

Law Africanus

Africa teems with exciting prospects for those seeking to venture into this evolving global business hub. John Podgore and Tom Renwick of Dechert on lessons learned operating in the continent from Dubai.



Dubai in particular) as a hub. According to the Dubai Chamber of Commerce and Industry (the “Dubai Chamber”), Dubai’s non-oil trade with Africa increased by 141 per cent from AED37.9bn to AED91.3bn between 2008 and 2013. The Dubai Chamber recently opened its first ‘foreign’ office in Ethiopia, and it plans to open another in Ghana this year. Additional offices are envisioned for Mozambique, South Africa, Kenya, Uganda and Angola to further strengthen the business links between Dubai and Africa. The rise of Dubai as a hub for African business is nothing short of astounding.

EXCITING OPPORTUNITIES

At the macro level, Africa presents some of the most exciting opportunities for investment in the world today. Private equity investment in Sub-Saharan Africa reached a five year high of USD1.6bn in 2013, according to the Emerging Markets Private Equity Association, and the World Bank forecasts an increase in economic growth in Sub-Saharan Africa from 4.7 per cent in 2013 to 5.2 per cent in 2014. Expanding middle classes hungry for consumer goods, healthcare and technology, countries eager to improve outdated infrastructure, as well as the traditional trade in Africa’s natural resources are all combining to propel Africa into the top rankings for growth. As a result, African countries now occupy no fewer than 10 of the top 25 slots for countries ranked by economic growth in 2013 by the CIA’s World Factbook, with seven of the 10 fastest growing economies in the world being African.

Dubai has without doubt become a major hub driving this growth, particularly in respect of “Equatorial Africa”, by which term we refer to the central swathe of African countries excluding a) North Africa/Greater Maghreb (with its traditional European links) and b) the “Southern Cone” of Africa (essentially the Republic of South Africa and the countries adjacent to it, with its natural hub in Johannesburg). Interestingly, there is no natural hub for business within Equatorial Africa – and for a number of reasons companies doing business in that region (whether or not from the region) have increasingly turned towards Dubai as a base. These companies benefit from Dubai’s gateway geographical location, world-class logistics and infrastructure, business-friendly environment, the presence of major offices for regional and international banks and professional firms (lawyers, consultants, tax advisors, etc.), straight forward visa registration, stable currency and the ability to offer business travellers

“Africa represents our fastest-growing region in the world. If you want to be relevant, you need to be in this part of the world.”

– *Dominic Barton*, global managing director of McKinsey & Company

Cultural and commercial links between the Middle East and Africa have existed from time immemorial and have always been strong. The Arabic-speaking North African countries aside, Arabic place names down the East Coast of Africa evoke a prior golden age of Arab trade, and the great mosques and universities of West Africa – well known to the great 15th century diplomat/adventurer/geographer Leo Africanus – all bear testament to the spread of Islamic culture across the continent.

Today, these links are being rapidly reinforced by modern businesses using the Arabian Gulf (and

or residents (and their families) a mix of comfort, security and entertainment not available in parts of Equatorial Africa. Dubai's free zones offer easy set-up, 100% foreign ownership and a favourable tax regime, whilst Dubai's airline, Emirates, offers routes to 25 destinations in Africa, with plans for further expansion in the future. Investors looking to buy into Africa are setting up alongside African companies present in Dubai looking to do business with the rest of the world.

Dubai now finds itself sitting comfortably astride the flow of investment into the continent. Arif Naqvi of Dubai's Abraaj private equity group, which has approximately USD7.5bn in assets under management in Africa, says the continent represents "...an extremely exciting and compelling investment opportunity...". Top-tier Dubai-based conglomerates, the Al Futtaim Group and Majid Al Futtaim both plan to enter or expand in Equatorial Africa, with other Arabian Gulf-based, family-owned investment vehicles and international private equity houses set to follow suit. Dubai's port operator, DP World, has operations in five African countries, representing both investment into the continent and dedication to improving logistics links between Africa and the Arabian Gulf (to facilitate, amongst other things, the flow of food from African agribusiness to Arabian Gulf consumers). Dubai's banks, too, are focusing on Africa, with banking revenues for African business for some banks quadrupling in the space of five years, across conventional and Islamic banking. Chinese banks are setting up in the Dubai International Financial Centre with an eye on Africa as well, and Bank of China has positioned a dedicated Africa team in Dubai to service the business of Chinese companies investing in Africa's resources, infrastructure and consumer market.

WORDS OF ADVICE

From our own experience of operating in Equatorial Africa from Dubai, we offer the benefit of some lessons learned:

- » Do make sure that you are prepared to travel to the region – a credible Equatorial Africa practice comes from the capability and willingness to deploy resources at a moment's notice. This means, amongst other things, being up-to-date on vaccinations and being able to prove it, so as not to be faced with the choice upon arrival at an airport in Equatorial Africa of (a) paying USD25 for a yellow fever jab (which doesn't provide protection from the disease until several days after vaccination) and for the World Health Organisation "yellow certificate" that accompanies it or (b) paying USD15 for a bogus yellow certificate without the jab...
- » Don't expect deals to run smoothly – expect the unexpected and be prepared for protracted dealings with governmental bodies and regulators which may be genuinely keen on foreign investment but vexingly inexperienced at facilitating it. A transactional lawyer with real Equatorial Africa credentials will have spent many a day "camped out" in the reception areas of various government ministries; it's how the game is played.
- » Don't assume what has worked in one jurisdiction will be accepted in the neighbouring jurisdiction. Unlike the Arabian Gulf, where 'cross-pollination' in respect of legal practice is the norm (largely the result of the same lawyers covering multiple Arabian Gulf jurisdictions, coupled with the legacy of Egyptian jurist Abdel Razzaq Al-Sanhouri – and, for example, making major transactions in Qatar very similar to major transactions in Kuwait) – legal practice in the various jurisdictions comprising Equatorial Africa has developed very independently. Be prepared for very different approaches to transactions across the various jurisdictions, even from one civil law jurisdiction to the neighbouring civil law jurisdiction – and between neighbouring common law jurisdictions.
- » Don't fall foul of extra jurisdictional anti-corruption legislation. The use of payments to facilitate business is not always viewed as dimly in parts of Equatorial Africa as it is in other jurisdictions; be mindful of the restrictions that apply to you, your company and your client, and be prepared to explain them to others, including to those who might request such payments.
- » On a related note, do not be surprised if a due diligence question to a seller concerning payments to government officials is met with a "Yes, of course we make payments to officials!".
- » Do choose local legal advisers very carefully. Many truly great, and truly local, law firms are found in Equatorial Africa, but the standard of local legal advice is not uniform across the region or even across the various offices of firms present in multiple jurisdictions within Equatorial Africa. Having international legal counsel with Equatorial Africa credentials, and existing local counsel relationships, at your side helps to navigate through a potential minefield of local law and legal practice. 🏹



Text by:

1. JOHN PODGORE, partner, Dechert LLP
2. TOM RENWICK, associate, Dechert LLP