

Focal point Africa

Thomas R. Snider - Partner, Head of Arbitration - Arbitration / Construction and Infrastructure / Mediation
- Dubai International Financial Centre

Welcome to the inaugural Africa edition of Law Update.

Africa is booming. Greater political stability along with a growing middle class with increasing disposable income have created a positive environment for foreign investment on the continent. African countries have also been successful in attracting foreign investors to participate in infrastructure projects through public-private partnerships ('PPP'). The African continent is, of course, also known for its wealth of natural resources. It is a major producer of metals and minerals and home to significant oil and gas deposits. Moreover, Africa controls two of the main global shipping routes, through the Cape of Good Hope to the south, and the Suez Canal to the east. Against this backdrop, the African economy has grown at a faster pace than other regions of the world in recent years. From 2010 to 2019, average gross domestic product growth in (sub-Saharan) Africa was 4.1 per cent, as compared to 3.3 per cent for the Middle East and just 1.7 per cent for the European Union. Only Asia recorded higher growth over this period.

It is not surprising, therefore, that Africa continues to draw attention in terms of trade and investment from around the world, and the close geographic proximity of Africa and the Middle East makes this region a prime candidate for trade and investment with Africa. Indeed, Middle East countries are already significant investors in Africa. From 2014 to 2018, the United Arab Emirates ('UAE') ranked fourth among all foreign investors in Africa globally (behind only China, France, and the United States). These factors make this edition timely and important.

We kick off this Africa edition by looking at the African Continental Free Trade Area ('AfCFTA'). With trade having commenced under AfCFTA on 1 January 2021, AfCFTA connects some 1.3 billion people across the African continent and therefore becomes the largest free trade area in the world based on the number of participating countries since the World Trade Organization was formed. Among many other key developments, AfCFTA member states have agreed to remove 90 per cent of tariff lines on non-sensitive products within five years for developing countries and within ten years for least developed countries.

We then take a look at the various opportunities and challenges facing foreign investors in Africa. We start by reviewing the legal challenges confronting private equity firms doing deals in Africa and then assess the growth of the venture capital ecosystem in sub-Saharan Africa and the possibilities it opens for investors. We also review the efforts that Tunisia has made in recent years to improve its investment climate in order to attract foreign investment.

We then consider opportunities that the UAE may offer to potential investors in Africa when structuring their deals. The UAE offers a wide range of corporate structures to investors with additional potential tax benefits depending on the application of double-taxation agreements concluded between the UAE and a host of African states. We also discuss the increasing interest we have seen in asset-backed securitisation of future-flow receivables generated by African operating companies using the UAE as a conduit jurisdiction. This type of mechanism provides a means of securing credit by utilising a special purpose vehicle structure provided by the financial free zones of the UAE and thereby reducing the cost of funding.

From there, we move to a discussion of recent legal developments in Africa. We provide an overview of data protection laws in Africa with a focus on Egypt, Ghana, Kenya, and South Africa and how they compare against the European Union's General Data Protection Regulation ('GDPR'). We also assess the impact of COVID-19 and whether employers in Africa can mandate vaccinations in Egypt, Kenya, Nigeria, and South Africa.

We round out this edition with a look at dispute resolution and arbitration, in particular. We provide an

assessment of the arbitration rules of the Common Market for Eastern and Southern Africa ('COMESA'), the largest regional economic organisation in Africa. We then turn to francophone Africa and consider the revised arbitration framework under the Organization for the Harmonization of Business Law in Africa ('OHADA') system.

We hope you enjoy this edition and find it informative and interesting. Please feel free to share any ideas for future articles or feedback generally with me at t.snider@tamimi.com.