With regard to payment of the purchase price, *Law 107-12* provides for 5 milestones (from the preliminary agreement to the handover of the keys) and specifies the maximum percentage of the purchase price that could be paid on each of these milestones.

Renewable Energies

Law n° 13-09 relating to renewable energies published on March 18, 2010 ("*Law 13-09*") aimed at promoting the production, sale and export of energy from renewable sources. From that perspective, *Law 13-09* introduced a legal framework applicable to the construction and operation of plants producing electricity from renewable sources, with the following major changes:

- Enabling private entities to produce and export electricity; previously, ONEE ("Office National de l'Electricité, the State-owned entity responsible for the provision of electricity and the operation of the distribution system) had the monopoly for the production of electricity; this market is now opened to competition. However, the supply of electricity must still be carried out through the national electricity network and interconnections. The regime set forth in *Law 13-09* is the following:
 - an authorization regime for installations that produce renewable energy of more than 2 MW;
 - a preliminary statement regime (declaration to be filed with the Ministry of Energy) for installations that produce (i) renewable energy of more than 20 KW and less than 2 MW, or (ii) 8 MW or more of thermal energy;
 - when the installed capacity of the production plant per site is below 20 KW of renewable energy, no condition applies;
- access to average voltage, high voltage and very high voltage grids by all developers of electricity produced from renewable sources;

Renewable Energies (cont'd)

- the access to average grid is subject to specific conditions set forth in *Decree n°2-15-772* dated 28 October 2015, and
- possibility to export electricity produced from renewable sources by using the national network; in order to implement the government's policy on renewable energies, *Law n° 16-09* established the Energy Efficiency and the Development of Renewable Energy (ADEREE).

Law 13-09 was amended and completed by *Law n°58-15* dated 29 December 2015 ("*Law 58-15*"). *Law 58-15* amends certain deficiencies of *Law 13-09*, namely:

- increasing the maximum threshold for installed capacity for hydroelectric power projects, from 12 to 30 MW;
- access to low-voltage national grid for small and medium installations,
- possibility for electricity producers to sell to ONEE excess production subject to the satisfaction of certain conditions; and
- associating the public entities in charge of the management of the hydraulic public domain (les Agences du Bassin Hydraulique) to the authorization process (for installations that produce renewable energy of more than 2 MW).

Oil and Gas - Downstream Activities

Law n°67-15 adopted by the Parliament on 2 February 2016 amends and completes *Law n° 1-72-255* on the import, export, refining, storage and distribution of hydrocarbons. Its key contributions consist in:

- Increasing control of the quality of the petroleum products distributed on the market;
- ensuring the availability of refined hydrocarbon products and natural gas in the gas stations;
- Supplying in priority the national market with petroleum products and natural gas.

As regards the control of the quality of the petroleum products, it should be noted that the missions and competences of the Ministry in charge of Energy are strengthened, and sanctions are now set forth.

Significant Amendments Introduced By Finance Bill 2015

The *2015 Finance Bill* ("*Loi de Finances*") promulgated by *Dahir n°1-14-195* dated 24 December 2014 introduced amendments to the *Moroccan Tax Code* (applicable as of 1st January 2015). The main amendments are the following:

- the rate of registration duties applicable to the transfer of shares of Moroccan entities (other than real estate companies and specific listed companies) increased from 3 to 4 percent;
- Extension of the Casablanca Finance City status of the "Regional headquarters and representative offices of multinational companies" to representative offices of non-resident companies (companies having this CFC status benefit from a specific tax regime: reduced corporate income tax rate of 10 percent applicable on 5 percent of the operating expenses, etc.);
- encouraging real estate companies to be listed on the Casablanca Stock Exchange: (i) simplification of reporting obligations for the listed Moroccan real estate companies by removing the obligation to join the nominative list of shareholders' names to the annual tax return; (ii) for individuals being shareholders of listed real estate companies: taxation of the profits derived from the disposal of listed Moroccan real estate companies' shares in the category of capital gain profits subject to individual income tax (instead of the category of real estate profits);
- decrease of the eligibility threshold enabling certain investment projects to benefit from specific tax exemption (namely, a 36-month value added tax's exemption for acquisition of equipment goods, materials and tools necessary for the completion of investment projects) from MAD 200 million to MAD 100 million;

Significant Amendments Introduced By Finance Bill 2015 (cont'd)

- transfer prices: Moroccan companies linked, directly or indirectly, with foreign legal entities may now ask the tax administration to agree (in a specific written agreement), in advance, on the method of pricing intra-group transactions for a period not exceeding four years.

Significant Amendments Introduced By 2016 Finance Bill

The *2016 Finance Bill* promulgated by *Dahir n°1-15-150* dated 19 December 2015 introduced substantial amendments to the *Moroccan Tax Code*, applicable as of 1st January 2016. For example:

1. Introduction of proportional rates of corporate income tax according to the amount of the taxable profit, as follows:

Taxable profit (MAD)	Rate (percent)
Up to 300,000	10
From 300,001 to 1,000,000	20
From 1,000,001 to 5,000,000	30
Beyond 5,000,000	31

2. Prior to the *2016 Finance Bill*, *Moroccan Tax Code* provided that companies benefiting from the full tax exemption could not benefit from the 100 percent deduction applicable to dividends received and the exemption of capital gains tax on the disposal of transferable securities. However, the Tax Authorities considered that such exclusion did not apply to certain organizations, including non-resident companies. The *2016 Finance Bill* specified that the 100 percent allowance and tax exemption on dividends received and capital gains made on disposal of transferable securities apply to non-resident companies.
3. The scope of the VAT refund is extended by the *2016 Finance Bill* to cover investment goods, equipment and tools with the exception of equipment, office furniture and vehicles of persons other than those used for the purposes of public transportation or public transit staff.
4. As from 1st January 2016, second-hand goods sold as part of a sale of business ("cession de fonds de commerce") are now subject to VAT (whereas VAT was not applicable previously).

Gide Morocco's Highlights

Gide Casablanca is an office of Gide Loyrette Nouel. The firm is one of the only law firms in Morocco that offers legal assistance covering the full-range of Moroccan and international finance and business law.

The firm assists international institutions, public institutions, banks, foreign investors and leading Moroccan business groups, with the legal and tax aspects of their investments and their commercial and financial operations.

We are currently advising:

- International Finance Corporation (IFC - World Bank Group) and the ALAC Fund on a EUR 90 million investment in the share capital of Saham Finances (a Moroccan-based African insurance group)

Gide Morocco's Highlights (cont'd)

- Aabar on its taking of interest in a joint venture dedicated to investments in the Moroccan tourism sector, to be created by and between Qatar Holding LLC, the Kuwait Investment Authority, the Moroccan Tourism Development Fund and Aabar (EUR 2 billion)
- The Moroccan Agency for Solar Energy (MASEN) on the implementation of phase 1 in the development of a 500 MW solar energy complex
- Saham on the acquisition of 100 percent of Colina (a sub-Saharan Insurance Group based in 11 African countries) from the Pharaon Group for approximately USD 110 million
- Medi Telecom (second telephone operator in Morocco) on refinancing its local debt, amounting of EUR 450 million

Lex Mundi Member Contact



A **LexMundi** Member

Wacef Bentaibi - bentaibi@gide.com

Jean-François Levraud - levraud@gide.com

Gide Loyrette Nouel

Member firm for France with office in Morocco

Tel: 212.5.22.27.46.28

Mozambique

Prepared by Mozambique Legal Circle Advogados, a member of the MLGTS Legal Circle, established by Morais Leitão, Galvão Teles, Soares da Silva & Associados, *Lex Mundi* Member Firm for Portugal with associated office in Mozambique



Economy thrives on **Coal** production and implementation of **infrastructure** projects, which drives credit.

Main export destinations are **South Africa, Netherlands, China, Singapore** and **India**.

Trends and Projects

Energy and Power

Mozambique is to produce the equivalent to 800,000 barrels of oil per day by 2025, with production expected to start in 2020.

The Cahora Bassa hydroelectric dam, in Tete, reached a new record of electricity production of 16,978 gigawatt/hours in 2015, an annual increase of 2.44 percent. This new record came after significant investments in the Hydroelectric Dam, with the implementation of its Engineering Plan. Following this record production, HCB recorded sales of MZN 12,201 billion (USD 258 million dollars), with operating income for the year reaching 6,135 billion (USD 130 million).

HCB has plans to build the North Plant, as part of the second phase of its expansion project, which will increase current power production of 2,075 MW by almost half.

The project is currently put on hold, since the government's attention has shifted to the floating power plant located in Nacala, formally launched in March 2016 by the presidents of Mozambique and Zambia. The MV Karadeniz Powership Irem Sultan, registered in Liberia, which docked at the port of Nacala on 18 February 2016, is a power station owned and operated by Istanbul-based company Karadeniz PowerShip Co.

This is the first floating power plant to operate in Mozambique, where it will remain for two years, following an agreement between the governments of Mozambique and Zambia, who will benefit from the production, and the Turkish, which is responsible for the maintenance of the facility. The electricity produced by the power plant will be injected into the grid of Mozambique's state power company EdM through the Nacala substation.

Also under evaluation are other projects, such as the Mpanda Nkuwa Dam, Boroma, amongst others.

The government of Mozambique has approved the floating platform development plan of the Coral Sul field, to be explored by Italian oil company ENI, in the Rovuma basin. This approval relates to the first phase of development of the project for exploration of 5 trillion cubic feet of natural gas in that field, located in the Area 4 concession.

The discovery proved the existence of 16 trillion cubic feet of high quality natural gas at a depth of over 2,000 meters and at a distance of 80 kilometers from Palma Bay, in the province of Cabo Delgado. The development plan includes drilling six wells and construction and installation of a floating platform for processing natural gas, which will have a capacity of 3.4 million tons per year.

Financial Banking and Insurance

The problems related to restructuring the debt of tuna company Empresa Moçambicana de Atum (Ematum) have led credit rating agencies Moody's and Standard & Poor's to lower Mozambique's rating. Fitch Ratings kept its credit rating of Mozambique's long term debt in local and foreign currency and removed it from the credit watch list, following the announcement of the proposal to restructure the debt issued by Ematum, on March 9 2016.

Financial Banking and Insurance (cont'd)

The assignment of a negative outlook illustrates the deterioration of some indicators, such as the price of raw materials whose fall has affected Mozambique, particularly with regard to capital inflows.

Infrastructure

Transport projects worth USD 17 billion are in the pipeline, including increased rail links to ports and expanding port capacities to allow for increased exports.

The works of the logistics base of Pemba are still ongoing. The facilities will include a pier, facilities for production and assembly of submarine equipment, construction of access roads, as well as equipment storage areas and mechanical workshops, to support the oil and gas industry in the region. The first phase is estimated to be concluded in the current year of 2016.

The construction of the Maputo Circular Road, a project budgeted at USD 315 million was concluded recently. The ring road connecting the cities of Maputo, Matola and the district of Marracuene is designed to relieve a chronic traffic problem between the two cities.

The execution of the works of the Nacala International Airport is finished and the airport is running since 2015, with a capacity for 500,000 passengers per year.

The executive project of the bridge linking Maputo and Catembe is now complete and works have already started. The infrastructure, just over three miles long, will cost about USD 700 million, also including more than 200 KM of roads to the border of Ponta d'Ouro and Bela Vista-Boane. The works should be completed between 2017 and 2018, with high hopes for the operation of enterprises and tourist areas of the southern province of Maputo.

Vale and the public company Mozambique Ports and Railways (CFM) joined in on the Nacala Corridor Project. The project involves the construction of 912 km of railway line from Moatize, through Malawi and returning again to Mozambique through Niassa to Nacala-a-Velha, where a deep-water port will be used to transport the coal from the Moatize coal basin. This project is budgeted at USD 4.3 billion and is designed to provide a logistics solution to the Moatize coal basin and as an alternative to the Sena line and the port of Beira.

The second phase of the modernization and expansion works of the Nacala's Port is due to start in the current year and preparatory work is underway to launch tenders for the project. Budgeted at about USD 32 million, partly funded by Japan, the project includes the rehabilitation and construction of new infrastructure of Nacala's Port, for which completion is scheduled in 2017. The Nacala's Port is of particular importance to Mozambique, as an international corridor and an important gateway to the countries of Southern Africa.

Legislative News

After the 2014 reforms in major sectors such as mining and gas & oil, the Mozambican legal system is experiencing a period of stability.

In the past year, the following relevant legislation was approved:

- *Decree-Law no. 1/2015*, of December 31st- Approved the *Legal Regime of the Sports' Corporations*;
- *Decree no. 47/2015*, of December 31st- Approved the *Industrial Property Code*
- *Notice no. 10/GBM/2015*, of December 31st- Approved the *Regulation of the Interbank Foreign Exchange Market*;
- *Decree no. 28/2015*, of December 28th - Approved the *Regulation of the specific regime of taxation and tax Benefits for Mining Activities*;
- *Decree no. 34/2015*, of December 31st - Approved the *Regulation of Petroleum Operations*;

Legislative News (cont'd)

- *Order of August 12th 2015* - Defines mechanisms to consolidate the implementation of the *Regulation of Commercial Activity Licensing*, the *Regulation of Industrial Activity Licensing*, as well as the *Simplified Licensing Regulations for the Exercise of Economic Activities*;
- *Notice 3/GBM/2015* published on May 5th - Establishes the terms and conditions on which banks and micro banks can extend their business by hiring banking agents and sets the access and conditions of the activity of bank staff and the hiring system of banking agents.

Henriques, Rocha & Associados' (HR&A) Highlights

HR&A's strengths lie at its strong professionals fully equipped to advise clients across the board but, particularly, in banking and finance, insurance, corporate and M&A and natural gas associated projects.

Some of the most recent highlights include the firm's participation on several major deals, namely on some emblematic natural gas projects and assets (from its inception, development, financing, operation and dispute resolution matters), energy and mining (corporate, financing and licensing matters) as well as other infrastructure (rail, roads and bridges) and sectorial specific issues (transversal banking, financial services and industrial advice).

Lex Mundi Member Contact



A **LexMundi** Member

Fabília de Almeida Henriques - fahenriques@mlc.co.mz

Mozambique Legal Circle Advogados,

a member of the MLGTS Legal Circle,
established by Morais Leitão, Galvão Teles, Soares
da Silva & Associados

Member firm for Portugal with associated office in Mozambique
Tel: 258.21.344000

Namibia

Prepared by Koep & Partners, *Lex Mundi Member Firm for Namibia*



Mining

accounts for more than half of **foreign exchange earnings**, with **precious stones** and **metals** being the number one export.

Foreign investment

is **encouraged**, but the necessary regulatory infrastructure for spurring **dynamic growth** in new investment is not in place.

Top export partners

include **Botswana**, **South Africa**, **Switzerland**, **South Korea** and **Angola**.

Trends and Projects

Energy and Power

The REFIT (Renewable Energy Feed-In Tariff) program was initiated by the Electricity Control Board and NamPower to coordinate the efforts of the multiple Independent Power Producers (IPPs) who had been granted generation licenses in Namibia within the last few years. The projects are in their final stages, with financial close to be reached by May 2016. The result will be approximately 17 IPPs with projects of a maximum of 5 MW each, to be constructed within the coming months. The Tariffs in respect of the projects were predetermined and set by the ECB, as were the Power Purchase Agreements concluded with each IPP.

Banking and Finance

Various new banking licenses have been provisionally approved by the Bank of Namibia recently, one of which has already been implemented and at least two more are in the final stages of implementation. Once these banks commence business, it will mean that the number of banks doing business in Namibia will almost have doubled. The new banking institution already in business is a branch of Banco Atlantico (originally from Angola and Portugal) while Bank Bic (originally from Angola) and Letshego Bank (with its holding company in Botswana) are expected to commence business during 2016. Trustco Bank and SME Bank are the other new banks already in business.

Competition Law

On 21 December 2015, the Minister of Industrialization, Trade and SME Development (formerly the Minister of Trade and Industry) published a notice setting out the classes of mergers excluded from the *Competition Act 2 of 2003* (*Government Notice 307 in Government Gazette 5905 of 21 December 2015*). The new merger thresholds take into consideration the value of the assets and the turnover of the acquiring undertaking (purchaser) and the transferred undertaking. The 2015 merger thresholds look firstly at the combined asset / turnover value of the acquiring undertaking and the transferred undertaking, and secondly at the asset / turnover value of the transferred undertaking only.

In terms of the 2015 merger threshold notice, the *Competition Act* does not apply to a merger if: (a) the combined annual turnover in, into or from Namibia of the acquiring undertaking and transferred undertaking is equal to or valued below N 30 million; OR (b) the combined assets in Namibia of the acquiring undertaking and transferred undertaking are equal to or valued below N 30 million; OR (c) the annual turnover in, into or from Namibia of the acquiring undertaking plus the assets in Namibia of the transferred undertaking are equal to or valued below N 30 million; OR (d) the annual turnover in, into or from Namibia of the transferred undertaking plus the assets in Namibia of the acquiring undertaking are equal to or valued below N 30 million.

If all the values in (a) to (d) are below N 30 million, then the transaction is not governed by the *Competition Act* and notification is not necessary. However, if any of the values in (a) to (d) are above N 30 million, then one moves on the asset / turnover value of the transferred undertaking only.

Competition Law (cont'd)

If either the value of the assets in Namibia or the turnover in, into or from Namibia of the transferred undertaking equals or are below N 15 million, then the transaction is not notifiable, regardless of the combined values in (a) to (d) above.

Legislative News

The following pieces of legislation are expected in the next year:

- **Income Tax Act:** Amendments to definition relating to the sale of a mining right/license, which means that more transactions will now be taxable, while allowing taxpayers to deduct acquisition costs. The sale of petroleum licenses/rights is now included in taxable income. Restraint of trade payments will now be subject to tax. Royalty payments made to a non-resident person or company for the "right to use industrial, commercial or scientific equipment" will now be subject to withholding tax of 10 percent. Finally, withholding tax on all interest paid to non-residents is introduced (previous legislation only levied withholding tax on interest payments made by banks and units trusts).
- **Value Added Tax Act:** amendments to the Act has seen an increase in the VAT threshold from N 200,000 to N 500,000. Security for VAT on the importation of goods by a VAT import account holder is now required. There is a prescribed criteria for eligibility for registration of an important VAT account at Inland Revenue. Shareholders of companies and members of close liable for VAT debts. Criminal penalties are now imposed for the misuse of import VAT account numbers.

Koep & Partners' Highlights

The attorneys at Koep & Partners have been involved in a number of large transactions in Namibia during 2015. For example, they have advised Bank BIC and Letshego Bank on the law and procedures in respect of opening a new bank in Namibia. The commercial team have also advised both lenders and borrowers on a number of project financing transactions (including the financing of a new gold mine and a smelter). This team was also involved in a number of mergers (including the TNT/Fedex merger and the Bidfish/FoodCorp merger) and restructurings (including the restructuring of an insurance company, a tourism company and an IT-company). The firm's litigation department remains active and have been involved in a number of high-profile cases, including taking government ministries on review in decisions relating to fishing quotas, import quotas and immigration permits. The litigation team is also acting for a former trustee of a charitable trust in a dispute with the remaining trustees and for Namibia Construction in the dispute regarding the Walvis Bay Airport.

Lex Mundi Member Contact

KO&P
PARTNERS

A **LexMundi** Member

Josias Andries Agenbach - agenbach@koep.com.na

Koep & Partners

Member firm for Namibia

Tel: 264.61.382800

Nigeria

Prepared by Udo Udoma & Belo-Osagie, *Lex Mundi Member Firm for Nigeria*



186.9 million people

are supported by the country's rich oil reserves and other industries including coal, tin, rubber, wood textiles, cement and construction materials.

Main exports are petroleum

and petroleum products,

of which the United States purchases 40 percent.

Exports

to the **United States, India, Netherlands, Spain, Brazil, United Kingdom, Germany, China, and France.**

Trends and Projects

Energy and Power

The Power sector, as part of the process of realizing uninterrupted power supply in Nigeria, witnessed various exciting developments in 2014. One notable acquisition was by Oando Plc - through one of its upstream subsidiaries focused on oil and gas exploration and production in Nigeria - Oando Energy Resources Limited - of 100 percent of the Nigerian upstream oil and gas business of ConocoPhillips for more than USD 1.5 billion. This acquisition increased its crude oil production capacity from just about 4,500 barrels per day ("bpd") to 50,000 bpd.

The Nigerian power sector however continues to face some challenges such as insufficient gas supply needed to power electric plants due to frequent vandalization of gas pipelines and historical legacy gas debts of the Federal Government of Nigeria (the "FGN") preceding the privatization. In a bid to address this, the Central Bank of Nigeria (the "CBN") established a N 213 billion intervention fund which, it is hoped, will help to stabilize the sector, settle outstanding debts owed to market participants and position the electric power sector for the 'take-off' of the Transitional Electricity Market ("TEM").

The International Finance Corporation (the "IFC"), in partnership with the World Bank, has launched a power project through its Lighting Africa Program aimed at providing Nigerians in rural areas with access to electricity.

A number of gas projects are at various phases of completion and several projects have been commissioned and are currently in operation, such as the Odidi Associated Gas Gathering Project (a Nigerian National Petroleum Corporation/Shell joint venture) that is currently being executed in South West Nigeria. The objective of this project is to gather and inject gas into the Escravos-Lagos Pipeline. It is proposed that this pipeline should, in due course, form part of the West African Gas Pipeline, which will supply gas to various West African countries.

The first gas pipeline-fed electricity project in Nigeria has commenced. The FGN has signed a USD 1 billion memorandum of understanding with Strancton Limited for the construction of a 1,000 MW power plant in Katsina State and also with Greenville Oil and Gas Limited for the supply of liquefied natural gas to the Kaduna power plant.

The FGN restated its commitment to end gas flaring in Nigeria by 2015. A gas flare tracking system, located at the National Oil Spill Detection and Response Agency has been introduced to aid regulators in detecting the quantity of gas flared by oil companies in Nigeria. By ending gas flaring, it is hoped that the energy sector will be able to generate sufficient quantities of gas to meet 40 percent of energy required to generate power supply and to preserve the sum of USD 800 million lost every year due to gas flaring.

In response to the domestic gas supply shortfall, the FGN, in December 2014 announced a new gas price regime effective from 1st January 2015, increasing the gas-to-power price from USD 1.50 per mcf to USD 2.50 per mcf and an additional USD 0.80 (eighty United States Cents) per mcf to cover transportation costs. The MYTO 2.1 factors in this new gas price in arriving at the current electricity tariff.

Energy and Power (cont'd)

The Nigerian electricity supply industry witnessed a paradigm shift in 2015 when the TEM was declared in February. The TEM, which is expected to introduce competition into the market, was initially planned to commence immediately after the unbundling of the defunct Power Holding Company of Nigeria (“PHCN”), the privatization of the Nigerian power sector and the subsequent hand over of the assets of PHCN to new investors in November 2013. TEM could not be declared, however, due to the non-satisfaction of some of the conditions precedent to its declaration. Instead, an interim market was introduced. The inability of the regulator to set a cost reflective tariff and the lack of progress by the distribution companies (“Discos”) in establishing a baseline for Aggregate Technical Commercial and Collection Losses were some of the outstanding conditions precedent which delayed the declaration of TEM. On 1st February 2015, the TEM was announced. The TEM is expected to move the Nigerian electricity market from an integrated ‘whole utility’ industry to a full-fledged competitive market structure that is characterized by contract-based arrangements for electricity trading. One of the significant features of TEM is the ability of the generating companies (“Gencos”) to sell electricity to the Nigerian Bulk Electricity Trading Plc (“NBET”) under various power purchase agreements while the Discos are able to purchase electricity under the terms of bilateral vesting contracts with NBET.

Gas-fired power generation remains the most common type of electricity source in Nigeria and gas remains the most vital feedstock for power generation in the country at this time. Recently however, efforts have been made to encourage diversification to other sources of power, including renewables such as solar power. The issuance of the *Regulations on Feed-In Tariff for Renewable Energy Sourced Electricity in Nigeria, 2015 (the “Regulations”)*, which sets out the legal framework for the investment in renewables, is an example of this effort. The highlights and objectives of the *Regulations* include: the provision of access, on a priority basis, to the grid for renewable energy based electricity; the establishment of a guaranteed price for electricity generated from renewables for a fixed period that provides a stable income stream and an adequate return on investment; and the obligation of off-takers to purchase all the electricity supplied by the renewable energy producer within the capacity limit defined in the *Regulations*. The *Regulations* require the Nigerian Bulk Electricity Trading Company Plc. to, as a matter of priority, purchase 50 percent of the renewable energy capacity limit, while the distribution companies shall take up the balance of the electricity generated.

In furtherance of the power sector’s willingness to diversify from the usual gas-fired electricity generation system, a consortium of investors signed a Joint Development Agreement in connection with the development and construction of a Greenfield 120 MW solar photovoltaic power project in Kogi State.

The FGN continues to seek all possible means of addressing challenges in the power sector and its decision to fast track the execution of the first set of World Bank partial risk guarantees underscores this point. The FGN (through the Federal Ministry of Finance and NBET), signed a USD 237 million guarantee with the World Bank in August 2015 in connection with the Azura-Edo IPP, a project that will contribute an additional 450 MW to the national grid by 2018.

In line with the *Electric Power Sector Reform Act, 2005* and in a bid to ensure that electricity tariffs are cost-reflective to engender returns on investments, the power sector regulator, the Nigerian Electricity Regulatory Commission (“NERC”) introduced the *Multi-Year Tariff Order 2015 (MYTO 2.1)* on 21st December 2015 which became effective on 1st February 2016. The *MYTO 2.1* is a 10-year tariff model, which will be in force until December 2024 and is expected to enhance funding and proper functioning of the power sector. The *MYTO 2.1* increased the existing electricity tariff by about 45 percent. On 16th February 2016, the Senate of the Federal Republic of Nigeria directed the Federal Ministry of Power, Works and Housing, the NERC and Distribution Companies to suspend the implementation of the *MYTO 2.1* as a result of the Nigerian public’s resistance to the tariff increase. Power generation companies in Nigeria have instituted an action against the NERC to restrain it from complying with the directive of the Senate in relation to the implementation of the revised tariff regime.

Energy and Power (cont'd)

Although Nigeria's power sector continues to witness challenges, in February 2016, the Federal Ministry of Power reported that Nigeria hit a historical energy generation peak of 5,074.7 MW.

On the regulatory side, the tenure of the previous management team of the NERC, consisting of 7 commissioners, expired on 22nd December 2015 and the President, who has statutory powers to appoint new commissioners, has not yet made any new appointments.

Immigration

In February 2015, the Nigerian Immigration Service abolished the requirement for expatriates with valid Combined Expatriate Residence Permit and Aliens Card ('CERPAC') to obtain re-entry visas in order to return to Nigeria whenever they travel out of the Country.

In May 2015, the *Immigration Act 2015*, which repealed the *Immigration Act 1963*, was enacted. The *Immigration Act 2015* clearly sets out the nature of permits and visas that may be issued to expatriates visiting or working in Nigeria. These include: residence permit, short stay visas, temporary work permits, temporary residence visas, and permanent residence visas.

Under the Immigration Act 2015, every airline operator, sea or other water vessel operator or land transportation, or commercial carrier, tour operator or operator of a travel agency ("Operators"), is under an obligation not to aid and abet, facilitate or promote: (a) any immigration offence; (b) smuggling of persons; or (c) any exploitation in tourism. Any Operator that violates these provisions commits an offence; and, in addition to any other applicable penalty provided in any other law, shall be liable on conviction to a fine of NGN 2 million. Where the offence is in relation to the smuggling of immigrants, however, the Operator shall be liable to a fine not exceeding ten million Naira and the court may issue an order to wind-up the business of the Operator and; in addition, make an order that its assets and properties should be transferred to the Objects of Smuggling of Migrants Trust Fund - a trust fund introduced under the new law.

In March 2016, the Nigeria Immigration Service issued a notice to the public under which it requested companies with expatriate staff to undertake the verification of all CERPACs issued to their employees in Nigeria.

Infrastructure

The transportation network in Nigeria is being strengthened by the proposed reintroduction and expansion of train services in various parts of the Country. Before now, the main form of transport was by road. The reawakening of the rail sector in Nigeria has been marked by the inauguration of the "Gombe-Kafanchan-Kaduna" inter-city train services, the Enugu-Port Harcourt train service and the reconstruction of an additional 678 km line from Makurdi to Gombe, with a 179 km branch line from Kafanchan to Kaduna.

The Lagos State Blue Line Rail Infrastructure is currently undergoing construction. This line, which will run from Okokomaiko to Marina, is projected to carry 400,000 passengers daily with an increased capacity of 700,000 passengers daily when the rail route becomes fully operational.

In addition to the Blue Line, in November 2015, the FGN approved the construction of the Lagos State Red Line Rail Project (the "Red Line"). The approval of the FGN was sought and obtained because the proposed Red Line, which is also being developed by the Lagos State Government, will require the concessionaire to occupy and use the right of way and the rail infrastructure as well as to utilize the existing corridor of the Nigeria Railway Corporation. The Red Line will run from Agbado to Marina via Iddo and Muritala Mohammed International Airport, Ikeja.

In addition, 22 airport terminals are being refurbished, while five new international airport terminals are under construction in Lagos, Port Harcourt, Kano, Abuja and Enugu.

Infrastructure (cont'd)

The Lagos State government continued the expansion of the Lagos-Badagry Expressway. The 10-lane road which begins at Eric Moore, in Surulere, will terminate at Badagry.

In May 2015, the FGN commenced the construction of the Lekki Deep Sea Port which is strategically located within the Lekki Free Trade Zone. The multi-purpose port will be comprised of a liquid bulk terminal, a dry bulk terminal, and a state of the art container terminal. It will be capable of handling the largest shipping vessels in the world, thereby strengthening Nigeria's position as a Western African maritime hub.

Many state governments are encouraging businesses to invest in waterways as another form of transportation in order to decongest traffic riddled roads. Lagos, in particular, deployed several officials of the Lagos State Waste Management Authority to clear the waterways of debris obstructing water transportation

The FGN appointed the Nigerian Shippers' Council (the "NSC") as the economic regulator for all port activities within the country through the passage of the *National Shippers' Council (Port Economic Regulator) Order, 2015* pursuant to the *Nigerian Shippers' Council Act, Cap. N133, LFN, 2004*. As the economic regulator, the NSC will be responsible for assessing the options for competition, deciding the port entry rules, regulating pricing freedom and monitoring the port outcomes.

In March 2015, the FGN passed the *Centenary Economic City Free Zone Guidelines and Regulations, 2015*, which are guidelines provided to ensure the efficient operation of the Centenary Economic City Free Zone. The Centenary Economic City, will operate as a Free Zone located several kilometers southeast of Nigeria's Federal Capital Territory, Abuja. The inter-connected city is being developed to have a central business district, 13 world class hotels, residential districts, a financial center along with other multi-purpose facilities. The project is billed to be a strong catalyst for economic growth in Nigeria upon completion.

In May 2015, the FGN passed the Kaduna Inland Dry Port Declaration Order, 2015 pursuant to which it declared the Kaduna Inland Container Depot a port of origin and final shipping destination in Nigeria. By its passage of the order pursuant to the Nigeria Ports Authority Act, Cap. N126, LFN, 2004, the FGN aims to extend shipping to landlocked areas and to decongest the ports. The port will have the status of an international port, including access to services such as customs, immigration, health and security.

The Brass Oil and Gas City Free Zone, an oil and gas free zone located in Bayelsa State was licenced by the FGN through the passage of the *Free Zones (Licencing of Brass Oil and Gas City ("BOG CITY") Odioama Brass, Bayelsa State) Order, 2015*. The *BOG CITY* is poised to evolve into one of the largest petrochemical, fertilizer, refining, methanol and hydrocarbon processing hubs in the world.

Oil and Gas

In 2014, a number of international oil companies ("IOC's") in Nigeria divested their interests in some onshore oil and gas assets. These interests have been acquired mostly by indigenous Nigerian companies, some of which are in partnership with foreign investors that act as their financial and technical partners. Seplat Petroleum Development Company Plc, which recently carried out a dual listing in Nigeria and London, acquired Oil Mining Leases ("OMLs") 4, 38 and 41 from Shell Petroleum Development Company of Nigeria Limited ("SPDC"). Oando Energy Resources Limited ("Oando") acquired the interests of ConocoPhillips in OMLs 60, 61, 62, 63 and participating interests in the Okpai power plant located within OML 60. Oando also acquired ConocoPhillips' interest in Oil Prospecting License 214. Oando Plc, through one of its upstream subsidiaries focused on oil and gas exploration in Nigeria - Oando Energy Resources Limited, has acquired 100 percent of the Nigerian Upstream Oil and Gas business of ConocoPhillips for more than USD 1.5 billion. This acquisition has increased its crude oil production from about 4,500 barrels bpd to 50,000 bpd.

The Nigerian Content Development Board ("NCDMB") has increased its efforts in implementing the provisions of the *Oil and Gas Industry Content Development Act 2010* (the "*Local Content Act*"). The goal of the *Local Content Act* is to ensure continuous growth of Nigerian content and the development of indigenous skills in all oil and gas

Oil and Gas (cont'd)

projects, operations and transactions. These efforts have included setting the ownership requirement for drilling rigs deployed for work in offshore areas in Nigeria. The Nigerian shareholding threshold for oil and gas service companies operating in Nigeria and the requirement for companies to retain a minimum of 10 percent of total revenues accruing from their Nigerian operations in Nigerian banks.

In May, 2015, the 4 year tenure of the pioneer Executive Secretary of the Nigerian Content Development and Monitoring Board, Mr. Ernest Nwapa, expired, and Mr. Denzil Amagbe Kentebe was appointed by the country's former President - Goodluck Jonathan - to take over the affairs of the board. The April 2015 elections, which saw the opposition party take over power, at the Federal level, ushered in a new government that had promised an overhaul of the Nigerian petroleum industry as one of its primary objectives. One of most significant appointments of the President Muhammadu Buhari led administration is that of the former Executive Vice Chairman ("EVC") of ExxonMobil Africa, Dr. Ibe Kachikwu, as the Group Managing Director ("GMD") of the Nigerian National Petroleum Corporation (the "NNPC"). In line with the new administration's aspirations to transform the NNPC into an efficient and transparent national oil company, there were also major overhauls at the helm of the corporation's directorates and strategic business units. The President subsequently appointed himself as the Minister of Petroleum Resources and Dr. Kachikwu as the Minister of State for Petroleum Resources, in addition to his position as GMD, NNPC.

Nigeria, like other petroleum exporting countries, witnessed a sharp decline in crude oil earnings as the price of crude oil averaged USD 50.00 a barrel in the year 2015. The country also lost significant market share as the global crude oil market moved to oversaturation.

To reflect the prevailing plunge in global crude oil prices, the FGN, in January 2015, implemented a NGN 10.00 (ten Naira) (approximately 5¢ United States Cents) reduction in the retail price per liter of Premium Motor Spirit (more commonly known as "petrol") and the former Minister of Petroleum Resources directed that petrol be sold at an official rate of NGN 87.00 (eighty-seven Naira) (approximately 44¢ United States Cents) a liter. In spite of the reduction, the government reported that it would still have to pay NGN 2.50 (two Naira, fifty Kobo) (approximately 1¢ United States Cent) as subsidy on every litre of petroleum product sold in the country.

The *2012 Petroleum Industry Bill (2012 PIB)*, like its predecessors, was not enacted into law, having only been passed by the House of Representatives on the last day of sitting of the seventh national assembly. A bill to amend the *Nigerian Oil and Gas Industry Content Development Act, 2010*, was however passed by both the Senate and the House of Representatives, but failed to receive presidential assent. The Department of Petroleum Resources (the "DPR"), in exercising its oversight functions over the Nigerian petroleum industry, sought to enforce compliance with a much overlooked segment of the *Petroleum (Drilling and Production) Regulations, 1988* which requires all petroleum licensees and permit holders to notify the Minister of Petroleum Resources prior to disengaging any worker from such licensee's employ. The DPR, to this end, released the "Guidelines for the Release of Oil Workers in Nigeria's Oil and Gas Industry" which was, to a large extent, perceived as needlessly overarching. Providing a glimmer of hope for the Nigerian petroleum industry during the last quarter of 2015, a proposed bill, rumored to have been developed by the Ministry of Petroleum Resources and the Nigerian Senate, (known as the "*Petroleum Industry, Governance and Institutional Framework Bill, 2015*") was released to the public by an unknown source. The *Bill* appears to take into account the widespread view that the *2012 PIB* was too ambitious in scope and that true sector reforms could only arise where the legislation is split up into digestible and prioritized segments. The *Bill*, which as at today has not been officially presented to the National Assembly, seeks to introduce an effective institutional framework for the Nigerian petroleum industry, set up structures for the establishment of commercially driven petroleum entities and promote transparency in the administration of Nigerian petroleum resources.

As part of its drive to foster transparency in the affairs of the state-owned oil company, the new administration at the NNPC terminated its offshore processing agreements (OPA) with certain crude oil off-takers. Under the OPA arrangement, the NNPC allocates an amount of crude oil per day, for refining at offshore locations, in exchange

Oil and Gas (cont'd)

for petroleum products at a pre-agreed yield pattern. Subsequent to an appraisal of the agreements, the NNPC conceived that the arrangements were skewed in favour of the off-takers such that the value of products delivered was significantly lower than the equivalent crude oil allocated. The corporation also took the view that the arrangements did not guarantee unimpeded supply of petroleum products as delivery terms were not optimal. Addressing these lapses, the corporation moved to implement interim OPAs towards the end of 2015, pending the commencement of new OPA arrangements.

Pension

A new *Pension Reform Act* (the "PRA 2014") was passed in 2014. Under the PRA 2014, both the employers' and employees' contributions were increased with the employers contributing a minimum of 10 percent of an employee's monthly emoluments while the employees contribute 8 percent respectively. As with the repealed *Pension Reform Act 2004*, the PRA 2014 retained the provisions which allowed an employer elects to bear the full responsibility of contributions to the pension scheme but stipulated that where an employer exercised this option, such employer would be required to contribute a minimum of 20 percent, as opposed to 18 percent, of its employees' monthly emoluments. Although the National Pension Commission ("Pencom") published a notice clarifying that any employer that elects to bear the full responsibility for the contributory pension scheme shall only be required to pay a total of 18 percent of its employees' monthly emoluments; it is unclear how the courts would interpret such publication in the event of a dispute.

Under the repealed act, the obligation to open a retirement savings account ("RSA") was vested in the employee, and an employer could only remit contributions to the RSA after the employee had notified the employer of the details of his/her RSA. It was not unusual for employees not to open an RSA, and therefore, a number of employers were unable to remit the contributions, and as a result were in breach of their obligation under the repealed act. In a bid to redress the situation, the Pencom issued the *Guidelines for Transitional Contributions Fund*, which guidelines provided a mechanism for the administration of the contributions of employees that had failed to open RSAs with pension fund administrators ("PFAs") of their choice. Section 11(5) of the PRA 2014, by authorizing employers to open nominal RSAs, subject to such guidelines as may be issued by Pencom, on behalf of employees who fail to do so within six months of the commencement of employment, has definitely resolved this concern.

Prior to the enactment of the PRA 2014, the entitlements of a life insurance policy maintained on behalf of an employee (which still remains at a minimum of three times the total annual emoluments of an employee), were required to be paid into such employee's RSA; and the amounts administered by the PFA in favour of the beneficiary under the deceased employee's will, or paid to the deceased's spouse and children, and in the absence of the spouse and child, to the recorded next-of-kin or any person designated by him/her during his/her life time or in the absence of such designation, to any person appointed by the Probate Registry as the administrator of the estate of the deceased. This process was complicated, and appeared to defeat the purpose of the life insurance policy which was meant to ameliorate the consequences of the death of an employee. The PRA 2014 has simplified this process and provides in section 8, that the underwriter shall pay the deceased employee's entitlements to the employee's named beneficiary, in accordance with the provisions of section 57 of the *Insurance Act, Chapter 117, Laws of the Federation of Nigeria 2004*.

In February 2015, Pencom circulated a draft of the *Regulation on Investment of Pension Fund Assets* (the "Draft Regulation") to the public for comments. The aim of the Draft Regulation is to increase the scope of investments that Pension Fund Administrators ("PFA") can engage in to yield reasonable profit for contributors of the pension fund. The Draft Regulation proposes to achieve this by providing a broad range of investment strategies to enable compliance with the PRA 2014 while taking the financial market and macro-economic environment into consideration. If the Draft Regulation becomes effective, the PFAs will have a broader range of investment strategies to guide their investment decisions, while taking the current financial market into consideration.

Pension (cont'd)

Amongst other things, the *Draft Regulation* lays the foundation for an Institutional Framework, by requiring each PFA to establish an Investment Strategy Committee and a Risk Management Committee in compliance with the provisions of Section 77 of the *PRA, 2014*. Should the *Draft Regulation* become law, each PFA will have a committee to advise it on investment strategies as well as another committee to manage and monitor risk and risk tolerance limits.

In 2015, Pencom also introduced *Draft Guidelines on Withdrawals from Retirement Savings Accounts (RSA) Towards Equity Contribution for Payment of Residential Mortgage* (the "*RSA Guidelines*"). The *RSA Guidelines*, which has generated a lot of interest amongst the Nigerian workforce, help determine the eligibility requirements, documentation and procedures required to enable RSA contributors to access and utilise part of their RSA balances towards equity contributions in respect of first home ownership mortgages. A RSA holder may only access a portion of his RSA balance (a maximum of 25 percent) once in his lifetime in order to utilise it as an equity contribution for a residential mortgage. In order to qualify to access the RSA balance, the RSA holder must be actively employed (either salaried employment or self-employment); have contributed consistently to his RSA for a minimum of 10 years prior to the application for drawdown; have an income ratio that does not exceed 33.33 percent of his net monthly income at the time of application; amongst other things. The mortgage loan amount will be between NGN 1.5 million and NGN 50 million with a tenor of between 5 to 20 years and a fixed interest rate for the duration of its term.

Real Property

In January 2015, the Governor of Lagos State signed into law, an executive order, reducing the cost of land transactions within the state. The order, which took immediate effect, reduced consent fees from 6 to 1.5 percent while capital gains tax, which was previously 2 percent, is reduced to 0.5 percent. Also the cost of stamp duty (that is payable to the Lagos State Internal Revenue Service) has been reduced from 2 percent to 0.5 percent, while registration fees have been reduced from 3 percent to 0.5 percent. It is expected that all other states of the Federation will follow suit in due course, especially as the FGN has indicated its desire to lobby other state governments to ensure a reduction of perfection fees to amounts below 3 percent of the consideration for purchase of the relevant property. In relation to mortgages, the consent fees were also reduced from 0.50 percent to 0.25 percent of the loan amount.

The Governor of Lagos State assented to the enactment of the *Lagos State Lands Registration Law ("LSLR")* on 21st January 2015. Prior to the enactment of this law, the registration of title/interest in lands in Lagos State was administered pursuant to the *Registration of Titles Law (Chapter R4) Laws of Lagos State ("RTL")* and the *Lands Instrument Registration Law (Chapter L58) Laws of Lagos State 2003 ("LIRL")*. The *LSLR*, which has now repealed these laws and a number of other laws, provides a single legal framework for the registration of title/interest in land in Lagos State.

The Nigeria Mortgage Refinance Company ("NMRC") was incorporated with the objective of encouraging and promoting home ownership in Nigeria by providing capital, raised from the domestic and international capital markets, to licensed primary mortgage lenders, thereby increasing the availability and affordability of mortgage loans to Nigerians. In furtherance of this objective, the NMRC, in 2015, refinanced the mortgage facility of a primary mortgage bank for the sum of up to NGN one billion.

The FGN has expressed its intention to engage in an aggressive housing intervention program which is aimed at reducing the current housing deficit by undertaking projects involving the construction of houses and formulating policies that will invariably lead to private sector participation in the real estate sector.

Regulatory and Compliance

In 2014, the Nigerian Copyright Commission (the “NCC”) commenced its electronic copyright registration system, Nigerian Electronic Copyright Registration System (NeCRS). The effect of this initiative is that the NCC has observed a significant increase in the number of copyright notifications lodged with it. The NeCRS is aimed at improving the existing copyright notification system by allowing the creators of works eligible for copyright, to register their interests through an online platform. A major advantage of this system is that it allows searches to be conducted on the NeCRS database.

The Standards Organization of Nigeria (“SON”) recently joined the Nigerian Single Window Trade Portal with other agencies in Nigeria, in a bid to promote and facilitate trade. This trade portal is a government website that offers a single portal for both Nigerian and international investors to access information concerning regulatory guidelines in relation to their proposed business/trading activities in Nigeria. The other agencies on the Portal include the Nigerian Customs Service and the National Agency for Food and Drug Administration and Control (“NAFDAC”).

In January 2015, the NAFDAC, the agency responsible for regulating food, drugs, cosmetics, medical devices, chemicals and packaged water (“Regulated Products”) in Nigeria, increased its registration fees by 30 percent. It must be noted that the registration of Regulated Products is compulsory for the manufacture, import, export, advertisement, distribution, sale and use of such products in Nigeria.

In 2015, as part of its efforts to stabilize the foreign exchange market, the CBN issued a circular directing Nigerian banks to desist from the collection of foreign currencies for payment of domestic transactions on behalf of their customers and from the use of their customers’ domiciliary accounts for originating and consummating payments for visible and invisible transactions (fees, charges, licenses, etc.) originating and consummated in Nigeria. It is therefore illegal to consummate any business offer or acceptance in any foreign currency, in Nigeria. Operators in the oil and gas, maritime and aviation industries, among others are, however, exempted from the application of the circular.

In June 2015, the CBN via a circular titled *“Inclusion of some Imported Goods and Services on the List of Items not Valid for Foreign Exchange in the Nigerian Foreign Exchange Markets”* excluded 41 items from the list of imported products/transactions which qualify as eligible transactions for the purchase of foreign exchange in the Nigerian official Foreign Exchange Market (“Forex Market”), in order to encourage local production of the excluded items. The excluded items/transactions include, among other things, Eurobonds; foreign currency denominated bonds and purchase of shares in foreign companies; private jets; rice; meat and processed meat products; clothes; cement and steel sheets.

As a result, Nigerian residents and non-residents can no longer access the Forex Market to purchase foreign exchange to invest in or import any of the excluded items. It is also illegal for any Nigerian bank to sell foreign exchange to a customer in order to make such investments/import such products. Any person that wishes to invest in the excluded items may only do so using his/its own independent sources of foreign exchange, such as funds held in domiciliary accounts, without recourse to the Forex Market.

The CBN in February, 2015 introduced the *Registration of Security Interests in Movable Property by Banks and Other Financial Institutions In Nigeria (Regulations No. 1, 2015)* (the *“Collateral Regulations”*) to provide a framework for the establishment of a national collateral registry for the registration of security over moveable property. The *Collateral Regulations* applies to all security interests, in respect of movable property created by an agreement that secures payment of a debt or other performance of an obligation, regardless of the type of the transaction, movable property or the nature of the secured obligation. By virtue of this regulation, all finance leases entered into after the effective date are subject to registration in the Collateral Registry at a fee of NGN 1,000 for the initial registration of a security interest/financing statement. It has been reported that the Collateral Registry launched in the first quarter of 2016.

Regulatory and Compliance (cont'd)

In 2015, the *Prohibition, Prevention, Detection Response, Investigation and Prosecution of Cybercrimes and other Related Matters Act 2015* (the “*Cybercrime Act*”) was enacted. This legislation, among other things, imposes the obligation on various stakeholders including cybercafé operators, financial institutions and telecom service providers to ensure the security of their platforms.

The *Equipment Leasing Act* was enacted in 2015, providing a legal framework to stimulate leasing development and investment. This *Act* establishes the Equipment Leasing Registration Authority as the agency charged with the responsibility for registering all Equipment Leases and companies carrying on business as equipment lessors, among other duties. The *Act* restricts participation in the business of equipment leasing to limited liability companies registered in Nigeria with the power to carry on such business under the provisions of its *Memorandum and Articles of Association* and; requires lease agreements to be registered within 14 days, however a period of 3 months is allowed for registration of lease agreements entered into before the commencement of the *Act*, after which a Certificate of Registration will be issued by the Equipment Leasing Registration Authority.

In 2015, the CBN introduced the implementation of the Treasury Single Account (“TSA”) in the bid of the FGN to effectively manage and consolidate the country’s revenue. All inflows from all government ministries, departments and agencies in Nigeria by way of deposit into commercial banks are paid into the TSA.

In 2015, the Nigerian Stock Exchange (NSE) issued a Rulebook which is a compilation of all the Rules, Regulations and Guidelines issued by the NSE.

In April 2015, the Financial Reporting Council (FRC) of Nigeria issued an exposure draft of the *National Code of Corporate Governance* with the objective of unifying the sectoral Codes of Corporate Governance released by various regulators within Nigeria. It has been proposed that the private sector code and the not-for-profit code, both of which form part of the proposed *National Code of Corporate Governance*, would be operational by June 2016. The objective of the *Code* is to enhance corporate governance, and stimulate sound financial systems of internal control in Nigeria, by harmonizing the various sectoral codes.

Tax

In October 2014, the Nigerian Stock Exchange waived the payment of value added tax on commissions applicable to capital market transactions. These commissions include those earned on traded values of shares, and payable to the Securities and Exchange Commission, the Nigerian Stock Exchange and the Central Securities Clearing System.

The withholding tax rate on all aspects of building, construction and related activities (excluding survey, design and deliveries) provided by the *Companies Income Tax Regulation* has been reduced to 2.5 percent from the former 5 percent. However, “survey, design and deliveries” have been explicitly excluded from the reduced rate.

The Federal Inland Revenue Service (“FIRS”) has questioned the eligibility of some companies that were granted pioneer status incentive i.e. exemption from corporate income tax of 32 percent. Some companies were granted the incentive for a straight 5-year period but the law does not provide for a straight 5-year grant but rather 3 years, then an additional 1-year and a final 1-year subject to satisfactory performance. The FIRS has consequently raised additional assessments on some of the companies for the last 2 years of their 5-year pioneer status.

The Oil & Gas Free Zone Authority (OGFZA), Onne Rivers State established the Free Zones Tax Administration (FZTA) Unit to coordinate all tax matters relating to the free zone with effect from January 2015.

In May 2015, the Ministry of Industry, Trade and Investment released a list of 44 industries and products that are eligible for the pioneer status incentive. Consequently only industries and products in the approved list are eligible for the incentive.

The former Chairman of the Lagos State Board of Internal Revenue Service (LIRS), Mr. Babatunde Fowler, was appointed as the Executive Chairman of the Federal Inland Revenue Service (FIRS) and his appointment was confirmed by the Senate in December 2015. Mr. Folarin Ogunsanwo was appointed as the new Chairman of the LIRS Board to replace Mr. Fowler.

Tax (cont'd)

The *Federal Capital Territory ("FCT") Internal Revenue Service Act* was enacted in 2015 to establish the Federal Capital Territory Internal Revenue Service ("FCT- IRS"), an agency that is charged with the responsibility of assessing and collecting taxes in the *FCT*, a power previously vested in the FIRS. The FIRS and the FCT- IRS, in March 2016, issued a joint public notice informing taxpayers and the general public that the FIRS will continue to administer and collect taxes due and payable within the *FCT* on behalf of the FCT- IRS. According to the statement, this decision was taken in order to facilitate an effective tax collection administration pending when the FCT- IRS commences full operations.

In April 2015, the FGN ratified the *Organization for Economic Cooperation and Development ("OECD") Convention on Mutual Administrative Assistance in Tax Matters*. The ratification of the Convention is a significant step in the administration of taxes in Nigeria as it is expected to give the FIRS new lines of enquiry about the tax affairs of multinational companies operating in Nigeria. The Convention requires Nigeria and other participating jurisdictions to exchange information relevant for enforcing the domestic tax laws of the jurisdictions that are party to the convention.

In 2015, the FIRS proposed an increase in the Value Added Tax ("VAT") rate from the current rate of 5 to 10 percent in order to help shore up government revenue which has been eroded by the declining price of crude oil. Although the 2016 National Budget projects a 20 percent increase in VAT remittance on the basis of improved compliance by taxpayers, the budget does not indicate that an increase in VAT will, actually, be effected.

Special levies were introduced in the 2015 National Budget on the purchase of luxury items such as new private jets, luxury yachts, luxury cars, champagnes, wines & spirits, business & first class airline tickets and a 1 percent *FCT* mansion tax was introduced in relation to residential property located within the *FCT* having a value of NGN three hundred million and above. The imposition of these levies were, however, not implemented due, in large part, to the absence of a legal framework for the imposition of the levies.

With respect to the payment of withholding tax, in 2015, the Tax Appeal Tribunal ("TAT") ruled that withholding tax should be levied on dividends paid out of gas profits by upstream petroleum companies. With respect to gas flaring, the TAT ruled that the payment made by an oil producing company to flare gas in the course of crude oil production is not a fine to be disallowed for tax purposes; but a necessary business expense that is fully tax deductible regardless of whether a written permit was obtained from the government to flare gas. In another ruling, the TAT held that no capital allowance claw-back (balancing charge) should be computed on the disposal proceed relating to intangible assets on which no capital allowance had been previously claimed.

The FIRS, in 2015, introduced some changes and initiatives in order to ensure improved tax administration and compliance. These include: enforcement of the payment of 30 percent advance corporate income tax where interim dividend is declared by a company; proposed joint tax audits of companies by the State Inland Revenue Services and the FIRS; and the engagement of the services of consultants for tax reviews.

A *National Security Tax Bill* proposing that Nigerian companies pay up to 5 percent of their profits as security tax is currently before the Senate.

In January 2016, the CBN issued a circular imposing an obligation on all deposit money banks and other financial institutions to charge a stamp duty of NGN 50.00 on all receipts given or issued by such institutions in acknowledgement of services rendered with respect to electronic transfers and teller deposits of NGN 1,000 and above. This duty is payable by holders of receiving accounts (i.e. the recipients of the deposits).

The 2016 National Budget provides that the 'tax rate' for smaller businesses will be reduced in order to address the unemployment situation in the country. It is not clear which taxes will be reduced and what constitutes "smaller companies".

Nigeria entered into agreements on the avoidance of double taxation with the United Arab Emirates and the State of Qatar in January and February 2016, respectively.

Udo Udoma & Belo-Osagie's Highlights

2015 Transaction Summaries

Banking and Finance

We advised:

- Rand Merchant Bank Nigeria Limited on a NGN 12.95 million facility from African Development Bank facility.
- Syndicated lenders on a USD 3.2 billion facility to MTN Communications Limited.
- the International Finance Corporation ("IFC") in relation to:
 - its NGN 650 million Grooming Center facility;
 - a USD 280 million IHS facility;
 - a USD 10.6 million Primera Food Nigeria Limited facility; and
 - a USD 19.8 million Natural Prime Resources Nigeria Limited facility.
- FMO/Proparco on their USD 40 million Access Bank plc facility and their USD 60 million First City Monument Bank facility.
- SABMiller plc on a syndicated USD 40 million financing.
- Syndicated lenders on a USD 680,625,000 facility to UNICEM.
- Proparco on its USD 40 million Fidelity Bank plc facility.
- Hong Kong & Shanghai Banking Corporation Limited (HSBC) in connection with a loan of USD 125 million that was provided by HSBC to Airtel Networks Limited.
- Standard Chartered Bank/FirstRand Bank Limited (through Rand Merchant Bank) on their USD 85 million AOS Orwell Limited loan refinancing.

Capital Markets

We advised:

- Citibank, on a USD 200 million Diamond Bank plc subordinated note offering.
- Citibank/Goldman Sachs on a USD 450 million FBN Finance B.V. subordinated note offering.
- Citibank/Goldman Sachs on a USD 1 billion Zenith Bank plc global medium term note program and offering of USD 500 million notes.
- Deutsche Bank/Standard Chartered on an EBN Finance Company B.V. USD 250 million subordinated note offering.
- Citibank/Standard Chartered Bank/Stanbic IBTC Bank plc on an NGN 8.7 billion federal government bond issued as Citibank N.A. global depository notes.
- Stanbic IBTC Bank plc on a NGN 150 billion note issuance program.
- African Development Bank's NGN 160 billion medium term note issuance program.
- UBA Trustees Limited on Kogi State's NGN 20 billion fixed rate bond issuance program; and the restructuring of the Kaduna State NGN 8.50 billion bond payment.
- As joint solicitors on a state government's NGN 15 billion bond issue.
- Trustees of a state government's NGN 20 billion bond issue.
- FSDH Merchant Bank Limited on a NGN 100 billion bond issuance.

Capital Markets (cont'd)

- On restructuring of Stanbic IBTC Bank plc as a holding company under Central Bank of Nigeria regulations.
- Standard Bank/BNP Paribas/Renaissance Capital on dual listing of Seplat Petroleum Development Company plc shares on the Nigerian and London Stock Exchanges.

Corporate Advisory/M&A

We advised:

- On acquisition by Lafarge Cement WAPCO (Nigeria) plc (now Lafarge Africa plc) of approx. USD 1.35 billion interests in Lafarge South Africa Holdings (Proprietary) Limited, Atlas Cement Company Limited, AshakaCem plc and UNICEM.
- Sahara Energy Group/Rak Unity Petroleum plc on the latter's restructuring.
- First Bank of Nigeria Limited on its First Registrars Limited divestment.
- Consol Glass Proprietary Limited on its acquisition of Glassforce Limited.
- Dangote Flour Mills on its Dangote Agrosacks Limited divestment.
- Tiger Brands on a post-acquisition tender offer in Dangote Flour Mills.
- UAC of Nigeria plc on post-acquisition tender offer in Portland Paints and Products plc.
- UAC of Nigeria plc on 49 percent divestment to Famous Brands Management Company (Proprietary) Limited.
- A global aviation company on leasing and registration of three aircraft in Nigeria.
- A Merchant Bank on the winding up of its representative office in Nigeria.

Litigation

We represented:

- Lafarge Nigeria (UK) Ltd and AshakaCem plc in proceedings to prevent the transfer of 1,312,444, 260 shares in AshakaCem plc to Lafarge Africa plc.
- Transocean Support Services in claims arising from drilling rig fatalities and injuries.

We are currently representing:

- Fernbach Financial Software S.A. in an action in relation to the termination of Banking Software Reseller Contract with a Nigerian agent.
- Cotecna SA and Cotecna Destination Inspection Limited in an action against NICON Insurance Ltd and for indemnity in relation to the fire incident at Cotecna's scanning facility at Ashaye Port.
- Ogilvy and Mather Africa BV in an action by Prima Garnet Communications Limited concerning a media communications affiliation agreement.
- International Finance Corporation ("IFC") in suits by DSNL Offshore Limited, Adamac Industries Limited and others on a refinancing facility.
- Mobil Producing Nigeria Unlimited in compensation claim and action for N1billion for alleged environmental damage.
- Mobil Producing Nigeria Unlimited in multi-billion Naira compensation claims arising out of Idoho Oil spill in Nigeria.
- Ikeja Electricity Distribution Company Limited ("IKEDC") in actions relating to electricity power contracts, actions by former employees, and contractors of the Power Holding Company of Nigeria plc, and by electricity consumers.

Litigation (cont'd)

- Transocean Drilling (UK) Ltd and Sedco Forex International Inc. in actions on the constitutionality of the Tax Appeal Tribunal.
- Schlumberger Anadril Nigeria Limited in an appeal at the Supreme Court on rights of appeal against National Industrial Court judgments.
- SIA Smartlynx Airlines on the enforcement of a foreign judgment for breach of aircraft lease agreement against Air Nigeria Development Ltd.
- Bank PHB plc in a suit by shareholders against it, CBN and others, regarding CBN's regulatory intervention.
- General Electric Company in an action arising from alleged breach of agency agreement.
- Daniel Power Plants Company Nig. Limited in an action against the Bureau of Public Enterprises and Niger Delta Power Holding Company Limited in relation to the Federal Government of Nigeria's privatization of the power sector and the acquisition of 80 percent shares in the Ogorode Generation Company Limited (owners of the Sapele II NIPP Power Plant in Sapele).

Oil and Gas

We advised:

- Rosetti Marino SpA on its joint venture with PIVOT-GIS Limited.
- TGS NOPEC on a Nigerian joint venture.
- A foreign consortium on acquiring onshore OML interests from Shell Petroleum Development Company, National Agip Oil Company and Total E&P Limited.
- A UK company subsidiary on the acquisition of gas pipeline rights of way.
- Petrobras on restructuring its Nigerian subsidiaries as part of a global exercise.

Power and Infrastructure

We advised on acquisitions of controlling interests by:

- Kepco Energy Resources Limited in Egbin Power plc (1,320 MW power plant) and a syndicated USD 414.9 million asset financing.
- New Electricity Development Company Limited in Ikeja Electricity Distribution Plc and a syndicated USD 105 million asset financing.
- NG Power-HPS Limited in First Independent Power Limited (five (5) power stations with 721 MW aggregate installed capacity) and a syndicated USD 311.20 million asset facility.
- Seven Energy International Limited, for USD 100 million of Oando Plc's East Horizon Gas Company Limited and the syndicated USD 170 million asset financing.

We also advised:

- UAC Property Development Company plc on the construction, operation and maintenance of a combined cycle power plant for its Golden Tulip Hotel Lagos and a mixed use development.
- The President Obama Power Africa Initiative, working with the U.S. Department of Commerce's Commercial Law Development Programme on a model power purchase agreement for African power transactions.
- The Eko Rail consortium on operating Lagos State Mass Transit Rail system's Blueline.

Private Equity

We advised:

- Actis on its disposal of a 14.78 percent in Diamond Bank plc.
- CAPE III Limited on its acquisition of UBN Insurance Brokers Limited and its investment in Wakanow Nigeria Ltd.
- Korean Investment Corporation on its indirect investment in IHS Nigeria plc.
- African Infrastructure Investment Fund on its indirect investment in IHS Nigeria plc.
- Emerging Capital Partners on the restructuring of IHS Nigeria plc.
- Abraaj on its acquisition of Fan Milk plc.
- Actis on its investment in Upstream Systems Limited (mobile monetization).
- Cape II Limited on proposed divestment from Bevpak Nigeria Limited and divestment from Gas Terminalling Limited.
- ACA Holdings Limited on acquiring SIM Capital Alliance Limited.
- Actis on its First Concept & Properties Limited investment.
- African Development Bank and certain PFAs on a proposed investment in ARM-Harith Infrastructure Fund.

Real Estate

We advised:

- Duval Properties Limited on 27,000 square meter Jabi Lake Abuja mixed use development.
- Sanlam Africa Core Real Estate Investments Limited on the acquisition of a first class commercial office building.
- First Concept & Properties Limited on a USD 65 million construction financing.
- Lousol Properties Limited on a USD 50 million commercial real estate finance facility.

Telecommunications, Media and Technology

We advised:

- Nokia Corporation on the global sale of Nokia's Device & Services Business to Microsoft Mobile Oy in Nigeria.
- Swift Networks Limited on a sale by Monarch Communications Limited of its private network links licence.
- Adlevo Capital LLC on its USD 2.3 million investment in Solo Phones Nigeria Limited.
- Emerging Capital Partners on the restructuring of IHS Nigeria plc.
- Smile Telecommunications on Nigerian aspects of a multijurisdictional financing.
- Swift Networks Nigeria Limited on proposed divestments by CAPE II and others.

2015 Transaction Summaries

Banking and Finance

We advised:

- A group of certain bondholders in relation to the restructuring of the Afren debt and the issue and sale of Notes;
- Lousol Properties Ltd on a USD 25.50 million Standard Chartered Bank facility;
- HSBC on a USD 125.00 million Airtel Networks Ltd facility;
- Goldman Sachs on a total return swap transaction with Sterling Bank PLC.;
- Consol Glass Proprietary Ltd (of South Africa) on its debt raising and security over its assets in Nigeria;

Banking and Finance (cont'd)

- IFC and Investec on a USD 33 million facility to Persianas Properties Ltd;
- FSDH Merchant Bank Ltd on various financing structures for funding the NNPC's participating interest in Oil Mining Lease 18;
- Stanbic IBTC Capital Ltd on the enforcement of its equity bridge facility security interests;
- FSDH Merchant Bank Ltd as financial adviser and lead arranger to Waltersmith Petroman Oil Ltd on a facility;
- Lenders on a USD 75 million unsecured loan by FMO and DEG - Deutsche Investitions – und Entwicklungsgesellschaft mbH to Ecobank;
- FSDH Merchant Bank Limited on USD 10 million facilities from Shelter Afrique and AFREXIM respectively.
- FSDH Merchant Bank Limited on a NGN 1.2 billion loan facility for the acquisition of shares in Union Trustees Limited.

Capital Markets, Corporate Advisory/M&A

We advised:

- Standard Chartered Bank Nigeria Ltd on its NGN 100 billion CP Program;
- Cummins Inc. on its purchase of a 50 percent equity interest in Cummins West Africa Ltd;
- Unilever Nigeria PLC. on a tender offer for 942,215,930 million of its shares by Unilever Overseas Holdings B.V.;
- A joint venture company on the proposed acquisition of Mansard Insurance PLC;
- The Kellogg Company on its acquisition of 50 percent of Multipro Consumer Products Ltd;
- SABMILLER on proposed equity and asset acquisitions;
- Amethis Finance Africa and the National Bank of Canada (Banque Nationale du Canada) (the consortium) on the indirect acquisition of a minority stake in NSIA Insurance Limited (NSIA);
- Yves Rocher on a distribution agreement with Montaigne Ltd;
- BUA Pasta Ltd and BUA Flour Ltd on asset transfers;
- Halliburton and Baker Hughes International on a proposed business divestment and integration process;
- An airline caterer and provider of in-flight services on a Joint Venture for the construction and operation of an airline-catering facility.

Litigation

We advised:

- Union Global Partners on a claim involving a scheme of arrangement;
- Navgas/Vitol SA in a dispute relating to a Jetty Utilization Agreement;
- HSBC Bank in a claim relating to a letter of credit transaction;
- Union Bank of Nigeria PLC. in committal proceedings against an executive;
- Tidex/Tidewater in various litigated matters;
- Seven Exploration and Production Ltd in various litigated matters;
- Amni International Petroleum Development Company in several lawsuits in connection with alleged oil spill claims;

Litigation (cont'd)

- Medicines Sans Frontier (MSF), France in law suits filed in connection with alleged medical negligence and breach of contract;
- Seatrucks Ltd, Diesel Power Ltd, Walvis Ltd and West African Dry-Docks Ltd in several lawsuits in connection with employment issues and alleged breach of contract;
- Petrolesde Venezuela S.A ("PDVSA") through the US law firm, Foley Hoag LLP in a suit instituted against PDVSA and two other defendants by Skanga Energy and Marine Ltd in the United States District Court Southern District of New York;
- Zain BV on Nigeria legal questions arising from proceedings in various Nigerian courts in connection with an arbitral award awarded against Celtel Nigeria BV;
- Sedco Forex International Inc. on a tax appeal against the Federal Inland Revenue Service;
- Mobil Producing Nigeria Unlimited in a compensation claim action for NGN 1billion for alleged environmental damage;
- IFC in suits on a refinancing facility and a suit on the botched concession of the Nnamdi Azikiwe International Airport, Abuja;
- Transocean group on various tax matters;
- De La Rue Plc on the enforcement of a United Kingdom judgment & LCIA Awards against Interpods Limited in Nigeria;
- General Electric Company Co ("GE") in a suit instituted by New Africa Technical Company Ltd; and
- Schlumberger Anadril Nigeria Ltd in a Supreme Court appeal on rights of appeal against National Industrial Court judgments.

Oil and Gas

We advised:

- The FGN and various state governments on the drafting of a petroleum industry bill;
- Pan African Oil Ltd on a proposed investment in OPL 2012;
- Grofin, on vessel construction financing for Supreme & Mitchells Oil Ltd;
- a European major on acquiring OML interests;
- on Joint Venture acquisitions of tank farms;
- Shelf Drilling on its acquisition of drilling assets from Transocean and local content issues;
- a financier and investor on its proposed acquisition of working interests in an Oil Prospecting License;
- KCA Deutag on local content compliance issues and on a proposed rights issue transaction;
- Shelf Drilling Offshore Services Ltd on the establishment of an employee gratuity trust scheme; and
- Accugas/Seven Energy on its Gas Sale and Purchase Agreement with Ibom Power Ltd.

Power and Infrastructure

We advised on acquisitions of controlling interests by:

- Daniel Power Plants Company Nigeria Ltd and a consortium in the acquisition of an 80 percent equity stake in Ogorode Power Generation Company Ltd in Delta State, Nigeria;
- Accugas Ltd (a wholly owned subsidiary of Seven Energy International Ltd) on a USD 170 million facility for the acquisition of a 100 percent stake in East Horizon Gas Company Ltd; and

Power and Infrastructure (cont'd)

- Accugas Ltd on a USD 445 million refinancing of facilities for the construction of a gas processing facility and the acquisition of a 100 percent stake in East Horizon Gas Company Ltd.

We advised preferred bidders:

- Eastern Electric Nigeria Ltd in connection with the acquisition of Enugu Electricity Distribution Company PLC. acquisition;
- In the 265 MW Omoku power plant acquisition (National Integrated Power Project privatisation);
- In the approx. USD 600 million acquisition of 507 GE Frame 9-gas turbine Ogorode power plant; and
- Oma Power Generation Ltd on the development, construction, financing, commissioning, operation and maintenance of a 500 MW gas-fired open cycle gas turbine power plant.

Private Equity/Funds

We advised:

- Carlyle Group on its acquisition of an 18 percent equity interest in Diamond Bank PLC.;
- Acumen Fund Inc. on its investment in Babban Gona Farmer Services Nigeria Ltd;
- Synergy Private Equity Fund in connection with a USD 10 million investment in Riggs Ventures West Africa PLC. and investment in Netplusdotcom Nigeria Ltd;
- EchoVC Pan-Africa Fund I Ltd on its investment in Netplusdotcom Nigeria Ltd;
- Atlantic Coast Regional Fund in connection with its investment in Nigerian-German Chemicals PLC.;
- An Emerging Capital Partners-led consortium on the sale of its 53.60 percent interest in Continental Reinsurance PLC.;
- Verod Capital on its acquisition of the entire share capital of Union Trustees Ltd;
- Verod Capital on a USD 4 million acquisition of a 50.10 percent stake in Niyya Farm Group and a shareholder loan to the company; and
- Capital Alliance on Phased Acquisition of Shares in Sim Capital by a new investor.

Real Estate

We advised:

- Duval Properties Ltd on 27,000 SQM Jabi Lake Abuja mixed use development;
- IFC on a USD 124 million investment in the Persianas Group (for the construction of shopping malls);
- Duval Properties Ltd on its housing Joint Venture with Dreamspaces Development Ltd;
- Union Bank of Nigeria PLC. on the disposal of properties in several states across Nigeria;
- A PE firm on the acquisition of property worth over USD 26 million;
- An investor in connection with the acquisition of 2 Grade A commercial office buildings in Lagos State; and
- On the acquisition of industrial properties for beverage manufacturing.

Telecommunications, Media and Technology

We advised:

- MTG Africa AB on its proposed acquisition of Cooper Communications Ltd; and
- Venture Garden Nigeria Ltd on a USD 16.5 million restructuring and proposed investment by Convergence Partners.

Lex Mundi Member Contact



A **LexMundi** Member

Daniel Agbor - dan.agbor@uubo.org

Myma Belo-Osagie - myma.belo-osagie@uubo.org

Udoma Udo Udoma - udoma.udoma@uubo.org

Udo Udoma & Belo-Osagie

Member firm for Nigeria

Tel: 234.1.4622307.10/8970622

Seychelles

Prepared by Appleby, Lex Mundi Member firm for Bermuda
with office in Seychelles

Main exports

are **processed fish**,
non-fillet frozen fish, **cement**,
animal meal and
pellets and **fish oil**.

Top export destinations

are **France**, **United Kingdom**, **Italy**,
Japan, and **Mauritius**.

Issues

of spatial exclusion are not prevalent in **Seychelles**, due to its small population, largely inhabiting the main island of **Mahe**.

Trends and Projects

Our Africa Group comprises an integrated team of legal specialists from Appleby law firm and fiduciary specialists. Working together these lawyers and fiduciary professionals draw on each other's strength to assist clients (many of them external investors into Africa) in coordinating the set up and running of operations in Africa. Our presence as a leading offshore firm in the Indian Ocean jurisdictions of Mauritius and the Seychelles enables us to efficiently and knowledgeably access the African Continent. Our in-depth understanding of the major offshore legal, regulatory and commercial environments, combined with a clear focus on international, financial, corporate and capital markets, enables us to deliver the right solutions for our clients to explore the abundant investment opportunities Africa has to offer. The Corporate group at Appleby is among the largest and most widely recognised in the offshore world. Our multi-disciplinary teams advise a large number of FTSE 100 and Fortune 500 companies on all aspects of corporate and commercial law, focusing on mergers and acquisitions, corporate restructurings, joint ventures, capital markets and investment funds. Our Corporate group regularly publishes a quarterly report on offshore M&A activity (known as Offshore-i).

Marine Conservation and Climate Adaptation Project

The Seychelles consists of approximately 115 islands, each of which is prone to the threats of climate change, given their low-lying island geographies. The Nature Conservancy has worked in partnership with the Government of Seychelles to mobilize an USD 30 million debt-swap for the Government of Seychelles, in exchange of their commitment to enhance the marine conservation and climate adaptation. The deal equally involves the creditors of the Paris Club and the South African Government.

Under the debt restructuring program, a permanent endowment has been established and that shall generate sustainable financing for Seychelles' marine conservation and climate adaptation activities. The Government of Seychelles has equally set up the Seychelles' Conservation & Climate Adaptation Trust, under the *Seychelles' Conservation & Climate Adaptation Trust of Seychelles Act, 2015* to purchase and restructure the debt, manage the endowment and enforce the terms of the debt forgiveness agreement. After 20 years, the endowment is expected to be fully capitalized and will pay out additional funds each year to fund continued marine conservation and climate adaptation activities. The project is intended to improve protection for the marine resources, to fuel Seychelles' blooming tuna and tourism sectors, to create the Indian Ocean's second largest marine reserve and to promote the implementation of a Marine Spatial Plan for the entire Seychelles Exclusive Economic Zone, a territory approximately 3,000 times the size of their land mass.

Legislative News

The following pieces of legislations have recently been introduced and/or voted:

- **The Seychelles Conservation and Climate Adaptation Trust of Seychelles Act, 2015:** This piece of legislation provides for the setting up of the public-private trust fund called the Seychelles Conservation and Climate Adaptation Trust (SeyCCAT), set up to manage the cash flow from the restructured debt under the debt swap program.
- **The Anti-Corruption Bill 2016:** This *Bill* is anticipated to establish an Anti-Corruption Commission, to provide for its functions and powers, and to create a means by which the Commission can investigate, detect and prevent corrupt practices.

Appleby's Highlights

The firm has experience advising major international corporations and organizations in high-value matters. Of particular note, in 2014 Appleby advised:

- CIC Gold Group Limited (CIC Gold), a Seychelles registered company headquartered in Beijing, China in relation to its flotation on the Main Market of London's Stock Exchange (LSE);
- On the Debt Swap Program supported by the Nature Conservancy, and involving the Government of Seychelles together with the creditors from the Paris Club, and assisting in the drafting of the *Seychelles Conservation and Climate Trust Adaptation Trust Act, 2015*.

Appleby is one of the world's largest providers of offshore legal advice and services. We have over 470 people, including 60 partners, operating from 10 offices around the globe. We advise global public and private companies, financial institutions, and HNWLs, working to achieve practical solutions, whether in a single location or across multiple jurisdictions.

Our Origins

The firm of Appleby has its origins in a number of jurisdictions. The original Appleby practiced in Bermuda and was established by Major Reginald Appleby, who commenced practice in the late 1890s. In the same decade the law firm Bailhache & Bailhache was formed by brothers; Bois & Bois was formed by father and son in Jersey; and Dickinson Cruickshank was formed by William Dickinson and James Cruickshank in the Isle of Man. Each of these four practices was entirely local and focused on the local community and its need for legal services.

Expansion in Bermuda & Cayman

In Bermuda, Major Appleby was joined in 1938 by Dudley Spurling to form Appleby & Spurling which, in 1949, became Appleby Spurling & Kempe when William Kempe joined the practice following his service in the Second World War. After the War, following the death of Major Appleby, the then Dudley Spurling (later Sir Dudley) and William Kempe joined lawyers from the only other large Bermuda firm and representatives of Bermuda's major banks and undertook a sustained program to market and develop Bermuda as an international business center. Jointly they forged a complete transformation in Bermuda's business environment and created an international business community from the business they brought to the jurisdiction. In 1945, Clifton Hunter began practicing law in Bodden Town and in 1965 formed the firm of Hunter & Hunter with his son Arthur Hunter. That firm (the first law firm in the jurisdiction) grew steadily and was instrumental, alongside other Cayman firms, in the development and marketing of the financial services industry in the Cayman Islands and the creation of the Cayman Islands as a leading international financial center.

Crown Dependencies

In 1950, Perrier Labesse was formed in Jersey by Jacques Perrier and Jacques Labesse and, under the leadership of Jacques Labesse, working with other Jersey firms, began to promote Jersey as an international business center. In 1984, Perrier Labesse merged with Bois & Bois to become Bois Labesse. They, in 1994, merged with Bailhache & Bailhache to become Bailhache Labesse, which continued its local and international practice. In the Isle of Man, Dickinson Cruickshank began, in the 1970s under the leadership of Martin Moore, a sustained drive to develop the island as a significant offshore financial center, developing a strong international practice alongside its local practice. In 1999, the firm merged with Morris Maddrell and continued its leading role, promoting the island and developing its reputation as a significant offshore center.

In 1979, Appleby Spurling & Kempe established its first external office, a fiduciary company in Guernsey. In 1990, it established a Hong Kong office. At this point, the other constituent parts of Appleby were otherwise located only in their home jurisdictions.

Building a Leading Global Firm

In 2004, Appleby Spurling & Kempe, in pursuit of the goal of creating a leading global offshore firm, combined with Hunter & Hunter in the Cayman Islands to become Appleby Spurling Hunter. After establishing an office in the British Virgin Islands in 2005, it combined in 2006 with Bailhache Labesse to become Appleby Hunter Bailhache and then just Appleby. After establishing offices in Mauritius (2007) and Seychelles (2009) Appleby combined with Dickinson Cruickshank to enter the Isle of Man in 2009, before opening an office to provide full legal services in Guernsey in 2010. Appleby's latest office opening sees it venture further into China with an office opening in Shanghai in April 2012, offering a full range of fiduciary and administration service to clients in mainland China and internationally. This has resulted in a combined enterprise of c200 lawyers and over 500 employees, including accountants, trust and corporate administrators as well as business services and support staff.

Appleby today is a truly global organization, based in eight significant offshore financial centers and a presence in major international financial centers. It has a profile, in terms of the range of jurisdictions and the services that it is able to supply, unequalled by any other offshore law firm. Appleby is engaged with governments, regulatory bodies and industry representative bodies, as well as professional bodies and associations, in all our offshore financial centers. In particular Appleby participates in discussions on law and regulatory reform, the development of new products and responding to the challenges faced by each of those financial centers in an ever-changing international business environment. Appleby Partners have been members of the elected legislatures, and ministers in governments in a number of our offshore financial centers. Members of the firm have gone on not only to political office but also in a number of centers (Bermuda, Jersey, the Isle of Man and Cayman) to senior judicial office. Appleby represents combined ingenuity and talent taken from all of the most significant international offshore financial centers, and is focused on the development of new products and the provision of effective service to its many international clients.

The Republic of Seychelles

The Republic of Seychelles office of Appleby was opened in 2009 focusing on investment into emerging African, Indonesia and Asian markets through general corporate and commercial work for our international clients. Institutional clients in North America, Europe and Asia are looking for efficient investment structures created through a well-placed, independent sovereign country.

Our entry into this market further builds our strength and depth across multiple jurisdictions, providing greater resources and choice to our clients. In particular, our two offices in the Indian Ocean (Seychelles & Mauritius) offer unique access to emerging African, Indian and Asian markets and reinforces Appleby's position as the first choice for clients in the offshore sector seeking to invest into such emerging markets. Our clients are diverse, ranging from banks and state owned enterprises, to investment

The Republic of Seychelles (cont'd)

funds, listed companies and high-net-worth individuals. They come to us for help and advice that reaches across more than eight offshore jurisdictions: expert advice that is delivered in a timely and commercially-minded way, and is always set in the context of understanding how to do business in India, Asia, or Africa. Our corporate and commercial practice has consistently earned top-tier ranking in leading publications such as Chambers Global and IFLR 1000.

Appleby was the first global, offshore law firm to provide legal services from the Republic of Seychelles. Our lawyers advise on all aspects of Seychelles law. This includes the establishment of investment funds, special purpose vehicles and structured finance products, insurance companies and insurance products, securitization, financing transactions and public and private holding companies. Our team can also facilitate the provision of legal advice in Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey and the Seychelles. We are an award-winning team. And we have a track record of advising clients on the most complex and market leading deals and structures.

Clients get the very best and most experienced advice, which makes us both efficient and knowledgeable. We are one of the only offshore firm in Seychelles that has the ability to assemble a team for each matter with expertise from across more than eight offshore jurisdictions, regardless of the location of your transaction. We ought also to mention that most of our lawyers in Seychelles are fluent in English and French.

Lex Mundi Member Contact

APPLEBY

A **LexMundi** Member

Malcolm Moller - mmoller@applebyglobal.com

Appleby

Member firm for Bermuda with office in Seychelles

Tel 248.429.5281

South Africa

Prepared by Bowmans, Lex Mundi Member Firm for South Africa



Exports its Gold diamonds and platinum

as well as other
minerals, machinery
and equipment.

Top export partners

are China, Germany,
the United States, Saudi
Arabia, India, China and
Hong Kong.

Trends and Projects

B-BBEE Act and Codes of Good Practice

Broad-Based Black Economic Empowerment (B-BBEE) is a central part of the South African Government's economic transformation strategy. The formulation of policy and legislation to achieve *B-BBEE* has been driven by the Office of the Presidency, together with the Department of Trade and Industry (DTI). A multi-faceted approach to *B-BBEE* has been adopted which aims to increase the numbers of black people (being South African citizens who have been racially classified as African, Indian or Colored) that manage, own and control the country's economy, and to decrease racially-based income inequalities.

The *Broad-Based Black Economic Empowerment Act 53 of 2003 (B-BBEE Act)* is the principal legislation through which *B-BBEE* is measured. The Minister of Trade and Industry published the previous *Codes of Good Practice*, which set out the details of the measurement process, in 2007. However, the new *Codes of Good Practice* replaced the previous *Codes* with effect from 1 May 2015. In assessing *B-BBEE*, a "scorecard" approach is used in the *Codes* whereby the different aspects of *B-BBEE* are accorded points. Under the *Codes*, the elements of *B-BBEE* on which an enterprise's *B-BBEE* score is measured and the respective weighting of each element (excluding bonus points) are: ownership (25 points), management control (15 points), skills development (20 points), enterprise and supplier development (40 points), and socio-economic development (5 points). The *Codes* also contain sub-minimum requirements in the context of the ownership, skills development, and enterprise and supplier development elements. If the sub-minimum requirements, i.e. 40 percent of the relevant targets, are not met, a measured enterprise will be deemed to drop one *B-BBEE* level. If, for example, a business scores sufficient points to be a Level 3 *B-BBEE* contributor but fails to meet one of the sub-minimum requirements, it will be deemed to be a Level 4 *B-BBEE* contributor.

The Minister of Trade and Industry has also published various sector-specific codes which detail the manner in which *B-BBEE* must be measured for businesses operating in particular sectors. Where a sector-specific code has been issued, businesses in that sector are required to apply the relevant sector code rather than the general *Codes*. Sector codes were published for the tourism, forestry, information communication and technology, chartered accountancy, finance, construction, transport, and agriculture sectors. The DTI had indicated that all sector codes should be aligned with the new *Codes* and submitted to the Minister for approval by 15 November 2015, and that any sector code not submitted to the Minister by this date would be repealed. The chartered accountancy and construction sector codes have since been repealed by the DTI, while a final aligned sector code for the tourism sector has been published. The DTI also published a sector code for the marketing, advertising and communications sector in March 2016. Sector codes for the forestry, information communication and technology, finance, transport and agriculture sectors are still in the process of being aligned with the new *Codes*. Businesses in a sector that is required to apply a sector code must continue to use the current sector code, until that sector code is replaced with an aligned sector code.

Protection of Investment Act

The *Protection of Investment Act 22 of 2015* was assented to by the President and published in the *Government Gazette* on 15 December 2015, but will only come into effect on a date still to be determined. The *Protection of Investment Act* aims, among other things, to protect investors and their investments in a way that balances their rights and obligations while affirming the country's right to regulate investments in the public interest and subject to the *Constitution*. The *Protection of Investment Act* was drafted following a review by the DTI of the bilateral investment treaties (BITs) to which South Africa is a party. The protections given to foreign investors in the *Act* are significantly different from the protection afforded to foreign investors under South Africa's BITs in the following respects:

- **The Protection of Investment Act:** as domestic South African legislation, is subject to change by South Africa unilaterally. By contrast, altering a BIT would require the agreement of the other party to the BIT.
- **The Protection of Investment Act:** recognizes standard international investment obligations, such as not treating foreign investors less favorably than domestic investors that operate in "like circumstances". (The use of the phrase "like circumstances" requires consideration of the effect of the proposed investment in South Africa). In addition, other standards, such as prohibiting unfair and inequitable treatment of investors, and the most-favored nation standard are absent (ie there is no equivalent provision to the fair and equitable treatment provision in the BITs).
- **The Protection of Investment Act:** provides that investors will have to request mediation through the State or approach the South African courts or undertake domestic arbitration.

Pending the coming into effect of the *Protection of Investment Act*, existing investments that were made under BITs will continue to be protected for the term stipulated in such BITs and any investments made after the termination of BITs but before the promulgation of the *Act*, will be governed by general South African law.

Mineral and Petroleum Resources Development Act

The *Mineral and Petroleum Resources Development Amendment Bill 2013 (the MPRDA Bill)* was approved by the National Assembly and by the National Council of Provinces on 27 March 2014. The purpose of the *MPRDA Bill* was, amongst other things, to amend the *Mineral and Petroleum Development Resources Act 28 of 2002 (MPRDA)* to remove ambiguities that exist within the *MPRDA*, and to provide for the regulation of associated minerals, partitioning of rights and enhance provisions relating to the regulation of the mining industry through beneficiation of minerals or mineral products. However, in early 2015, the President referred the proposed amendments to the *MPRDA* back to the National Assembly due to constitutional concerns. These concerns include the apparent imposition of quantitative restrictions on exports, which seem to contravene international agreements, such as the *General Agreement on Trade and Tariffs* and the *Trade Development and Co-operation Agreement*. Other provisions which are up for reconsideration are the oil and gas provisions.

The *MPRDA Bill* was referred to the National House of Traditional Leaders for comment by 31 March 2016. The Portfolio Committee on Minerals still plans to schedule further meetings on the *MPRDA Bill* before it is finalized.

Gas Bill

The *Gas Bill* was published for public comment on 2 May 2013. The amendments broaden the ambit of activities regulated by the *Gas Act* primarily to take into account new technological advancements and transportation technologies such as LNG and compressed natural gas and other unconventional gases not explicitly included within the scope of the *Gas Act*, which at present only regulates piped gas. It further augments and enhances the compliance monitoring and enforcement powers of the Gas Regulator including administrative measures such as the power to revoke licenses and issue compliance notices. In addition there is an obligation for applicants to make financial provision for the rehabilitation of land and an enhanced obligation to register certain activities including the production of gas. More certainty is provided in relation to the Gas Regulator's role in the determination of maximum gas prices and tariffs including the factors and methodology that will be taken into account in such a determination.

The *Gas Bill* is expected to be introduced into Parliament in 2016.

Carbon Tax Bill

The Department of Treasury published the *Draft Carbon Tax Bill* for public comment on 2 November 2015. The Bill seeks to introduce a tax on carbon emissions in response to climate change and aims to encourage polluters to mitigate the harm caused by such emissions. In addition, the *Bill* also provides for several tax-free allowances which will reduce a tax payer's carbon tax liability.

Supply Chain Management Review

The principle piece of legislation that regulates public procurement is the *Constitution of the Republic of South Africa 1996 (Constitution)*. *Section 217 of the Constitution* requires that when an organ of state contracts for goods and services, it must do so in accordance with principles of fairness, equitability, transparency, competitiveness and cost-effectiveness. The *Constitution* permits organs of state (such as departments of government and public entities) to implement a preferential procurement policy that advances persons previously disadvantaged by unfair discrimination. *Section 217(3) of the Constitution* provides for legislation that will prescribe a framework within which the policy must be implemented to be enacted. Thus, the *Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA)* and the regulations published under it in 2011 (the *PPPFA Regulations*) prescribe requirements regarding black economic empowerment considerations for state tenders.

The National Treasury is currently undertaking a supply chain management review process:

- General procurement legislation, in the form of a *Public Procurement Bill* which will consolidate the fragmented legal and regulatory landscape, align preferential procurement with section 217 of the *Constitution* and modernize procurement rules, is being finalized and is expected to be released for comment during 2016.
- It is reported that the power to disbar suppliers abusing government's supply chain management system will be vested with the Chief Procurement Officer in terms of the *Public Procurement Bill*, with a mandatory disbarment period of 10 years. Disbarred companies will be deregistered from the Companies and Intellectual Property Commission (meaning that the company will not be able to trade), directors of disbarred companies will be blacklisted on CIPC (to ensure that they are in no position to register any company), and directors of disbarred companies will be severally and jointly liable for any losses incurred by government through their actions.
- The Minister of Finance has announced that that initiatives of the Chief Procurement Officer will be extended to include monitoring of state-owned companies' procurement plans and supply chain processes, and to include reviews of contracts above R 10 million to ensure value for money.
- There has been talk of the removal or amendment of the *PPPFA Regulations*. In early March, the National Treasury announced that the Office of the Chief Procurement Officer had finalized reviewing the *PPPFA Regulations* to accommodate requirements for supporting SMMEs, township and rural businesses, youth and women owned businesses, and localization, and that the revised *PPPFA Regulations* would take effect during April 2016. While the final version of these regulations has not yet been made public, the drafts published in July 2015 proposed a fairly radical change to the manner in which tenders are administered and preference points are awarded in a procurement context, and will potentially impact on all tenders which State Owned Companies (SOCs) put out.
- All companies that wish to do business with government must be registered on the central supplier database from 1 April 2016 for transactions with national and provincial government and their entities, and from 1 July 2016 for municipalities.
- From 1 April 2016, it is compulsory to procure routine goods and services through the centrally negotiated contracts in place. The process will be managed through the gCommerce portal which automates ordering and allows for bulk discounts. The automation process is expected to reduce corruption by reducing the risk of human intervention to override established protocols.

Governance and Risk Framework Management for Insurers

The *Proposed Governance and Risk Framework Management for Insurers (the Proposed Framework)* published by the Registrar of Long-Term Insurance and Short-Term Insurance (the Registrar) in terms of the *Long-Term Insurance Act 52 of 1998 (the LTIA)* and the *Short-Term Insurance Act 53 of 1998 (the STIA)* took effect on 1 April 2015. The Framework:

- Gives effect to the governance, risk management and internal control measures mooted in the *Insurance Laws Amendment Bill, 2013 (the Bill)* which was withdrawn by the Minister of Finance;
- Takes into account public comments submitted by the National Treasury on the *Bill*; and
- Gives effect to international standards as set out in the *Insurance Core Principles of the International Association of Insurance Supervisors (October 2013)*.

Insurers are required to implement and document an effective governance framework that provides for the prudent management and oversight of its insurance business and adequately protects the interests of its policy holders. The governance framework must be proportionate to the nature, scale and complexity of the insurer's business and risks.

Protection of Personal Information Act

While certain sections of the *Protection of Personal Information Act 4 of 2013 (POPIA)* commenced in April 2014 (such as the definitions section, the sections regarding the establishment of the office of the Information Regulator, and the sections regarding the regulations that may be made under *POPIA*), the operational provisions of *POPIA* are yet to commence. It is expected that the remaining sections of *POPIA* will commence, on a date still to be determined by the President, only after the Information Regulator has been established.

In this regard, the Portfolio Committee on Justice and Correctional Services issued a media statement on 13 April 2016 confirming that it has now shortlisted ten candidates for five positions, i.e. for a chairperson and four ordinary members, with the Information Regulator. In terms of *POPIA* the names of the shortlisted candidates must be submitted to the National Assembly which must make a recommendation to the President, on a majority of votes, in respect of the candidates who should be appointed to the Information Regulation. Based on this recommendation, the President is then required to appoint the chairperson and four ordinary members to serve on the Information Regulator. The members of the Information Regulator are appointed for a period of 5 years, after which period they will be eligible for reappointment.

With the Portfolio Committee's shortlisting of these candidates to serve on the Information Regulator, it appears that the implementation of *POPIA* is progressing (albeit slowly).

Bowmans' Highlights

Bowmans is a leading Pan-African law firm. Its track record of providing domestic and cross-border legal services in the fields of corporate law, banking and finance law and dispute resolution, spans over a century.

With six offices in four African countries and over 400 specialized lawyers, we are differentiated by our geographical reach, independence and the quality of legal service we provide.

We draw on our unique knowledge of the African business environment and in-depth understanding of the socio-political climate to advise clients on a wide range of legal issues. Our aim is to assist our clients in achieving their objectives as smoothly and efficiently as possible while minimizing the legal and regulatory risks.

Bowmans' Highlights (cont'd)

Clients include corporates, multinationals and state-owned enterprises across a range of industry sectors as well as financial institutions and governments.

Bowmans' expertise is frequently recognized by independent research organizations. The firm has been named Africa Legal Adviser by Dealmakers for the last two consecutive years (2014 and 2015) and won the Competition and Regulatory Team of the Year and IP Team of the Year Awards at the prestigious African Legal Awards hosted by Legal Week and the Corporate Lawyers Association in 2015.

During 2015, the firm's South African office was involved in a number of noteworthy matters. A summary of recent highlights is set out below:

Banking and Finance

We advised:

- Rand Merchant Bank as lead arranger and funder in connection with the structuring of a transaction involving an intraday bridge facility, a three month bridge facility which was then repaid using preference share funding. The transaction was complex due to the redemption of the existing preference shareholders, the security provided for three different classes of preference shares, the timing of each step of the transaction, the tax treatment of preference share funding and the use of separate hedging arrangements for the different classes of shares. The transaction also needed to be restructured to provide for the amalgamation of Mediclinic with the Al-Noor Group that is listed on the London Stock Exchange.
- On one of the largest commodities financing transactions of the year that included several legal jurisdictions. Trafigura required a significant increase and advancement of its financing operations in and across Africa. The deal was highly complex and contained multiple levels of security. It required a well thought out legal, commercial and practical strategy to ensure closing within a very short and fixed time frame of 8 weeks. This deal was shortlisted for African deal of the year award.
- Steinhoff in connection with the issuance of a debt instrument under its debt capital markets program but with features which effectively converted the instrument to a fully-fledged term loan facility. The transaction is included due to its novelty and complexity. We understand this was a first in the market.
- Absa Bank Limited (in its capacity as Lender and ECIC Agent) in respect of a ground breaking and collaborative initiative to finance one of Africa's significant new diamond producers in relation to (i) an ECIC backed facility of USD 84 million for the construction and development of a mine and (ii) a Eurobond issue.
- Delta Africa Property Holdings Limited and Delta Property Fund Limited. We acted as deal counsel in relation to a landmark multicurrency term loan facility provided by Investec Bank Limited for the acquisition of the Anfa Place Shopping Centre in Casablanca, Morocco. We were instrumental in structuring, advising on, drafting and coordinated all aspects of the transaction. The transaction involved 4 African jurisdictions and documented 5 legal systems. The loan facility has now set the platform for future funding models and projects in Morocco.
- Nedbank Limited, The Standard Bank of South Africa Limited and FirstRand Bank Limited (acting through its Rand Merchant Bank Division). We advised three of South Africa's largest banks, being Nedbank Limited, The Standard Bank of South Africa Limited and FirstRand Bank Limited (acting through its Rand Merchant Bank Division), in connection with the refinancing of one the largest financings (ZAR 5.25 billion) made available in the South African market in 2016.
- Absa Bank Limited and Capital Appreciation Limited. This funding transaction forms part of the listing of the first special purpose acquisition company on the JSE.

Competition

We acted as:

- South African counsel to Pfizer Inc in its global transaction with Allergan, which is expected to create the world's largest pharmaceutical drug maker. The merger is currently under investigation by the South African Competition Commission.
- Counsel to Nationwide Airlines against South African Airways in the first damages claim in South Africa resulting from a prohibited practice under the *Competition Act*. We subsequently represented Nationwide successfully against SAA in relation to ongoing abuse of dominance conduct. This resulted in a second damages claim against SAA in February 2016.
- Counsel to Life Healthcare in relation to the market inquiry into the private healthcare industry, initiated by the Competition Commission. The inquiry involves stakeholders from the private healthcare industry (including hospital groups, medical schemes, pharmaceutical houses, the World Health Organization and members of the public) making oral presentations to a panel appointed by the Competition Commission. The healthcare inquiry is the first inquiry since the *Competition Act* was amended to give the Competition Commission formal powers to initiate and conduct market inquiries.
- Counsel to the Namibian Competition Commission in respect of complaint proceedings against the Namibian Association of Medical Aid Funds (NAMAFA) and its member medical aid funds. Judgment in the High Court of Namibia was handed down in March 2016, dismissing the application by the various member medical aid funds to have the complaint proceedings dismissed and confirming that the *Competition Act* applies to them and to NAMAFA.

Construction

We acted as counsel to Old Mutual in relation to a large new commercial development on Stella Street, Sandton. The project is a significant commercial development within the heart of Sandton, with a project value exceeding R 1 billion.

Employment

We provided employment advice to ABI Bottling (Pty) Limited on all aspects pertaining to the proposed creation of Coca-Cola Bottling Africa.

Environmental

We acted as:

- Lead environmental law advisor to the Department of Energy and National Treasury, who are running the first international IPP bid processes for renewable energy, base load coal, LNG gas to power, and a number of related programs in South Africa, on environmental and regulatory matters related to the design and implementation and drafting of the bid process documents and regulatory frameworks for the programs, the power purchase agreements and implementation of the process, as well as evaluation of environmental criteria for bidding, fulfilment of environmental conditionality and negotiation with preferred bidders. Also advising on the amendment of legislation required to facilitate the process including the *Gas Act*, *Electricity Regulations on New Generation Capacity*, the *Electricity Regulations Act* itself and the institutions required to support the bid process.
- Counsel to a number of the Anglo American South African business units and operations including Kumba Iron Ore Limited; De Beers Consolidated Mines Proprietary Limited and Anglo American Platinum Limited on several matters including, but not limited to:
 - specific advice regarding rehabilitation obligations and rehabilitation provisions;
 - advising in a specific administrative dispute context, engagement with the authorities regarding minimum emissions limits and compliance timeframes, and its application to various operations; and
 - advising on the environmental and regulatory aspects of disposal of certain non-core assets.

Environmental (cont'd)

- Counsel to Pikitup Johannesburg (SOC) Ltd is the official integrated waste management service provider to the City of Johannesburg Municipality, and mandated to provide integrated waste management services to the residents of Johannesburg. It employs more than 4,500 people, using more than 200 trucks to provide refuse collection services to the City's private and business residents and services the entire 1,625 square km that is Johannesburg. This is a longstanding client, and we have been providing advice to Pikitup in different sectors, including, in the last year, procurement and contractual advice. We have also been providing advice regarding the management and separation of various waste streams, advice to various facilities that Pikitup operates as well as advice regarding waste management licensing.

Equity Capital Markets

We acted as counsel to:

- The first special purpose acquisition company (SPAC), Capital Appreciation Limited, to be approved for listing on the main board of the Johannesburg Stock Exchange.
- Virgin Active Group Holding Plc in relation to its proposed 2015 IPO. This was the first proposed inward listing of a UK company on the JSE. The company ultimately didn't proceed due to the company being acquired by a private equity buyer.
- SPAR Group Limited in relation to its R 2.2 billion accelerated bookbuild offering.
- J.P. Morgan Securities plc, HSBC Bank plc and The Standard Bank of South Africa Ltd / Standard Bank plc, together acting as South African counsel, joint bookrunners and underwriters, in Lonmin plc's rights offer of approximately USD 407 million in 2015.
- Merrill Lynch International and Scotia Capital Inc., in their capacity as joint bookrunners, in relation to Gold Fields Limited's recent accelerated R 2.5 billion bookbuild share placement.

Litigation

We advised:

- In defense of Transnet SOC Limited in one of the largest (excess of ZAR 20 billion) class action lawsuits in South Africa to date.
- African Oxygen Limited t/a Afrox in arbitration proceedings against ArcelorMittal South Africa (South African's largest supplier of steel) to enforce a long term gas supply agreement.

M&A

We acted as:

- South African and Rest of Africa counsel to SABMiller plc in the recommended acquisition by AB InBev of the entire issued and to be issued share capital of SABMiller plc. At USD 107 billion (approximately ZAR 1.5 trillion), this is the largest M&A transaction in South African transaction history and the third largest M&A transaction globally at the date of announcement. Our involvement has included, amongst other things, the impact of the deal on SAB's existing BEE arrangements, exchange control arrangements and competition/anti-trust. In addition, we have coordinated the competition/anti-trust and securities law aspects on the African continent, in conjunction with AB InBev's counsel.
- Counsel to Affiliated Managers Group Inc. (a global asset management company listed on the NYSE) in the acquisition of a minority equity interest in Abax Investments Proprietary Limited, a niche fund management business and licensed Financial Services Provider. The investment was AMG's first investment into a fund manager based in an emerging market.

M&A (cont'd)

- Counsel to SABMiller in respect of the proposed combination of The Coca-Cola Company, SABMiller and Gutsche Family Investments' (majority shareholders in Coca-Cola SABCO) bottling operations in Southern and East Africa to create Coca-Cola Beverages Africa, which will be the biggest bottler of soft drinks in Africa and the 10th largest in the world, with annual revenue of USD 2.9 billion. The new bottler, Coca-Cola Beverages Africa, will serve 12 high-growth countries accounting for approximately 40 percent of all Coca-Cola beverage volumes in Africa.
- Counsel to JSE-listed Reunert Limited in relation to its acquisition of a majority stake in the Zambian listed entity, Metal Fabricators of Zambia Plc (ZAMEFA), from NYSE-listed General Cable Corporation.

Restructuring

We advised:

- Listed steel mine and producer, Evraz Highveld Steel and Vanadium Ltd (and its Board of Directors), on all aspects of its business rescue process.
- The Overseas Shipholding Group, Inc. (one of the largest shipping tanker groups in the world; listed on the New York Stock Exchange) and its 180 subsidiaries in an urgent precedent-making court application to recognize its US bankruptcy in South Africa and to apply, with full force and effect, the automatic stay provided for in section 362 of the US Bankruptcy Code, in South Africa.

Lex Mundi Member Contact



A **LexMundi** Member

Jonathan Lang - j.lang@bowman.co.za

Jonathan H. Schlosberg - j.schlosberg@bowman.co.za

Peter Whelan - p.whelan@bowman.co.za

Bowmans

Member firm for South Africa

Tel: 27.11.669.9000

Uganda

Prepared by Bowmans, Lex Mundi Member Firm for South Africa and Kenya
with office in Uganda



Main exports

include

coffee,

fish, tea, cement

and **raw tobacco.**

Top

export

destinations are

Kenya, Rwanda,

South Sudan,

the **Democratic**

Republic of

Congo and the

Netherlands.

Trends and Projects

Oil and Gas

The legal framework for the management of Oil and Gas Resources has been finalized. These include the enactment of the *Petroleum (refining, gas conversion, transmission and midstream storage) Act 2013*, the *Petroleum (Exploration, Development and Production) Act 2013* and the *Public Finance Management Act 2015*. The relevant institutions, including the establishment of the National Oil Company and the Petroleum Authority of Uganda, are also being finalized to ensure prudent management of the Oil and Gas resources.

As part of the Refinery development program, land acquisition for the proposed Oil Refinery at Kabaale in Hoima is almost complete. The Environmental baseline study for the Oil Refinery project has also been concluded. The major priority for the government for the next financial year will be commencement of detailed engineering studies for the Oil Refinery, following the selection of a Lead Investor on a Private-Public Partnership (PPP) basis.

Uganda has also recently announced that it will build a major pipeline to export its oil through Tanzania. The 1,400 km (800 miles) project will connect Uganda's western region near Hoima with Tanzania's port of Tanga. The project is expected to cost about USD 4 billion and create 15,000 jobs. The discovered oil reserves in Uganda are estimated at some 6.5 billion barrels and the country expects to start production in 2018. When completed it will be East Africa's first major oil pipeline.

Hydroelectric Power

The Government of Uganda has commenced the construction of the Karuma Hydropower Project, worth about US\$ 4.3 billion (USD 1.7 billion). The 600 MW dam was commissioned by President Yoweri Museveni in August 2013. 85 percent of the funding will be procured by Sinohydro Corporation Ltd, a Chinese firm with a soft loan from the China Exim Bank, and the Uganda government will cater for the remaining 15 percent.

In addition, the preliminary works for the construction of the 183 MW Isimba Hydropower Project located in Kamuli District along the River Nile has started. The project construction contract had been awarded to the China International Water and Electric Corporation, a Chinese government-owned firm. Construction began in October 2013 and is expected to last approximately four years at a cost of USD 415 million from the China Exim Bank.

The Ayago Power Station is a 600 MW hydroelectric power plant that will be constructed on the Victoria Nile, downstream of Karuma Power Station but upstream of Murchison Falls. The project will be developed in two simultaneous phases, known as Ayago North (estimated capacity: 350 MW) and Ayago South (estimated capacity: 250 MW). In August 2013, that award was rescinded and the construction contract was awarded to China Gezhouba Construction Company. Similarly, work towards the construction of power projects on River Ndugutu, River Sindila and River Nyamagasani have commenced.

On the public stand, the government's emphasis is directed towards the continuation to pursue the interventions aimed at increasing electricity generation, supply and access throughout the country. A large part of the 2014/15 National Budget was allocated to the Rural Electrification Program.

Other Power Projects

There are a couple of solar power and geothermal power projects that have either been established or are in the process of being established by both government and private entities. The viability of a nuclear-powered electricity producing plant is also seriously being considered by the Ministry of Energy and Mineral Development.

Finance, Banking and Insurance

The Ugandan Banking sector has seen a number of developments in the last year. From the legislative side, The *Financial Institutions (Amendment) Act No.2 of 2016* was passed to amend the *Financial Institutions Act, 2004*. The Act provides for Islamic Banking, bancassurance, agent banking, special access to the Credit Reference Bureau by other accredited credit providers, reform of the Deposit Protection Fund, among other things.

The government also passed the *Anti-Terrorism (Amendment) Act, Anti-Terrorism (Financing) Regulations, 2015* and the *Anti Money Laundering Regulations, 2015*. These legislative provisions have been passed by the government in a bid to fulfil her international obligations under the *International Convention on the Suppression of the Financing of Terrorism, 1999* and in line with *United Nations Security Council Resolutions 2167 and 1373*. The provisions enjoin financial institutions together with law enforcement authorities to monitor compliance with anti-terrorism legislation in a bid to clamp down on terrorism financing activities.

On the 7th March 2016 the Central Bank announced that it had ended its Statutory Management of the former Imperial Bank (Uganda) Ltd and that Imperial Bank (Uganda) Ltd had changed its name to Exim Bank (Uganda) Limited and appointed a new Board of Directors.

Infrastructure

The government of Uganda has joined with Kehong Group China for the construction of a USD 220 million China-Uganda Agricultural Industrial park which was recently commissioned by the President. The Park is set to sit on 1,000 acres and is set to provide 2,000 jobs on completion. There have also been outlines for deliberate plans to establish industrial parks in four other districts. Under the project China will work with over a million farmers to improve rice farming, poultry, livestock, grain processing, oil and food processing, seed treatment, machinery and improve agricultural technology training.

In the 2015/16 budget the government allocated Shs. 3,328.79 billion to the transport sector in order to improve the condition of transport infrastructure nationwide. This represents 18.2 percent of the total resource allocation for next financial year. Government intends to accelerate the construction and completion of on-going road projects and maintenance of the national, district, urban, community access road networks and numerous bridges across the country. The Uganda National Roads Authority (UNRA) the government entity charged with the construction and maintenance of roads has also undergone a total overhaul of its management in a bid to fight corruption, waste and inefficiency in the construction of roads.

With regards to electricity transmission as of 2015 transmission lines were 1,627 kms on the power distribution lines and the medium voltage reached a total of 15,178 kms compared to 6,245 kms the country had in 2006. The low voltage distribution lines connecting electricity to customers had reached about 18,000 kms compared to the 8,448 kms of 2006.

In the water transport subsector, the Government has continued to prioritize the improvement of inland water facilities through the provision of ferry services and construction of landing sites on Uganda's major water bodies. Under the railway subsector, emphasis was mainly on accelerating the implementation of the interventions to revitalize railway transport. These will include the design for the construction of the Tanga-Arusha-Musoma railway line and the New Kampala Port, fast-tracking and accelerating the rehabilitation of Tororo-Packwach and Kampala Kasese railway lines; fast-tracking the implementation of the joint Memorandum of Understanding signed between the Government of Uganda, Sudan and South Sudan for the joint design studies to construct Gulu-Atiak-Nimule-Juba railway line, and completing the redesigning of the Kampala-Malaba railway line (251 km) into standard gauge.

Infrastructure (cont'd)

In regard to air transport; the government of Uganda over the next five year period, intends to upgrade Entebbe International Airport as Uganda's principal international gateway to improve the quality of operation and maintenance. The scope of works upgrade includes, among others, construction of a new cargo center, new passenger terminal, strengthening runways, and the replacement of navigations aids. The cost of the Airport rehabilitation is estimated to amount to USD 325 million. In addition, several regional aerodromes, including the Jinja one, and an airport at Kabale (Hoima) to ease the development of the oil refinery will be fast-tracked.

Telecommunications

The information communication and technology sectors in Uganda currently employ about 1.3 million people and generated up Shs 416.7 billion in 2014 up from Shs 332 billion in 2013. It contributes almost 2 percent to national output. The number of mobile telephone subscribers now stands at 19.5 million, while internet subscriptions increased from 3.4 million in 2013 to 4.3 million in 2014. The volume of various value added services such as mobile money transfers and other data related services are becoming more popular.

The government has embarked on the operationalization of the national backbone with over 30 public offices now connected to the National Backbone Infrastructure (NBI) and receiving high speed internet bandwidth.

Digital Broadcasting Migration that increases the efficiency of the use of the broadcasting spectrum has commenced with a pilot phase covering Kampala. Digital Migration in broadcasting will be rolled out nationwide, under a Public Private Partnership arrangement.

On the regulatory front the Commercial Court late last year fined one of the leading telecom players MTN Uganda UGX 2,300,000 for anti-competitive practices.

Legislative News

Outside the recurring and ever changing *Tax and Stamps laws*, there are a number significant commercial related regulations have been enacted in the 2015-2016 period, the *Finance Act No.8 of 2015*, for example varies the environmental levy and imposes annual operator license fees with respect to vehicles and vessels.

On the more corporate side, the *Companies (General) Regulations, 2016* were brought into force seeing the introduction of electronic means of company registration it is now also possible to register a single member company and its Certificate of Incorporation is provided for under the *Companies (Single Member) Regulations, 2016*.

Bowmans' Recent Activity

Bowmans is one of Africa's premier corporate law firms. The firm is well represented in what are considered to be the hub jurisdictions in the key regions of the African continent. Through these offices, we are able to coordinate advice on transactions, and offer a seamless service to our clients, making the execution of cross border transactions less cumbersome, time consuming and costly and hence more efficient. Our 400 lawyers are some of the best practitioners in their respective jurisdictions, with significant "on-the-ground" understanding of the business environment in the jurisdictions in which they operate.

At the recent Cell C Deal Makers Annual Awards held in Johannesburg, Bowmans won the Africa Legal Advisers category by both deal value and number of transactions in Africa (excluding South Africa). Bowmans' total deal value in this category of USD 4.627 million constitutes 14.84 percent of the market share while the 41 reported transactions equals 36.61 percent of market share.

Bowmans' Recent Activity (cont'd)

Bowmans' Uganda office has a proven track record which has enabled it to build a reputable clientele, which includes the top tier of local and international financial institutions, private equity funds, leading manufacturers and industrialists, international oil companies, international investors, print and electronic media houses, international and local non-governmental organizations as well as high net worth individuals.

Recently, the firm has been involved in a number of matters which demonstrate our depth of expertise, and ability to provide flexible, solutions-orientated and strategic advice. A summary of recent firm highlights is set out below:

Banking and Finance

We are currently advising:

- A client in relation to a USD 600 million financing of the 600 MW Karuma Hydropower Project
- The leading manufacturer of corrugated packaging products in Uganda on a USD 32 million financing deal from Standard Chartered Bank (London)
- Wananchi (Group) Holdings Limited on the Ugandan law aspects of an additional USD 100 million investment from Helios Investment Partners
- The East African Development Bank, as lender on the construction of a commercial office development in Kampala
- The East African Development Bank, as lender on the construction of a shopping and commercial retail development complex in Entebbe
- The National Development Bank of Sri Lanka on the legal and regulatory regime governing financial institutions in regards to Islamic Banking
- Eaton Towers with regards to deal structuring, documentation and closing for USD 22 million project financing.

Corporate, Mergers and Acquisitions

We are currently advising/have advised:

- Orange SA (previously known as France Telecom) in the disposal to Africell of its majority shareholding held by Atlas Services Belgium in its Ugandan subsidiary, Orange Uganda Limited
- Eaton Towers, a leading independent towers company in Uganda, in the acquisition of the tower infrastructure segment of Bharti Airtel in Uganda
- Harvard Management Company on the acquisition of shares and the assets of two agro-forestry companies in Uganda
- The China Africa Development Fund (CADF) on its acquisition of shares in Guangzhou Dongsong Energy Group, a local incorporated company with an exploration license for phosphates, base metals, and uranium covering 26 km² in Tororo District
- A Canadian Trust company on the sale and deregistration of three aircraft sub-leased to a Ugandan aircraft operator
- A South African insurance company on its proposed acquisition of a stake in an insurance company in Uganda following the increase of the statutory minimum capital requirement of all insurance companies in Uganda
- Lion Assurance Company on the funding and increase of its capital following the increase of the statutory minimum capital requirement of all insurance companies in Uganda

Corporate, Mergers and Acquisitions (cont'd)

- Alexander Forbes Equity Holdings Proprietary Limited and its subsidiaries on the Ugandan law aspects regarding the restructuring of its capital structure, involving, inter alia, various debt to equity conversions, preference share redemptions, share buy backs and acquisitions of loans outstanding as well as the entry into of a new term loan agreement, revolving credit facility agreement and two sets of preference share funding instruments issued by shareholders in Alexander Forbes Equity Holdings Proprietary Limited in connection with the restructure
- Ascent Capital on its USD 15 million private equity investment in the largest fast moving consumer goods company in Uganda
- On behalf of a leading chain of supermarkets in East Africa in its insolvency proceedings

Infrastructure and Natural Resources

We are currently advising:

- A developer of two hydropower projects on River Ndugutu and River Sindila
- A developer of a proposed hydropower project on River Nyamagasani
- One of the bidders for the construction of the Uganda National Oil Refinery
- CNOOC Uganda Limited on the legal and regulatory aspects regarding the development and establishment of a Central Processing Facility, a Liquefied Petroleum Gas processing facility as stipulated in its field development plan
- EleQtra, a leading player in the development, investment, management and operation of private infrastructure in emerging economies, in the construction of a solar park in eastern Uganda
- One of the leading premium international hotel brands on the establishment and construction of a 5-star hotel in Kampala
- Hatton National Bank Plc (Sri Lanka) and Bank of Ceylon (Sri Lanka) on a USD 8.5 million transaction with regards to deal structuring, due diligence, documentation and closing

Capital Markets and Regulatory

We represent:

- Prudential Investment Management Inc. on the regulatory aspects for the provision of investment management services in Uganda
- Noor Bank on the legal and regulatory aspects of the capital markets regime in Uganda
- Barclays Wealth Management on the licensing and other regulatory aspects of the capital markets regime in Uganda
- Standard Chartered Bank Singapore on the regulatory aspects of cross-border investment activities in Uganda
- Facebook Inc. on the telecommunication and competition law regime applicable to the introduction of certain products with a leading mobile network operator in Uganda
- Orange SA on the application and approval of the competition/anti-trust law aspects during its disposal to Africell, of its Ugandan subsidiary, Orange Uganda Limited. This was the very first approval from the Uganda Communication Commission (the industry regulator) under the newly-established Competition Secretariat
- Facebook Inc in a removal request by a certain individual

Litigation and Arbitration

We are representing:

- Reynolds Construction Company (RCC) in a suit against the government objecting to the irregularities in the tendering process in regards to a project for the completion of the Northern Bypass in Kampala amounting to EUR 65 million
- One of the leading financial institutions in Uganda in class action against 12 banks concerning the legality of the levying of bank charges on certain transactions in Uganda
- Ezee Money Limited against one of the leading mobile telecommunication operators in Uganda under the anti-competitive practices in the telecom industry in Uganda
- TOTAL E&P, one of the licensed oil & gas exploration and production companies in Uganda, in a suit concerning the disposal of its waste products
- The Nation Media Group on its challenge of the constitutionality of certain provisions of the *Press and Journalists Act Cap.105*
- Several individuals in constitutional and Human Rights matters
- Several individuals accused in the Anti-Corruption Court

Lex Mundi Member Contact



A **LexMundi** Member

David Mpanga - dfkm@afmpanga.co.ug

Bowmans

Member firm for South Africa and Kenya with office in Uganda

Tel: 256.41.425.4540

LexMundi

World Ready

About Lex Mundi

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries. Lex Mundi member firms offer clients preferred access to more than 21,000 lawyers worldwide – a global resource of unmatched breadth and depth.

Each member firm is selected on the basis of its leadership in – and continued commitment to – its local market, and each brings comprehensive knowledge and understanding of the business climate, laws, culture, politics and economy of its respective jurisdiction. Working with Lex Mundi member firms you can be assured that you will be connected to:

- Premier member firms vetted for their leadership, expertise and capabilities for handling complex matters and disputes
- Global reach of unmatched breadth and depth
- Market- and industry-specific knowledge and strong connections to decision makers and influencers at the local, national and global levels
- Seamless client service for cross-border matters
- Legal resources to effectively and confidently deal with legal issues virtually anywhere in the world

Through close collaboration, information-sharing, training and inter-firm initiatives, the Lex Mundi network is an assurance of connected, on-the-ground expertise in every market in which a client needs to operate. Working together, Lex Mundi members are able to seamlessly handle their clients' most challenging cross-border transactions and disputes.

Member law firms are located throughout Europe, the Middle East, Africa, Asia and the Pacific, Latin America and the Caribbean and North America.

Through our non-profit affiliate, the Lex Mundi Pro Bono Foundation, members also provide pro bono legal assistance to social entrepreneurs around the globe. For more information, please visit www.lexmundi.com and www.lexmundiprobono.org.

Lex Mundi – the law firms that know your markets.

Find out more about Lex Mundi at: www.lexmundi.com

Lex Search



Locate a Lex Mundi Member Firm Lawyer
or Firm Anytime, Anywhere.

600 Offices

100+ Countries

21,000 Lawyers

160 Premier Member Firms

With Lex Search, Lex Mundi's online member search, you have access to preeminent member law firms to help support your needs practically anywhere they arise. Lex Search is accessible on the Lex Mundi website www.lexmundi.com and available on your mobile phone or PDA at www.lexmundi.com/mobile.

LexMundi
World Ready

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

LexMundi
World Ready

2100 West Loop South
Suite 1000
Houston, Texas 77027 USA
1.713.626.9393
www.lexmundi.com

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

