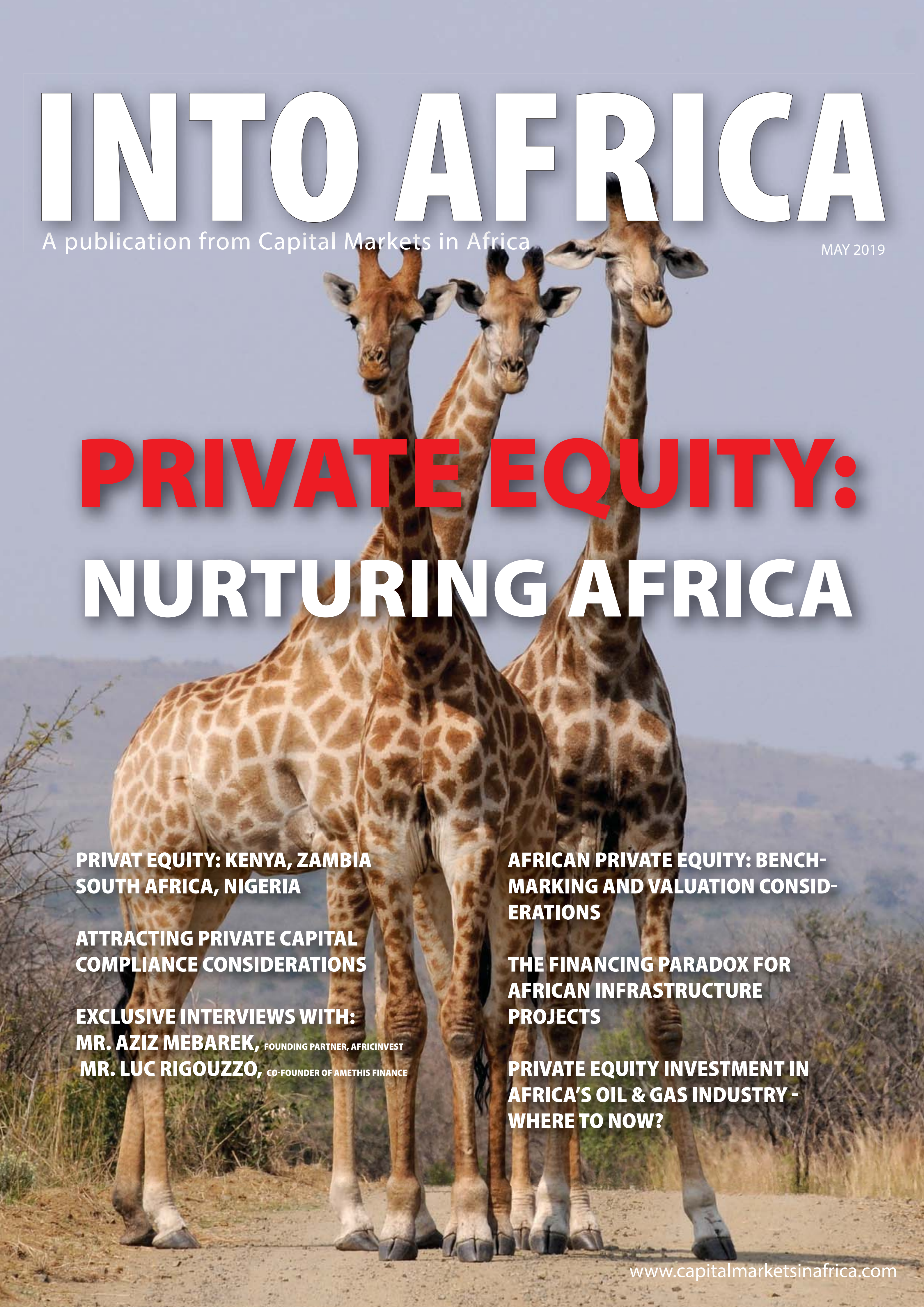

INTO AFRICA

A publication from Capital Markets in Africa

MAY 2019

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Welcome to the May 2019 edition of **INTO AFRICA**, , a publication written by the professionals, for professionals, investors, policymakers … Advancing and providing fresh insight into Africa's emerging markets through renowned thought leadership and peer-to-peer knowledge-sharing. The edition is titled: ***Private Equity: Nurturing Africa***.

African private equity (PE) has remained robust with the total value of fundraising increasing to US$2.7bn in 2018 from US$2.4bn in 2017, indicating investors' ongoing confidence in African PE, based on African Private Equity and Venture Capital Association (AVCA) data. While the value of PE deals dropped marginally in 2018 to US$3.5bn from US$3.9bn in 2017. Also, the total value of African PE fundraising between 2013 and 2018 was US$17.8bn.

Private Equity has maintained its key role in Africa's economic transformation and sustainable growth by supporting small-medium enterprises as well as promoting impact and sustainable investment in Africa. Private equity has also helped innovative and dynamic African companies achieve their ambition who may otherwise be limited only by a lack of capital and experience.

SHELLEY LOTZ (Head of Regulatory Affairs: Southern African Venture Capital and Private Equity Association (SAVCA)) opens the discourse by demystifying the private equity fundamentals as well as offer some insight of the South Africa private equity sector. **ADAM BENNOT** (Senior Associate, Unlisted Investment Services, RisCura) picks up the baton by exploring the private equity exits in Africa and revealed the myth around the exit option of the PE funds. Continuing the next lap, **HEDWIG SIEWERTSEN** Head of Inclusive Finance, Alliance for a Green Revolution in Africa (AGRA)) delves into the art of managing expectation in private equity investment in Africa. **The Investment Consulting Unit** (Aon Hewitt Limited (Mauritius)) offers insight into understanding the benchmarking and valuation of private equity in Africa.

Baton passes on, **ROMAIN PY** (Head of Investments, African Infrastructure Investment Managers (AIIM)) discusses the financing paradox for African infrastructure projects. **MARC IMMERMAN** (Principal, Metier Sustainable Capital South Africa) states that African infrastructure provides attractive investment opportunities for private equity. **MEDINA JETT** (Founder & President, ICSGroup, LLC) points out that compliance has become a key consideration for private equity firms in Africa. **FAITH WANGARI MAINA** (Investment Analyst, Cytonn Investments Kenya) looks at private equity in Kenya. While the Latham & Watkins' team (**SIMON TYSOE**, **CLEMENT FONDUFE** and **EVELYNE GIRIO**) delve into private equity investment in Africa's Oil and Gas industry. Maintaining the pace, **CELSO LOURENCO** (Managing Consulting, Angola) and **MERCEL KRUSE** (CEO, Africa Corporate Finance Advisory, Angola) looks at the new private investment framework in Angola.

On the legal track, **CAMILIA BENANI** (Senior Associate, DLA Piper Casablanca, Morocco) and **SHARON SAKUWAHA** (Partner, Corpus Legal Practitioners Zambia) highlight some regulatory and legal considerations for private equity in Morocco and Zambia respectively. **ANNE KIUNUHE** (Partner, Anjarwalla & Khanna Kenya) and **CHARLOTTE PATRICK-PATEL** (Principal Associate, Anjarwalla & Khanna Kenya) discuss legal considerations in Kenya. Likewise, **LYDIA SHADRACH-RAZZINO** (Director, Corporate Commercial, ENSafrica South Africa) and **TSHEPO MATHABATHE** (Business Development Manager, ENSafrica South Africa) navigate South Africa's private equity landscape. **FOLAKE ELIAS ADEBOWALE** (Partner, Udo Udoma & Belo-Osagie Nigeria) and her team feature in "T*owards an enabling legal and regulatory framework for private equity and venture capital in Nigeria*".

Still on, **DEEPA VALLABH** (Head of Cross-Border M & A, Africa & Asia, CDH, LLP) and her team advice on managing and mitigating risks in African M&A transactions. **TSHIAMO MASEKO-POISSON** (Executive, LNP Attorneys Inc.) and **ATHI JARA** (Director at LNP Attorneys Inc.) dissect the DRC's new mining code. In addition, **JOSHUA BAMFO** (Partner & Head, Transfer Pricing Services, Andersen Tax Nigeria) and **VICTORIA SERIKI** (Experienced Associate, Transfer Pricing Services, Andersen Tax Nigeria) examine the Nigeria transfer pricing regime. **RUDI MATJOKANA** (Managing Executive, Vodacom Business Public Enterprise) provides a technology angle to the issue of sustainable development.

And still more, we bring you exclusive interviews from **AZIZ MEBAREK** Founding Partner, Africinvest) and **LUC RIGOUZZO** (Executive President and Co-Founder of Amethis Finance).

As usual, we provide you with a summary of what analysts are saying about Africa's economic outlook and credit quality as well as the prospects of the commodity markets for 2019.

Tunde Akodu

Editor

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THE FUNDAMENTAL ROLE OF PRIVATE EQUITY

By **Shelley Lotz,** Head of Regulatory Affairs: Southern African Venture Capital and Private Equity Association (SAVCA)

Investments by private equity funds into companies hold great benefits besides the provision of capital. Private equity investments have considerable impact in terms of productivity, skills development, job creation, and social impact, as it includes the transfer and exchange of know-how, access to a broader network, and not merely the flow of capital. Private equity fund managers play an active role in managing their investments in companies, with the aim of adding maximum value as they and their investors derive a return from the increased value of their investments.

In South Africa, the private equity industry represents a significant sector within the overall financial services industry, and is an attractive asset class within the broader capital markets. As seen across a range of indicators, the profile of the local private equity industry is that of a productive contributor to the development of the South African economy. In addition, private equity facilitates BEE, addresses economic imbalances of the past, promotes entrepreneurial initiatives and positions, South Africa to compete successfully on the global stage.

Private equity is also an important source of Foreign Direct Investment (FDI), both indirectly via the raising of offshore money by local fund managers and also by direct co-investment by foreign investors (which is an investment alongside the private equity fund manager).

What is Private Equity?

Private equity refers to the investment of capital into private companies, as opposed to investing in companies that are listed on a stock exchange.

Private equity consists of companies that manage private equity funds, called fund managers, who raise capital from investors and invests these funds into private companies. Traditionally, these investors are institutional investors such as pension funds, endowment funds, development corporations, insurance and, other financial institutions who are looking for a long-term investment.

Each private equity fund has a specified investment mandate which details the geographies, industries, and type of private companies the funds will be invested in. A company may seek private equity financing for a variety of reasons such as increasing its working capital to support business expansion, developing new technologies and products to grow and remain competitive, making acquisitions of other businesses or buying out certain shareholders and to restructure the ownership and management of the business. Another vital application of private equity in South Africa is facilitating the introduction of BEE investment.

Characteristics of private equity

The characteristics of private equity, in comparison to listed equity, is as follows:

- Private equity is a long-term equity investment that supports long term planning;
- Private equity provides access to a variety of sectors, which may be under-represented in listed markets, and access to high-growth developing markets that do not have stock exchanges;
- Private equity investments can either be a significant minority or majority stake, with ongoing and active involvement by the fund manager in unlocking value;
- There is full alignment between the fund manager, the investors and the management team the private equity fund invests in; and
- Private equity has historically outperformed the listed markets.

"Private equity investments have considerable impact in terms of productivity, skills development, job creation, and social impact, as it includes the transfer and exchange of know-how, access to a broader network, and not merely the flow of capital."

Private Equity Funds and Types of Firms

Private equity firms, commonly referred to as fund managers or General Partners (GPs), typically raise money from institutional investors such as pension funds, insurance companies, and institutional investors. This money is put into a fund structured as a Limited Partnership or Trust and which is managed by the fund manager and the capital is used to invest in companies, either for a minority or majority equity stake. Fund managers also invest their own money into the funds they manage. This is to ensure they have 'skin in the game', i.e. their interests are aligned with that of their Investors. Private equity funds typically have a fixed life-span of 10 years. The fund manager usually invests for the first five years of the fund, and will then sell investments and return capital to the investors during the next five years. Fund managers will return the investors' original capital, plus any additional returns made over the life of the fund.

It is the institutional investors in the funds – known as Limited Partners – who first receive any returns generated by a fund. It is only when these returns pass a certain point, known as the 'hurdle rate', that the fund managers start to participate in returns.

Investment stages

Private equity is any type of equity investment in a private business across sectors and stages of growth and development.

Private equity can be broadly classified into the following sub-classes, namely:

- Venture capital – investment into a company in the form of seed capital, start-up capital or early-stage capital to assist with product development and initial marketing.
- Development capital – funding for growth and expansion of a company which is breaking even or trading profitably.
- Buy-out funding – acquires a controlling interest in established businesses from other shareholders, whether individuals, other venture-backers or the public. Unlike venture and development capital, the proceeds of buy-out funding or replacement capital are generally paid to the previous owners of the business.

Private equity in South Africa

Beyond being defined as a range of investment categories applicable to non-listed companies, private equity is also a distinct asset class within the broader capital market and is supported by a well-defined industry made up of various players and stakeholders.

In South Africa, the private equity industry benefited from the global trend towards recognising the asset class as an attractive investment vehicle for investors, combined with its growing reputation as an effective means of economic development for Governments and development agencies. It may be argued that South Africa has one of the most sophisticated private equity industries among emerging and developed markets, with different funds investing in companies at all stages of business development, from start-up venture capital funds through to late-stage and buy-out funds.

The South African private equity market differs from the rest of the African continent due to a number of factors including:

- The depth and sophistication of our capital markets;
- Multiple options for fund managers to sell investments such as financial buyers, strategic/trade buyers and listing on a stock exchange;
- Strong regulatory and governance structures including protection of minority shareholders and rule of law; and
- Highly skilled and experienced management teams.

The South African private equity industry has grown considerably over the last 20 years, not only in the amount of funds being managed by fund managers, but also the increase in the number of investments made, the value of the returns to investors and the number of investment professionals employed by the industry.

Private equity value and returns

The most widely used measure to determine the performance of the private equity industry is to calculate the annualised internal rate of return (IRR). This measures the return of a private equity fund based on all cash flows in and out of the fund, as well as the remaining net asset value of the fund. The IRR is calculated after taking into account all relevant fees and therefore closely reflects the return an investor would achieve if they invested at the start of the fund. Traditionally private equity returns have outperformed the listed markets over the long-term.

In order for fund managers to be able to successfully raise funds from investors, they need to be able to demonstrate a track record of delivering good returns from their previous funds. Private equity in South Africa has made and continues to make, a positive contribution to the economy. It doesn't only facilitate a more efficient allocation of capital, but it also contributes to employment creation and ensures business sustainability.

The basis for private equity is to create value and to have a positive impact. Feedback received from companies that have benefited from private equity investments indicate that as a result of private equity they were able to:

- Introduce new products and services;
- Grow faster;
- Implement good corporate governance;
- Create employment opportunities; and
- Have a positive impact on their social environment.

This is not only due to the inflow of capital injected into these companies, but also as a result of active management by the private equity fund during the lifespan of the investment.

The South African economy, through the private equity industry, can realise meaningful benefits from additional capital allocation to the industry by South African pension funds in terms of Regulation 28. South African private equity has become a mature and highly respected industry that is recognised as a significant force for good with high growth potential.

"The South African private equity industry has grown considerably over the last 20 years, not only in the amount of funds being managed by fund managers, but also the increase in the number of investments made, the value of the returns to investors and the number of investment professionals employed by the industry."

Contributor's Profile

Shelley Lotz joined SAVCA in 2016 as the Head of Regulatory Affairs focusing on leading SAVCA's engagement and advocacy efforts with various regulators including National Treasury, SARS, SARB and the FSCA.

Shelley's extensive experience in the financial services sector includes six years at Horizon Equity Partners, where she was responsible for all fund reporting, valuations and compliance.

Shelley also spent six years at the Royal Bank of Scotland in London where she worked in a technical accounting and regulatory advisory role for the Investment Bank. Shelley was the Finance lead in the launch of RBS's GBP 1.1bn Private Equity fund in 2007, which paved the way for Shelley's career in private equity.

PRIVATE EQUITY IN AFRICA: THE MYTH OF THE WEAK EXIT ENVIRONMENT

By **Adam Bennot,** Senior Associate, Unlisted Investment Services, RisCura

Africa's steady rise continues to attract a growing number of private equity (PE) investors who believe that African markets offer an exciting growth and investment opportunity. Some of the key drivers underpinning this growing perception among investors include improvement in the business environment, fiscal reform and sound economic policies, technological advancement, regional integration and improved cooperation between the public and private sector.

From an external perspective, the improving global economic outlook and China's ongoing demand for African resources provide a foundation for robust medium-term growth. Combined, these drivers could stimulate the private sector, resulting in job creation, a higher tax base, and a growing African middle class in the long-term.

In the context of Africa's positive outlook, PE activity on the continent remains robust. According to a report by the African Venture Capital and Private Equity Association (AVCA), the total value of African PE fundraising increased to USD 2.7bn in 2018, up from USD 2.4bn in 2017. The total deal volume reached 186 deals in 2018, up from 171 deals in 2017.

Africa's PE activity clearly demonstrates the growing appetite to invest in the continent. However, significant challenges remain, particularly regarding the perceived risks of deploying large scale capital in frontier markets. A key concern, particularly among limited partners (LPs), is the perceived weak exit environment. A perception often shared by investors is that the shallow nature of African capital markets makes exiting investments difficult to execute.

However, Africa's exit environment has remained resilient and more active than many realise. Across sectors and markets there is an increasing number of exit routes. According to a recent PE exit study by AVCA and EY, there have been 403 exits over the last 10 years. 2016 was a record year for exits with 50 exits recorded compared to just 34 in 2007, indicating increasing momentum for PE exits. The number of exits in 2018 dropped slightly to 49, primarily due to fewer exits announced in South Africa off the back of increased political and economic uncertainty.

While South Africa continues to have the highest level of exits, the last two years saw an increase in activity in North Africa (Egypt, Morocco, Tunisia), which made up 22% of exits from 2016-2017. On a per country basis, over the last 10 years, exit activity was highest in South Africa (43%) followed by Nigeria (8%), Egypt (8%), Kenya (6%) and Ghana (5%).

According to the study, a key trend in exit activity is that secondary buyouts (sales to other PE firms) was the most common exit route with 37% of all 2017 exits, up from 16% in 2015 and just 8% in 2008. During 2014-2016, PE fundraising activity hit an all-time high, which is likely driving PE firms to be more active in the secondaries' market. However, this could suggest that PE firms may be struggling to find new investment opportunities in the market and are having to recycle other PE firms' portfolios.

Although a healthy secondary buyout market is emerging, it's still at a nascent stage of development. With the increasing maturity of the industry, more secondary transactions are likely to take place and secondary-focused PE firms are likely to enter Africa.

The study shows that although exits to trade buyers (strategic buyers of existing businesses) dramatically declined from 50% in 2016 to 25% in 2017, 2018 saw a relative rebound in this exit route. Trade buyers represented the highest volume of exits routes in 2018 at 39%, slightly higher than PE and other financial buyers at 37%. Exits to trade buyers has always been a favoured exit route as companies have sought to take advantage of Africa's growth opportunities.

Although IPOs continue to represent the lowest share of recorded exits, the deepening of African capital markets, coupled with economic growth, has the potential to support the development of the listed space in Africa. According to a report by AVCA and PWC, between 2010 and 2017, PE backed IPOs as percentage of total IPOs averaged just 16% in terms of volume and 23% in terms of value. By comparison, in the US the average is 39% in terms of volume and 44% in terms of value. 2010 saw the largest number of PE backed IPOs by volume and value, with five IPOs valued at USD 1.1bn.

In line with equity capital markets, the JSE leads the African exchanges as the preferred exit destination of PE backed IPOs. The exchanges in North Africa (Egypt, Morocco and Tunisia) are next in line. Interestingly, this is in line with the overall exit activity as South Africa and the North African regions have the highest levels of exits in all categories over the last two years.

Despite the growing opportunity to exit through public listing, the development, size and liquidity of the African exchanges is the reason why this PE exit option has not grown over the last few years. According to RisCura's 2018 Bright Africa report, Africa's stock exchanges, except for the JSE, remain stubbornly illiquid. The Egyptian Exchange (EGX) currently has the second highest daily turnover across the African exchanges with a total of USD 72m traded daily, compared to the JSE's USD 1.8bn.

The next most liquid exchange, by turnover for 2018, is the Casablanca Stock Exchange (CBSE) at USD 17m, followed by the Nigerian Stock Exchange (NGSE) at USD 15m. This represents less than 1% of the trade on the JSE.

The low free float on African stock exchanges also contributes to their illiquidity. The JSE ranks highest in terms of market capitalisation and free-float of 73%. The Ghana Stock Exchange (GHSE) and Namibian Stock Exchange (NSX) have the next highest free float at 66% and 61%, respectively.

Although the CBSE and EGX have the highest market capitalisation (ex. JSE), they have very small free floats of 27% and 25%, respectively, giving them a lower adjusted market capitalisation than the NGSE which has a lower market capitalisation but higher free float of 46%.

Another challenge in Africa is that the cost of trading on African exchanges is substantially higher than developed markets. A significant portion of trading fees is made up of brokerage commissions, and the limited pool of licensed brokers gives investors limited bargaining power on fees. The low volume of trades on these exchanges means that brokers charge more on each trade to cover their costs.

Given the illiquidity and high transaction costs associated with African exchanges, there are also opportunities to achieve exits through international equity markets. An increasing number of African companies, particularly from South Africa, are being listed on international exchanges and this exit route is expected to grow. Of the international exchanges, the London Stock exchange (LSE) leads as the preferred destination for PE backed exits, with total proceeds of USD 600m between 2007 and 2010.

Another viable exit strategy is through a management buyout (MBO) or private sale. Through effective structuring of PE deals, put options or share buyback mechanisms can be put in place. This is a useful strategy if exiting via an IPO or sale to a financial buyer or strategic trade buy is not viable or available. According to the AVCA and EY exit survey, in 2017, exits via MBOs was 20%, up from just 2% in 2016 and 9% in 2015.

As the African PE landscape matures, the opportunities for exits will improve as investors continue to diversify their PE portfolios. Exits via secondary buyout markets and to strategic buyers is likely to remain the primary exit strategy for African GPs. Due to the challenges facing PE backed IPO exits on Africa's stock exchanges, we expect this strategy to remain subdued over the medium-term. However, as African capital markets broaden and deepen, this strategy will increasingly represent a larger proportion of exits on the continent over the long-term.

Contributor's Profile
Adam Bennot provides expert independent valuation and risk and performance services to investors in unlisted assets in Africa. This ensures that clients benefit from a high degree of speciality in valuations and have transparency and accountability which is increasingly demanded by investors. As a senior associate, his responsibilities include performing and reviewing valuations of companies held by private equity funds, fund of funds and infrastructure funds as well as providing cutting edge research regarding the African investment landscape and private equity performance. Adam joined RisCura in 2015, has four years' industry experience and is particularly interested in the ESG aspect of investment. Prior to joining RisCura, he assisted in drafting legislative policy on education and labour issues for the United State House of Representatives, writing press releases for the House Committee on Education and the Workforce.

PRIVATE EQUITY INVESTMENT IN AFRICA: THE ART OF MANAGING EXPECTATIONS

By **Hedwig Siewertsen,** Head of Inclusive Finance, Alliance for a Green Revolution in Africa (AGRA)

In most private equity gatherings one conclusion is always drawn: Investors and entrepreneurs are not finding each other in sufficient numbers, and I think the facts do speak for themselves:

According to the latest EAVCA survey of the PE industry in 2018 only 47 deals were done in East Africa. Looking at the number of entrepreneurs and investment funds, I would think we should have done better!

Entrepreneurs say: “Access to capital is the biggest constraint in my business”, Investors and lenders say: “There are not enough deals in the market”. My message is: Neither can’t be true.

I think Private equity is not about accessing capital; nor is it about the closing of deals. In my view, Private Equity is about the art of managing expectations.

What do I mean by the art of managing expectations?

There are many well capitalized funds; at least 80 invest in East Africa.

There are many businesses in EAC. However, there are a few transactions.

So why is the left hand side not reaching the right hand side?

Let me look at the expectations of each group.

What do investors expect?

1. Firstly, that of 5 – 10 years is enough to make investments, grow them and exit these investments in order to have their money returned. I think these investment cycles are too short and we should try to open the discussion on perpetual funds. Evergreen funds allow fund managers to enter into the capital when both the entrepreneur and the fund feel it is the right time and we can decide when it is the right time to divorce. It would be great if investors leave it to the fund manager to decide through their under standing of the business and the market it operates in, when to invest and when to exit.
2. Secondly, investors expect unrealistic returns for funds. I think we should focus the discussion on the return generated by each investment, instead of discussing the return of funds. We can manage expectations between investors and entrepreneurs on how profitable we expect the company to be. But PE fund managers cannot expect entrepreneurs to understand that the return of their company should compensate for failures of other investments in the fund. So funds can decide to only discuss mutual expectations on returns to be made by individual investee companies.
3. Thirdly I think that investors have high expectations on how low management fees can be. The PE sector in the EAC as it is today is still underdeveloped, it lacks a lot of data and the costs of travelling to all corners of the EAC requires operational expenses. So to make investments is a lot of work which should be fairly compensated. If funds want to invest in all corners of the EAC and to employ professionals that understand both investors and entrepreneurs so that they can manage expectations well, that requires professional people that reach out to all corners of the EAC and those people are not cheap. So investors should become more realistic in their management fee expectations.

Then something on expectations of fund managers:

1. Fund managers tend to have high expectations on the level of sophistication of entrepreneurs. Private Equity is a new product for entrepreneurs and we cannot expect them to have a full fledged financial model and business plan. I advise that funds accept that as fund managers they need to invest in the creation of low hanging fruits. We cannot expect to sit in our office and wait till the

complete investment pack lands on our desks.

2. Sometimes fund managers expect that once the funds have been disbursed to the company the deal and the company can grow on its own. I think that once the deal is closed the real work start: adding value to the companies whereby we have an active role as networkers, supervisors, coaches, etc.

Lastly the expectation management with entrepreneurs:

1. Firstly, Entrepreneurs expect that if the investor has shown interest, that the money will be disbursed tomorrow. That is not realistic: Entrepreneurs should see themselves as the drivers of the business and should see us, equity investors, as people sitting on the passenger seat of the company. Fund managers only dare to sit there if we think the driver is excellent, the car is safe and the road we are going to drive is, in the, end leading to somewhere: a better world to live in for all people. It takes time before we understand your business so please allow us some time to do our homework and understand your company as well as you, the entrepreneur.

2. Secondly, entrepreneurs often have very high expectations of their capacity to grow and the current value of their companies. I think these are often unrealistic: we all recognize the hockey stick projections and the situations where entrepreneurs want to be paid for the value they are still to create in the future; WITH the help of the funds of the investors. As a fund manager, you get to reality if you divide sales by two and multiply the costs by two and then value the company on the basis of what it is today. Because, we as equity partners, will be part of the growth that will be realized, so our piece of the wedding cake should become bigger when the cake becomes bigger. We do not pay for the piece of the large wedding cake if the company is still a queen cake.

So dear investors, fund managers, and entrepreneurs: Let's manage our mutual expectations better with the help of the many facilitators in this market.

A friend of mine who was enjoying a long and happy marriage was once asked: what is your secret? Her answer was 'low expectations'.

Now, I do not want to say that we should have low expectation but for fund managers, private equity is almost like a marriage: it is for the longer term, a mutual give and take and its objective is to create and build as partners for a future where life is better than it is today. I say it is almost a marriage because for me investments:

1. although for the long term they have an end to it. and unlike marriages preferably before one of either partner dies.
2. unlike monogamous marriage, a fund manager wants to marry many different partners.

So let's conclude: Which expectations could you manage better?

1. Investors (LPs): allow for long investment cycles in equity funds in order to allow fund managers to do a good selection of investments and exits at the chosen moments and pay a fair management fee so funds can have professionals to work in all corners of the region.
2. Fund managers (GPs): get out of your office and create investable opportunities, don't expect the deals to be readily made.
3. Entrepreneurs: don't be unrealistically ambitious nor greedy.
4. Enablers: Please help us to understand each other better, to be transparent about our mutual expectations and to be realistic in the expected results of our marriage.

Contributor's Profile

Hedwig Siewertsen is responsible for designing and implementing AGRA's Inclusive Finance strategy. Financial services are key in transforming agriculture from a solitary struggle to survive into a business that thrives. AGRA designs and deploys blended finance instruments, technical assistance funds and acceleration funds to make financial services accessible and affordable to agricultural SMEs and smallholder farmers in food crops in 11 African countries.

Prior to coming to AGRA, Hedwig was CEO of a USD 100 million single-family office impact fund, investing in SMEs in the East African region and prior to that she was Deputy Director of Enclude Netherlands a consulting firm specialised in financial services delivery for MSMEs in emerging markets. She has worked across 25 African countries, has a B.Sc. in Tropical Agriculture and a Masters' degree in Development Economics.

AFRICAN PRIVATE EQUITY

BENCHMARKING AND VALUATION CONSIDERATIONS

By **Investment Consulting Unit,**
Aon Hewitt Limited (Mauritius)

Introduction

Many institutional investors (such as pension funds) are looking for higher returns, given lower interest rates when compared to say 10-15 years back. Alternative assets such as African Private Equity (PE) could be considered for diversification and enhancement of returns. Between 2012 and 2017, 953 PE deals, worth USD 24.4 billion were reported[1] in Africa. PE investments can also generate a multiplier effect in the different African countries as they provide funding for local companies.

PE consists of investments that are not traded on a public market. PE investors directly invest in private companies or engage in the buyouts of public companies. PE has gained much popularity in the past few years.

PE funds may opt for different types of strategies. The most common types are listed as follows:

1. Leveraged buyouts (LBOs) are the most popular form of PE funding. LBOs are primarily funded by debt, but PE investors may also use a combination of debt and equity.
2. Venture Capital (VC): Funds provide capital to start-up companies with potentially innovative ideas and technology. VC investors provide both financial and managerial support in the early stage of development.
3. Distressed funding: PE investors may invest in underperforming and financially distressed companies. The aim is to improve their financial health or to sell their assets at a profit.

The PE fee structure in Africa typically consists of a management fee and a performance fee. Management fees are charged annually and are typically 2% of the committed capital of the Fund. **It is to be noted that the management fee is charged on committed capital and not on the actual invested capital.**

Valuation methodologies

Because of their illiquid nature, the valuation of PE can be very tricky. There are 3 main methodologies to value African PE fund investments:

1. Discounted cash flow approach (DCF): The DCF approach involves calculation of the present value of the firm using future expected cash flows such as dividends, free cash flow to the firm or free cash to equity.
2. Market/Comparables approach: The Market/Comparables approach makes use of comparables i.e. market data from similar publicly traded companies. The most common comparables used are the different price multiples. However, it is often difficult to find public companies in Africa at the same stage of development, same line of business, same capital structure, and same risk.
3. Asset-based approach: The asset-based approach estimates the value of a firm's equity as the fair value of its assets minus the fair value of its liabilities. This method is generally more efficient for distressed companies with many tangible assets.

It is usually recommended to use all valuation techniques simultaneously and apply a specific weight to each valuation methods.

Private equity due diligence

Private equity firms usually require high degree of due diligence. Key factors to consider when investing in an Africa PE Fund (new or existing) include:

- Amount of assets under management and Target Fund Size
- Investment Strategy and Philosophy
- Term of the Investment
- Historical IRR for similar strategies
- Targeted IRR for current strategy
- Targeted allocation per country & sector
- Valuation and returns calculation methods.
- Management & Performance Fees
- Management style.

1. African Private Equity and Venture Capital Association (AVCA), 2017 Annual African Private Equity Data Tracker with Regional Spotlights

- Key person risk.
- Reputation.
- Growth plans and Pipeline deals
- Systems for risk management.
- Appropriateness of benchmarks.

Challenges with using IRR for evaluating PE funds

PE performance is commonly measured by the 'Internal Rate of Return' (IRR). At times, these can be very mouth-watering and can be 15% or even higher in Africa.

Investors should generally be cautious as such high IRR's can be misleading at times. A very small absolute return can actually generate a high IRR over a short time period. To add to this, it is even possible that a fund with a higher IRR ends up giving a lower total return to investors than a fund with lower IRR.

At Aon, we regularly get queries from clients looking at African PE proposals. We recommend clients to look at both IRR and other multiples (realization ratios, multiple of invested capital) so as to get a balanced view. We also emphasize that it is very important that the client knows how the PE manager is calculating IRR. Clients are advised to understand what is being measured, how it is being measured and what is being used to benchmark returns.

Private equity benchmarks

It is notoriously challenging to benchmark PE and African PE is no exception. The main reasons are:

- PE investments are illiquid,
- Lack of easily available universe of transactions (e.g geography, sector, vintage year, style, life cycle),
- PE has a very long horizon (≥10 years), making short term monitoring difficult,
- J-curve[2] effect faced by private equity funds,
- PE has an irregular timing of cash flows.
- Uses IRR as a measure of return (which is money weighted) while other asset classes (listed equities and bonds) use the time-weighted return measure.

Benchmark proxies in Africa could include the following:

1. African Listed Equity indices (e.g the MSCI Frontier Market Africa): The performance of the African Listed Equity index is treated as a measure of the 'opportunity cost', given that PE should provide a premium over the public equities in the long run. A margin of 3-5% (net of all fees) could be added to the index return to cater for the higher risk. One problem with this approach is that public indices are more volatile in short-term. Furthermore, many listed African stocks are quite illiquid when compared to their developed market counterparts.
2. AVCA Index: First launched in April 2013, the Africa Private Equity and Venture Capital Index (AVCA) comprises of 51 funds focused on private equity and venture capital investments in Africa. AVCA includes pan-African, regional, and country-specific funds, 13 of which are focused primarily on South Africa. The index represents the following asset classes: buyouts, growth equity, mezzanine, and venture capital[3].

   The following is also to be noted[4]:

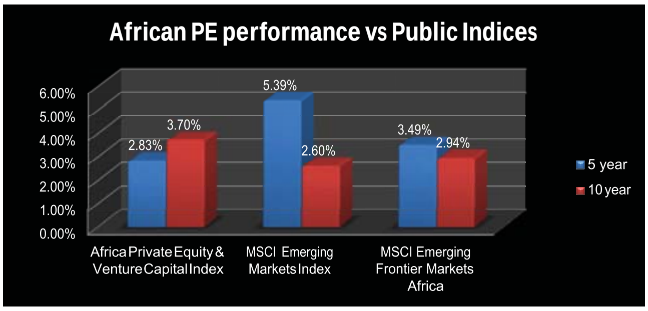
   - The AVCA index has underperformed Public Indices (MSCI EM index and MSCI EFM Africa) over the 5 years ended June 2018.
   - The index outperformed the Public Indices over 10-year period.

   It should be pointed out that AVCA index performance is calculated by the IRR methodology while the Public Indices use average annual compounded return. These 2 methodologies are not recommended for direct comparison.
3. Vintage year: The performance of an African PE Fund can also be compared with other PE Funds, with similar strategies and which were launched in the same year (known as the vintage year).

Other issues relating to African PE

Private equity does not readily lend itself to benchmarking. Other issues to consider include:

2. Negative performance in initial years
3. Africa Private Equity & Venture Capital Index and Benchmark Statistics, 2017
4. Africa Private Equity & Venture Capital Index and Benchmark Statistics- June 2018



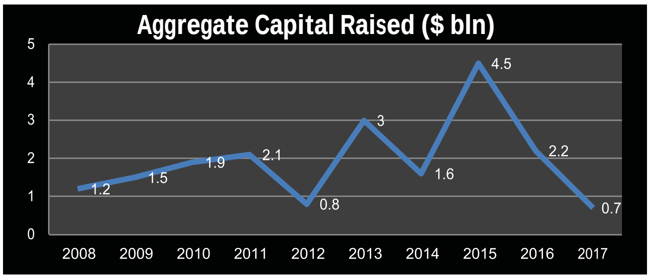
Survivorship bias.

The occurrence of the survivorship bias due to fund closings has often been highlighted in the market. Funds may close for reasons such as low demand or poor performance. The discontinuation of these funds from being included in the benchmark will tend to bias the benchmark return towards the performance of the surviving (and better performing) funds.

Fundraising

Debt raising for PE funds can be quite challenging in Africa. Around 33% of African Funds failed to meet their target fundraising from 2012 to 2015[5].

According to Prequin[6], there have been fluctuations in Africa-Focused Private Equity Fundraising (see below chart).



Depreciation

Depreciation of local African currencies is of a key concern to international investors reporting performance in hard currencies. As illustrated in the next chart[7], the main African currencies have all depreciated against the USD in the 5 years ending January 2018. Should these depreciations be sustained over the longer term, foreign investors into African PE would have their returns diluted when reporting in USD.

90% of African PE General Partners claims that currency risk is either important or very important[8].

Note: Representative rates for the period 1 January 2013 through 15 March 2018.

Importance of diversification

Diversifying across sectors and across different targeted consumers is also a key consideration for PE Investments. The exchange rate risk can, to some extent, be managed, by investing in PE funds which are relatively balanced in terms of import-versus-export driven investments.

Conclusion

Investing in African PE could act as a diversifier and potentially generate superior returns. However, caution is needed as it is an illiquid asset class and benchmarking is not easy.

We recommend clients to well understand the risks when they are considering investing in African PE. At the end of the day, return is only half of the story.

"Alternative assets such as African Private Equity (PE) could be considered for diversification and enhancement of returns."

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5. The figure increased to 57% in 2016 and 50% in 2017.(Source: Private Equity International)
6. May 2018 Edition- Prequin Special Report on Private Equity in Emerging Markets
7. Source: https://www.empea.org/app/uploads/2018/05/EMPEA-Briefs_Africa_FINAL_WEB.pdf
8. Private Equity International- September 2018 edition

THE FINANCING PARADOX FOR AFRICAN INFRASTRUCTURE PROJECTS

By **Romain Py,** Head of Investments, African Infrastructure Investment Managers (AIIM)

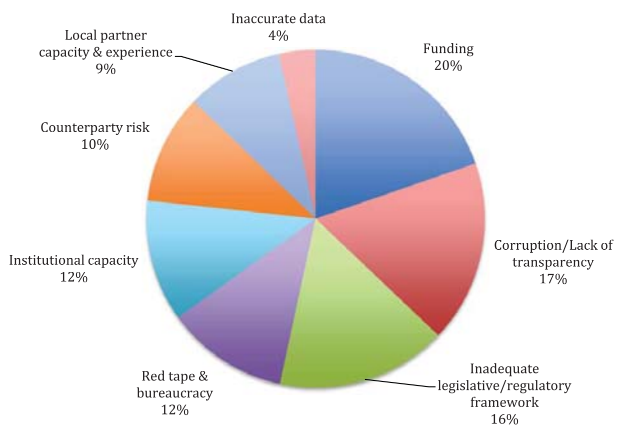
Addressing Africa's infrastructure gap requires many billions of US dollars. Over the next 10 years, Africa needs to spend approximately $94bn annually on essential infrastructure, including another 7,000 megawatts a year in power capacity, just to keep up with growing demand. However, the delivery of bankable projects is proving more difficult than anticipated, mainly due to weaknesses in governance, unsupportive regulators and lack of institutional capacity. Even Africa's most commercially viable sector, power, is suffering.

This is the paradox of African infrastructure finance: despite plenty of private sector interest and available, equity few projects actually reach financial close. The lack of early-stage funding to pay for the relevant studies or to engage public agencies has often been pointed as the key bottleneck. However, with the increased number of project preparation facilities available (Power Africa, EU-Africa Infrastructure Trust Fund…) and successful use of the "programmatic development" approach, notably in the renewables space (South African REIPPPP, Uganda GET-FiT, IFC Scaling Solar…), attention now focuses on poor governance and inadequate legislative/regulatory environments.

Most important factors causing bottlenecks in project preparation

While the economic outlook of sub-Saharan Africa is expected to strengthen this year (the

Most important factors causing bottlenecks in project preparation



Source: Infrastructure Consortium for Africa 2013

latest IMF projections have the region's aggregate GDP growth stepping up to 3.8%, up from 2.6% averaged over the last four years), this aggregate growth masks significant differences across countries. Importantly, despite notable improvements, economic growth remains weak in the continent's largest economies (Angola, Nigeria and South Africa) with growth averaging 2.5%, which is in line with the population growth rate. However, rising debt and debt servicing costs have several countries in, or at risk of, debt distress. The average debt to GDP ratio has risen to 57% in 2017, with at least 14 countries (one-third of all SSA countries) judged to be either in debt distress or at high risk of debt distress, up from only six countries in 2013. As a result, we believe that governments will turn to more Public-Private Partnerships and other risk mitigation mechanisms that provide private funding while helping preserve the solvency of public sector balance sheets.

The outlook for emerging markets, including Africa, is mixed. Much depends on where economies are in their respective business (and election) cycles and on their ability to adapt to weaker external demand and policy normalization. While SSA growth is expected to rise to 3.8% in 2019 and 3.9% from 2020, up from 3.0% in 2018, according to IMF forecasts, the improved growth outlook will be balanced by high debt levels. Governments will have to continue reducing their reliance on borrowing and shore up domestic-tax mobilization. As the IMF validly puts it, oil-exporting nations should adjust their fiscal position by boosting non-oil revenues through economic diversification, while non-oil economies need to tame rising debt levels by relying more on private-sector investment than public spending.

In the current global context of increasing amounts of capital chasing fewer attractive deals and driving down returns in traditional markets, LPs are increasingly looking to new markets, such as Africa, to achieve their return objectives. As Africa's largest private infrastructure investor, we have witnessed greater interest from the international LP market than at any time previously.

It is, however, important to note that the African private equity industry is still at an early stage of development relative to the traditional markets. As a result, the key focus for the industry needs to be on educating the various stakeholders.

For example, we need to educate some LPs about managing risks and help them understand better the large gap between perceived risks and actual residual risks for deals. Of course, African-based institutional investors are usually better placed to understand this risk perception and are becoming more familiar with private equity as an asset class.

We also need to educate governments on the requirements for increased private sector participation and consistency of policies and regulations. Reforms have been enacted in some countries in the region in order to encourage Africa-based institutional investors to allocate capital to the asset class. However, more remains to be done to fully harness private equity's potential to contribute to Africa's socio-economic development. This is particularly important to our ESG goals, where positive social outcomes are as intrinsic as investment returns to the projects we back.

There are also African pension funds to be educated because they play a key role providing an additional pool of capital and are growing at around 20% per annum in some African countries; although they remain a tiny fraction of the global pensions industry. Moreover, we have been educating a lot of Africa-based pension funds on the benefits of investing in infrastructure as a means to providing long term, inflation-linked returns for their members which also provides members a great opportunity to invest in their own future. Although access to long-term debt financing remains a challenge across the continent and dominated by DFIs, unlocking local pension fund monies to invest into infrastructure debt will be key for the deepening of local capital markets and the development of the continent's broader commercial ecosystem.

For a continent where some high profile negative news stories make the pages of the international press, taking the focus off all the great opportunities, educated LPs investing with experienced GPs who understand the African context will be able to make outsized returns from a patient, long-term investments.

Contributor's Profile

Romain Py, Head of Investments: With a 19-year track record, African Infrastructure Investment Managers (AIIM) is the most experienced private equity investment manager focused exclusively on African infrastructure on the continent. AIIM is committed to Africa's long-term development through its infrastructure focus and currently manages USD2.1 billion across 7 funds having concluded investments into more than 55 assets across the power, telecommunications and transport sectors in East, West, and Southern Africa.

Romain has 20 years' experience in infrastructure with a proven track record in originating, structuring and executing investments in developed and emerging markets. Prior to joining AIIM in 2014, he worked for JPMorgan, HSBC and Société Générale. Romain is leading AIIM pan-African fund business, notably AIIF3, and represents AIIM as a director on the boards of African Ports & Corridors Holdings, DSM Corridor Group, SEGAP, Albatros Energy Mali, Beyond Energy, and AIIM Hydroneo.

NEW PRIVATE INVESTMENT FRAMEWORK & BUSINESS OPPORTUNITIES IN ANGOLA

By **Celso Lourenço**, Managing Consulting, Angola | **Marcel Krüse,** CEO, Africa Corporate Finance Advisory, Angola

In the past, the process of investing in Angola used to be quite complex, obliging foreign private investors to receive a green light from various government agencies before being able to effectively transfer their investment into the country and move forward with the set-up of their local company. Thus, the new Angolan private investment law published mid-2018 (Law no. 10/18, of June 26) was quite a game changer as it simplifies the process faced by foreign investors and allows them now to set up their local companies before the filing of their private investment project with local authorities.

The one million US Dollar minimum investment rule for foreigners was abolished, putting resident and non-residents on an equal foot. The additional tax on dividends was suppressed and four geographical zones of development were established, with higher fiscal incentives the further away from the capital city of Luanda. But also, the new law no longer obliges foreign investors to partner with Angolan citizens or entities (except in specific sectors such as oil and gas, which are regulated by other laws), a rule that in the past may sometimes have caused reluctance from foreign investors. Having said this, experience showed that joining forces with local reliable partners can be useful and beneficial to all parties when structured and implemented properly.

The new law also attempts to motivate foreign private investment in sectors that the country's economy most needs through fiscal incentives. These so-called priority areas with access to fiscal incentives are:

1. Education, technical and professional ,,training, higher education, scientific research and innovation
2. Agriculture, food, and agroindustry
3. Specialized health services
4. Forestry, reforestation and industrial transformation of forest resources
5. Textiles, clothing, and footwear
6. Tourism, hospitality, and leisure
7. Construction, public works, information technology and communications, airport, and railway infrastructures
8. Production and distribution of electricity
9. Basic sanitation, collection, and treatment of solid waste

Of course, foreign investment is not limited to these priority areas - these are merely relevant for negotiating future tax benefits.

The new law provides foreign investors with a solid investment framework, clarifying technical issues key to any investor, e.g. rights and obligations, definitions of terms, maximum size of shareholders' loans eligible as investment, limits of indirect investments, modalities of dividend repatriation and liquidation proceeds, compensation and royalties, and other rights of transfers abroad associated with the transfer of technology. As Angola has a regime of foreign currency control regulating transfers of funds abroad, these clarifications are of utmost importance for any foreign investor. Investors, however, need to keep in mind that compliance with foreign exchange regulations and private investment laws does not guarantee that payments in foreign currency can be made.

This will depend on the foreign currency available, which depends on the health of the economy.

While the new law guides the investor on how to invest and how to repatriate dividends, it does not show the true dimension of investments and business opportunities in Angola.

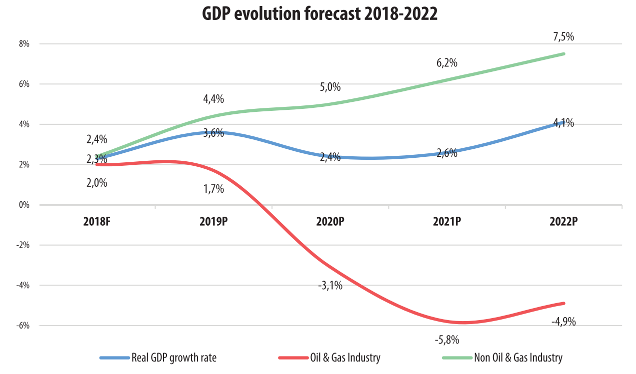
The 2018-2022 National Development Plan published in May last year is an interesting document for any person seriously considering to invest in Angola. It constitutes the government's medium -term action plan for the development and diversification of the economy. Its fundamental objective is to restore investor and consumer confidence through the correction of the macroeconomic imbalances that were caused during the latest economic crisis, to allow for the return of a growth path based on a more diversified economy..

The recent oil price shock highlighted Angola's dependence on oil. Oil accounts for 70% of government revenues and more than 95% of total exports. As such, any decline in oil prices tends to have a disproportionate negative economic impact on the country. Although large, the oil sector does not create many jobs. The diversification of the economy would have a positive impact on employment, tax revenues and energy distribution.

The government's agenda of reforms also includes a Macroeconomic Stability Program to reduce the gap between the official and informal foreign exchange rates, reduce inflation below 10% and promote private investment to stimulate the economy. A Program of State Reform and Capacity Building set up new policies to strengthen public institutions, optimize the public administrative sector, reform administrative procedures, and combat economic crime and corruption. A Program for the Promotion of Exportations and Substitution of Importations (PRODESI) was developed with key initiatives to reduce imports, increase self-sufficiency and diversify Angolan exports.

Efforts are being made to improve the quality of services in the fields of education, higher education and health with policies designed to attract teachers with adequate scientific and technical knowledge, and a Program for the Construction of Infrastructure and Rehabilitation of Infrastructures is in process with policies aimed at concentrating public investments in structural projects to provide public goods and promote economic diversification.

The 2018-2022 Nationl Development Plan's macroeconomic framework until 2022 foresees an optimistic growth of the Non-oil & Gas GDP sectors to compensate for the decline in production levels of crude oil and natural gas.



Source: Government of Angola - National Development Plan 2018-2022

The gradual recovery of growth is expected to result in a gradual acceleration of the various components of GDP, with emphasis on private investment (averaging 20% of GDP). Implicitly, the national plan counts on significant foreign direct investment to boost the country's economy and participate in its diversification, significantly develop the private sector, and contribute to the crucial human capital improvements of the country's workforce.

Accordingly, the 2018-2022 National Development Plan proposes countless business opportunities to investors, national and foreign, willing to participate in the future growth of the Angolan economy:

a) Productive sectors that substitute imports and diversify exportation (banana, coffee, horticulture and tubers, legumes and oilseeds, honey, palmar, fishery products and derivatives, alcoholic and non-alcoholic beverages, iron ore, gold, quartz, construction materials, torches, ornamental, textiles, cement and other building materials, iodized salt, petrochemical industry products, services and telecommunications and tourism)
b) Agriculture (cereals, roots and tubers, legumes and oilseeds, fruits, vegetables, coffee, sugar cane, fertilizers, seeds, and equipment)
c) Livestock (meat, eggs, and milk)
d) Forest resources (timber, wood products, honey, and wax)
e) Fishing
f) Salt

g) Aquaculture (fish in captivity and production of animal feed)
h) Mining (diamonds, gold, ornamental stones, limestone (dolomite), siliceous sand, clay, iron ore, ferrous and non-ferrous metals, non-metallic mineral resources, noble metals, rare metals, rare earth elements and radioactive minerals, phosphates, and potassium)
i) Manufacturing industries (soap, sugar, cornflour, wheat flour, pasteurized milk, meat processing, pasta, steel rods, and steel tubes)
j) Tourism (beaches, surfing, safari)
k) Transport and logistics
l) Recycling (PET, plastic, aluminium, paper, and cardboard)
m) Training and technology transfer centres

While the government's efforts are focussed on diversifying the economy, there continue to be interesting business opportunities in the oil & gas sector. The sector has been going through a thorough reorganisation these past months and the country's state-owned oil company Sonangol's role as a concessionaire moved to the National Oil and Gas Agency under the direct supervision of the Ministry of Mineral Resources and Oil.

In March 2019, Sonangol announced its intention to sell its stakes in blocks 21/09 and 20/11 through an international tender, providing farm-in opportunities to potential investors. Sonangol is also a shareholder in several local Angolan banks and announced that it will sell its stakes in these entities, including its 8.5% stake in BAI Banco Angolano de Investimentos, a top tier Angolan bank, providing investors an interesting opportunity to enter the Angolan banking sector.

"While the new law guides the investor on how to invest and how to repatriate dividends, it does not show the true dimension of investments and business opportunities in Angola."

A reorganisation of the diamond sector is also underway since March 2019, in a similar way to the oil sector, and announcements were made that Endiama and Sodiam, both Angolan state-owned companies, shall be transformed into operators and in future might be either listed on the Angolan stock exchange or totally privatized.

Additional 72 state companies are being considered for full or partial privatisation over the next few years. The list includes some potential jewels, such as Angolan ports, national carrier TAAG, the country's 2nd largest state-owned bank Banco de Comercio e Indústria, the country's largest insurance company ENSA (which has a huge real estate portfolio), as the government's long-term policy is that companies which, in the government's view, are not required to remain under public ownership as a matter of policy should eventually be privatised.

Finally, the continuous development of the country's infrastructure (electricity, water, etc.) may also open future business and investment opportunities for private equity investors willing to participate in public-private partnerships (PPP).

"The new Angolan private investment law published mid-2018 was quite a game changer as it simplifies the process faced by foreign investors and allows them now to set up their local companies before the filing of their private investment project with local authorities."

Contributor's Profile

Celso Lourenço is an investment Banking professional with more than 17 years of experience. He has held management positions, specializing in client relationship management, project management and business planning, managing relationships with local clients and international partners, as well as leading companies in the private sector and government entities.

Marcel Krüse is the Managing Director of Africa Corporate Finance Advisory, a strategic & financial advisory boutique specialized in Angola. His areas of expertise include assisting clients in making strategic decisions involving capital, raising capital and providing the necessary support to increase the value of its clients' businesses.

PRIVATE EQUITY IN KENYA: EVOLUTION, TRENDS AND POTENTIALS

By **Faith Wangari Maina,** Investment Analyst, Cytonn Investments Kenya

The African Private Equity market has experienced tremendous growth and evolution over the years as indicated by the growing number of players, deal volumes, and diversification of private equity investments into various sectors. The growth in the sector is driven by an increasing interest in Sub-Saharan Africa by private investors, driven by:

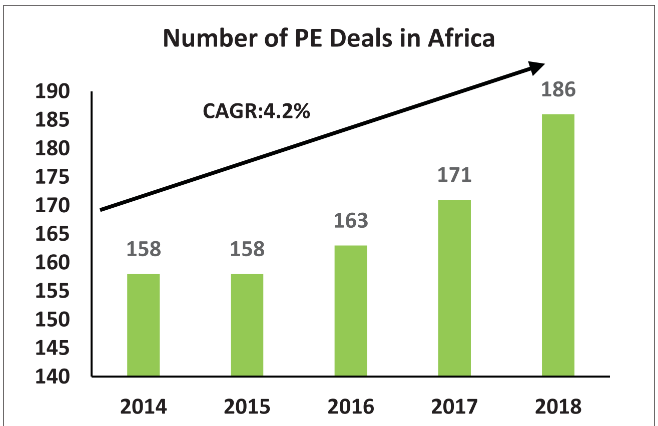
(i) Rapid urbanization, a resilient and adapting middle class, and increased consumerism,

(ii) The attractive valuations in Sub Saharan Africa's private markets compared to its public markets,

(iii) The attractive valuations in Sub Saharan Africa's markets compared to global markets, and

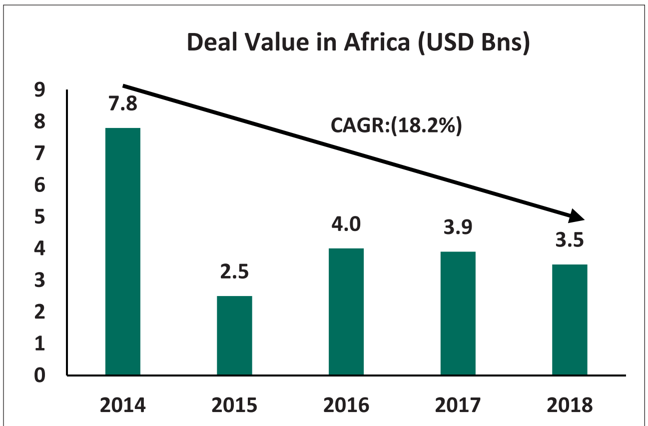
(iv) Better economic projections in Sub Sahara Africa compared to global markets.

According to the 2018 Africa Venture Capital Association Report, the number of private equity deals in Africa has grown by a Compounded Annual Growth Rate (CAGR) of 4.2% between 2014 and 2018, from 158 deals in 2014 to 186 deals in 2018. Key to note is that, despite the growing number of deals, the deal value has reduced tremendously in the region. This reduction in deal size can be attributed to the increasing focus on Micro and Small Enterprises (MSEs), and Small and Medium-sized Enterprises (SMEs), that require relatively lesser capital investments.



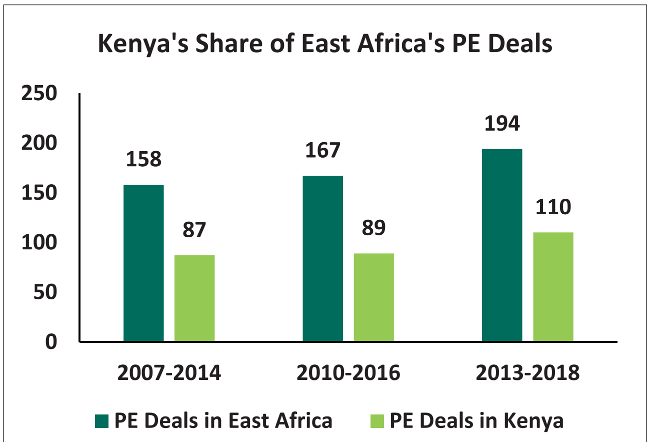
Source: AVCA Annual African Private Equity Data Tracker

The share of deals and the deal value recorded in East Africa over the years has remained consistent, averaging at 18.0% and 8.0% of all deals and the

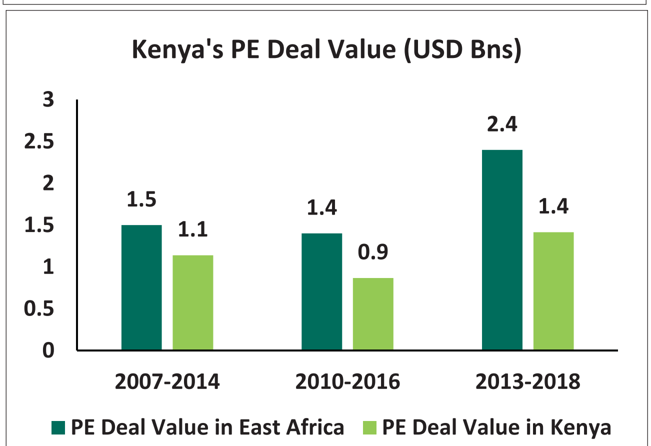


Source: AVCA Annual African Private Equity Data Tracker

deal value recorded in Africa, respectively, from 2010 to 2018. Kenya's share of these transactions recorded in the East African region has shown growth over the years as indicated in the graphs below.



Source: AVCA Annual African Private Equity Data Tracker



Source: AVCA Annual African Private Equity Data Tracker

A number of factors have supported the growth of the Kenyan private equity sector over the years. We look at these factors, their performance and outlook, and their expected impact on the private equity market in Kenya going forward:

i. Positive Economic Growth: Kenya's GDP growth projections for 2019 released by 16 organizations, that comprised of research houses, global agencies, and government organizations averages at 5.8%, from estimated growth of 6.0% in 2018. This is higher than the last 5-year average of 5.6%, indicating positive economic growth, which is likely to attract private investment into the country. According to IMF analysis, private investment increases when GDP growth is high; a 1% point increase in GDP growth rates leads to a 0.21% points increase in the private investment rate.

ii. Socio-Political Environment: A stable political environment attracts and keeps the investor in an economy. For Kenya, the year 2017 was characterized by, among other factors, a protracted electioneering period that negatively affected economic growth due to the political unrest that ensued. Real GDP expanded by 4.9%, compared to 5.9% for FY'2016. The economy has since been on a recovery trajectory. With the next elections slated for 2022, we expect the economy to continue its recovery due to political stability evidenced by the handshake between the President and the opposition leader, thereby improving confidence in the government's agenda of implementing economic reforms and attracting investors.

iii. Improving Ease of Doing Business – According to the World Bank Group's Doing Business 2019 Report, Kenya's ease of doing business ranking improved by 19 positions to #61 from #80 in the 2018 Report, out of 190 countries ranked. In addition, Kenya maintained its 4th position in Africa from last year's report after Mauritius, Rwanda and Morocco, and the score improved by 5.1 points to 70.3, from 65.2 in the previous report. The main drivers for the improvement included protection of minority investors, access to credit, and insolvency resolution, all of which are factors that will attract private investment into the country.

iv. Increased allocation to private equity by Pensions: Data released from the Retirement Benefits Authority (RBA) shows that investments in alternative assets by pension schemes in Kenya gained traction, with the inclusion of Private Equity & Venture Capital and REITs as separate classes in the regulations with Private Equity constituting 0.04% of the Kshs 1.2 tn total assets under management. Over one year to June 2018, pension funds increased their investments in Private Equity by 68.0% to Kshs 0.4 bn in June 2017 from Kshs 0.3 bn in June 2016. Over the six months to June 2018, pension funds' investment in Private Equity grew by 31.3% to Kshs 0.4 bn in June 2018 from Kshs 0.3 bn in December 2017, with the number of pensions, which have invested in PE firms growing to thirteen from two in 2015. This highlights the growing appetite for investments in the Private Equity sector as investors seek higher returns, which is likely to support the growth of the private equity sector. Notwithstanding the above increase, Private Equity investment is still dwarfed by investment in traditional asset classes with Private Equity having an allocation of 0.04% against an allowable allocation of 10.0%.

v. Ease of Exits: In 2018, Africa recorded 46 Private Equity exits, a drop in overall exit activity compared to the previous year's high of 52. This remains relatively low compared to other regions in the world. One of the hindrances of exits in Kenya and the region is the tedious process involved in a company going the IPO way. A shift in this trend is only achievable if there is an improvement in the local capital markets by putting in place measures that will: (i) make the process of companies going public by means of an IPO easier, (ii) encourage disclosures for non - listed companies in order to improve transparency and accessibility of information, which boosts investor confidence, making it easier for firms to raise capital during IPOs, and (iii) encourage foreign participation through improved regulation, good economic fundamentals and empowering private initiatives. In Kenya, the Nairobi Securities Exchange has introduced the Ibuka Program, an incubation and acceleration platform that will help address the listing drought at the bourse and we expect that will open up more private equity exit channels.

With most of the indicators pointing towards a positive future for private equity investments in Kenya, what are the sectors that show the greatest potential? In 2018, of the disclosed fundraising deals in Kenya, among the sectors that received the most funding are the FinTech Sector, Financial Services Sector and the Education Sector, as highlighted in the table below.

2018 Private Equity Fundraising Activity by Sector		
Sector	Funding Raised (Kshs bns)	Entities Funded
FinTech	27	10
Education	4.9	2
Financial Services	2.8	3
Total	34.7	15
Source: Cytonn Research		

The interest in these three sectors by investors is also supported by prevailing economic and social conditions as highlighted below.

FinTech:

- Africa's low penetration rates for traditional banking services at 25% according to the Global Findex database
- Higher mobile penetration at 44% according to the GSMA 2017 Report
- FinTech lending, in particular, continues to draw the most interest from investors. The untapped potential in credit and credit related industries in Africa is highlighted by the significant difference in credit extension activity in Africa compared to other world regions. FinTech lending addresses this by providing access to credit via convenient and already established channels

Financial Services:

- The increasing demand for credit,
- The growing financial services inclusion in the region through alternative banking channels,
- Increased innovation and new product development within the financial services sector, and
- Need for consolidation in the sector, which has already picked up the pace

Education:

- Demand for quality education and a more comprehensive curriculum,
- The entry of international brands over the past years such as the Nova Academies, GEMS Cambridge, JSE listed ADvTech Limited and Bridge Schools
- Despite this, the market still seems opportunistic, and the regulatory landscape is still very uncertain in Kenya.

Given the past performance, and the positive indicators supporting the private equity market, the outlook on the sector in Kenya remains positive. In Sub Saharan Africa, Nigeria and Kenya are the most favored destinations by private equity investors, according to the 2018 Annual Limited Partner (LP) Survey report, with 57% of investors interviewed indicating that they plan to increase their investment in the region over the next 3 years. Kenya has been fortunate not to face economic headwinds, as was the case in Nigeria and South Africa, the two most developed African PE markets. As such, Kenya has gained ground on its counterparts and we expect this trend to continue in 2019.

"The African Private Equity market has experienced tremendous growth and evolution over the years as indicated by the growing number of players, deal volumes, and diversification of private equity investments into various sectors"

Contributor's Profile

Faith Maina is an Investment Analyst at Cytonn Investments, with a focus on Alternative Investments. Her experience includes identifying and analyzing investment opportunities for Private Equity Investment, developing financial models and business cases to guide decisions to invest in these opportunities and setting up operations for these investments. Faith holds a Bachelor's of Science Degree in Computer Science from Multimedia University and is a CFA Level 1 Candidate.

PRIVATE EQUITY: ADDING VALUE AND GENERATING OPPORTUNITIES FOR AFRICA'S INFRASTRUCTURE GAP

By **Marc Immerman,** Managing Principal, Metier Sustainable Capital South Africa

The infrastructure sector in Africa, characterised by a lack of basic services such as energy, wate, and waste management, provides attractive investment opportunities for private equity teams with the requisite experience, strategies and execution capabilities. Positive demographic trends are driving demand for these services, underpinning the investment opportunities.

The most acute African infrastructure gap prevalent is that of energy; requiring an investment exceeding $900 billion to expand the existing electrical infrastructure. Africa is also endowed with attractive renewable energy resource potential advantageous to the deployment of renewable and cogeneration technologies including solar photovoltaic, concentrated solar thermal, wind, hydro and biomass amongst others. Coupled with the availability and affordability of land, the continent has significantly more viable renewable energy potential than is required to satisfy its energy needs. The recent reduction in costs of renewables are well publicised and currently offer tariffs 30% cheaper than coal power while being cleaner, quicker to deploy and importantly done so in a cost-effective manner at a smaller scale.

The solution to empower the unelectrified (c. 600 million people in Southern Africa alone) in theory should be simple. However, the likely solution is more complex and requires innovative solutions. The key challenges include:

- Limited and unstable electrical grids: The average grid size in Africa is miniscule (30 countries in Africa have a grid 1% the size of Eskom's while a further 13 countries operate at a scale of 2% of Eskom's) this limits the ability for larger-scale projects to be deployed. The scale of the larger projects, typified in the energy landscape of the developed economies, can absorb the costs incurred in project finance/non-recourse structures. The conclusion being that the precedent and financial structure of larger scale renewable energy projects is not suited to the African energy infrastructure given the limitation of project scale.
- Developer inexperience: Structuring and developing renewable energy projects is complex. Many local developers / project founders will, unfortunately, make mistakes which in turn increase costs and time for project development, often rendering projects stranded.
- Offtaker security: The current economic challenges faced by African governments in many cases renders sovereign offtake as unbankable. This is exacerbated by the growing reluctance of governments to offer sovereign guarantees which are currently required by lenders. The growing trend of delivering energy to non-sovereign offtakers is an evolving model and the necessary offtaker security protections have not been established as acceptable to lenders in many instances.

Therefore, a potential solution to the challenge is to invest in different energy generation models to that of the developed world; mirroring in many respects' the development of telephony in Africa. The expansion of mobile telephony is well known; what is interesting is that this technology effectively surpassed the centralised landline technology at the time. Following this prognosis, the African private equity infrastructure industry is currently focused on investing in a decentralised captive energy environment with private offtakers while continuing to pursue larger centralised grid-tied energy projects.

How is private equity placed to address the risks while deploying the funding to power Africa?

- Value Add: Some private equity infrastructure funds have the experience to correctly develop and invest in the earlier develop ment stages of renewable energy projects. By ensuring the identifiable and mostly addressable development challenges facing renewable energy projects are addressed, results in a higher probability of success and importantly a quicker process to construction and energy supply.

- Funding: Private equity managers trusted by international and local asset management industries can raise and channel a significant quantum of investment. There is a limited supply of Foreign Direct Investment into Africa; the private equity industry facilitates aggregation, accesses and deploys foreign direct investment that may not have found its way onto the African continent.
- Environmental, social and governance investment policies: The private equity industry commits to leading environmental, social and governance standards which ensure that investments deployed are done so in a responsible manner. Specifically, in the case of energy, this leads to very material benefits to local communities.

Similar principles apply to the other sectors of infrastructure investment including transport, water, and waste. The current drivers in these sectors include:

- Growing urban populations: Rapid urbanisation and growing consumption are the major drivers of demand for waste, water and sanitation services. The continent's rate of urbanisation rose from 15% in 1960 to 40% in 2010 and is projected to reach 60% in 2050. Over the next 50 years, the urban populations in Africa are expected to triple, materially changing the demographic profile of the region and placing pressure on current infrastructure.
- Scarcity and the rising value of resources: The value of waste is strongly linked to the levels of recovery and re-use of materials, as well as a source of energy. Stronger demand for materials such as glass, plastic, paper, and electronic components is allowing recyclers to generate value from solid waste streams, while the high cost of energy in Africa makes waste-to-energy and co-generation opportunities competitive with other forms of energy generation. These waste beneficiation opportunities present attractive commercial opportunities.
- Limited disposal opportunities: Landfills

  across Africa are filling up quickly while the development of additional landfills is complex and expensive. Therefore, the available solution is a reduction in waste to landfill via recycling and simultaneously generating useful by-products from disposable waste such as energy and/or gas.

Many of these clean infrastructure investments mimic the standard financial structure as described and typically deployed by non-recourse energy projects. Hence, the same challenges will be pertinent although in this instance further sensitivity is of relevance given the human need for water and the adverse social impacts of waste accumulation.

Private equity is well placed to raise and deploy capital in an acceptable risk/raionareward environment while abiding by leading environmental, governance and social standards. The significant infrastructure challenges and gaps prevalent in Africa might well facilitate a new paradigm shift in the deployment and investment model of infrastructure. Private equity is a driving force at the forefront of this exciting development.

Contributor's Profile

Marc Immerman has a wealth of experience in research, analytics, start-ups, rationalisation, and international expansion. He joined Metier in 2009 to pursue co-investments and commence the early research, strategy and marketing efforts on fund initiatives in the Sustainable Capital space. He qualified with a master's in finance from UNSW in Sydney Australia after completing a Bachelor of Commerce degree at the University of Natal, Pietermaritzburg.

Marc was a co-founder of the Bokpoort solar thermal project with Michael Goldblatt, Metier and Lereko. This pioneering R5billion project is now operational, boasts the largest molten salt storage ever deployed on a 50MW project and has garnered local and international accolades. He is a director on the boards of Oricol (waste management), AE AMD, REESCO, the three Mainstream Wind projects (Loeriesfontein 2, Khobab and Noupoort) as well the Pedekraal wind development project.

ATTRACTING PRIVATE EQUITY CAPITAL IN AFRICA: KEY COMPLIANCE AND RISK CONSIDERATIONS

By **Medina Jett,** Founder & President, ICSGroup, LLC

Compliance has become a key consideration for private equity firms in Africa for a host of reasons – top among them is the need to meet international compliance standards in order to raise capital outside the continent. Institutional investors often consist of pension funds who have fiduciary obligations to their beneficiaries or fund of funds who have similar obligations to their limited partners. The fiduciary obligation to protect the assets of the fund is what drives the need for heightened due diligence by institutional investors.

Prior to Wall Street Reform and the resulting increase in scrutiny of the private funds' sector, a fund's investment performance was the primary factor that institutional investors were concerned with. The due diligence process around a firm's investment performance and the investment strategy far outweighed the compliance and operational due diligence aspects. Investment teams are now equally focused on a fund's compliance program and operational controls. Increasingly, investors are recognizing that their fiduciary obligations to their stakeholders require heightened scrutiny around compliance in order to avoid headline or reputational risk or loss of assets.

Most international investors expect that African PE firms will be able to respond to their due diligence questionnaires and meet their expectations with respect to managing operational and compliance risks. Among the issues that institutional investors tend to be most concerned with are:

1) Cybersecurity
2) Conflicts of Interest;
3) Bribery and corruption; and
4) The culture for compliance

PE firms that lack effective compliance policies, procedures and controls that ensure compliance with regulatory and investor expectations will have a difficult time earning the trust - and the capital - of institutional investors. After the compliance weaknesses of Abraaj came to light, African PE firms' compliance policies and procedures are naturally subjected to more intense scrutiny by Investors.

Cybersecurity

Cybersecurity and the safeguarding of electronic data and systems are critical issues around the globe. PE firms face the risk of a cyber-attack on their technology by which a third-party could unlawfully gain access to its systems and/or misappropriate its sensitive information. Small firms are at a particular risk due to the lack of sufficient resources and the misguided belief that cyber hackers have bigger fish to fry. Though there can be no assurance that any cybersecurity program will be able to completely avoid a cyber - attack, investors want to be assured that PE firms have effective cyber security controls to manage cyber risks effectively.

The primary source of cyber risk for any business is its employees. By clicking on links that open the door for malware to enter the network; by being susceptible to phishing emails; or by losing unlocked phones or unencrypted laptops, it's often untrained employees who put their employers at risk. Cyber risks result in huge monetary losses which are often unrecoverable. PE firms that train their employees on how to identify cyber threats and how to protect company devices and data will limit their exposure to a cyber breach.

Having a qualified cybersecurity resource can also prove invaluable in understanding the firm's network, how it maintains and accesses data, and the controls needed to properly control unauthorized access.

Conflicts of Interest

The ability to manage conflicts of interest issues like the proper allocation of fees and expenses, investment allocations across multiple funds and outside business activities are trends that all PE firms should be thinking about.

Conflicts of interest are closely linked to a fiduciary duty. As a fiduciary, investment advisors have a duty to put the interests of the fund(s) and the investors ahead of the firms', interests or employees' personal interests. A conflict arises when the firm or its employee is or appears to have an interest in a particular outcome. A simple example would be an employee whose father-in-law is the CEO and major shareholder of a private company that the firm is considering investing in. This relationship would need to be disclosed to investors; the firm would need to determine the extent of the conflict and take steps to eliminate any detriment to the fund or its investors, and to manage the conflict going forward.

Advisory boards made up of investor representatives are the best practice for PE firms. Advisory boards typically have as one of its responsibilities, the review of potential conflicts of interest and the decision-making related thereto. Each fund should have an advisory board which allows the firm's partners to avoid deciding on potential conflicts in which they have a vested interest. A PE fund that does not have an advisory board would not be considered best in class with respect to its management of conflicts of interest.

Corruption

Unfortunately, Africa's reputation for corruption presents an uphill battle for African PE firms. To a large extent, the perceptions about Africa are sensationalized but the Abraaj case did nothing to help matters. After the compliance weaknesses of Abraaj came to light, African PE firms' compliance policies and procedures have been naturally subjected to more intense scrutiny by Investors. US investors are particularly concerned about their fiduciary obligations to their stakeholders, number one of which is to protect the assets of the fund. US pension funds have increased concerns about whether they can sufficiently vet an African PE fund to avoid reputational and headline risks and loss of assets.

Internal policies and procedures meant to prevent and detect bribery and corruption as described in the Foreign Corrupt Practices Act should remain top of mind in terms of the standard to meet or exceed in terms of. Policies should strictly prohibit the exchange of monetary gratuities or anything of value, procedures should dictate the process for disclosure and approval of exceptions to the policy, and controls should mandate frequent monitoring to ensure adherence to the policies and procedures.

African PE funds can start to change the way businesses on the continent are perceived by raising the standards by which they operate and by building compliance programs that go beyond what may be required by their current regulatory regime to satisfy the concerns of international investors. Over time, this will help to debunk the perception that investing in Africa PE is a high-risk proposition.

Culture of Compliance

In addition to the specific compliance risks discussed, the most important consideration is whether the firm has a strong compliance culture. A strong culture for compliance means that the firm not only has compliance policies and procedures as required by regulators and as expected by investors, but that it embraces high compliance and ethical standards as a way of doing business.

A firm that has a strong compliance culture has employees that are well trained on the expected behaviors; has management that sets a strong and consistent tone from the top; and rewards employees for compliant behaviors and penalizes them for operating inconsistently with the firm's ethical values. Firm's with a strong culture for compliance err on the side of doing the right thing even where is there is no rule or policy proscribing the proper action or behavior. These firms tend to avoid compliance infractions and stand out from the crowd in their quest for capital.

"PE firms that lack effective compliance policies, procedures and controls that ensure compliance with regulatory and investor expectations will have a difficult time earning the trust - and the capital - of institutional investors."

Contributor's Profile

Medina Jett is an attorney and compliance professional with an extensive background working with investment advisors and private equity funds. She is the founder and president of ICSGroup, LLC, a US-based compliance and operational consulting firm that provides outsourced compliance support to investment advisors, primarily PE firms. ICSGroup also works with African PE firms seeking to raise capital to prepare for and complete the institutional investor due diligence process.

PRIVATE EQUITY IN AFRICA

IS A SERIOUS ALTERNATIVE INVESTMENT PROVIDING SOUND LONG-TERM RETURNS

Aziz Mebarek, Founding Partner, Africinvest

***CAPMARKETSAFRICA:** Firstly, let's talk about you. Please tell our readers more about your background and what motivated your choice of career path?*

AZIZ MEBAREK: I am an engineer by background and used to manage industrial companies in North Africa for part of an Italian conglomerate. As such I was involved in several acquisitions, growth strategies and a turnaround plan. The need for institutional investors to bring funding and value addition to private companies was obvious.

As I was thinking about making an entrepreneurial move after my management experience while in my early thirties, I joined efforts with my friends and partners Ziad Oueslati, Karim Trad and Ahmed Abdelkefi. Each one of us brought different expertise and experience, from financial services to technical auditing. Together we would start the first PE management company in our region.

The market need, the entrepreneurial spirit, and the friendship story were the pillars of this next step in all of our career paths.

***CAPMARKETSAFRICA:** Given your longevity in the Africa private equity industry, what developments have you witnessed over the years and what are your expectations for the future?*

AZIZ MEBAREK: It has been a long journey. I think we are among those who contributed to the start of the PE industry on the African continent. Africinvest was a cofounder of the Africa Venture Capital Association (ACVA) and Emerging Markets Private Equity Association (EMPEA). From a local player we became a Pan-African player targeting different segments of the PE industry and now engaging in venture capital through a Pan-African innovation fund open to the main global hubs in the world (Silicon Valley, the French Tech, Berlin, London, Shanghai..) through a relevant partnership with a global VC player. We also started our activity in France targeting French mid-size companies willing to develop their activities in Africa.

In the future, we want to consolidate our platform and think about other business segments relevant to our continent, for example in the Infra space.

***CAPMARKETSAFRICA:** There has been a lot of talk about how African story had been over-sold and why investor needs to have a long time view rather than expect a short-term return. What is your take on this? And how would you sell the investment potential story of Africa?*

AZIZ MEBAREK: The African continent has a sound future, thanks to its vibrant educated youth and improvements in governance in most of the countries. Of course, it is never easy, and there are still different challenges to be overcome. For those who have a deep knowledge of the different countries composing the continent, and have a consistent and disciplined strategy, Africa has real potential.

Now, of course, PE in Africa is by definition a long-term investment, and I don't think it should compete with short term opportunities which might occur elsewhere. Each investment strategy has its own merits and investors choose a strategy based on their own assessment. I don't think that a pension fund would be able to deploy all its available means in short term products.

PE in Africa is a serious alternative, providing sound long-term returns, with some risks that should be assessed carefully and mitigated mainly through the choice of good fund managers. Many professional PE teams are now available on the continent which is certainly good news for Africa

***CAPMARKETSAFRICA:** As African capital markets are still relatively underdeveloped and illiquid, what can you tell us about capital markets and exit opportunities in Africa for private equity firms? What do you see as being the most frequent exit route?*

AZIZ MEBAREK: We are modest when it comes to talking about exits. It is never easy. But nevertheless, different exit routes are available and offer concrete liquidity to PE players. IPOs are of course one route, but we see more and more strategic sales, and secondaries, as well as MBO swaps into liquid assets in Europe or in the US. Africinvest has a solid track record when it comes to exits with almost 90 exits achieved so far in different countries through these different options. Our pace of exits is approximately one every two months. Our peers are showing similar statistics, which is also a good signal to those who are assessing the opportunity to engage in the PE space.

***CAPMARKETSAFRICA:** Small- and medium-sized enterprises in Africa are struggling to raise capital. Please, could you explore the factors behind this "missing middle" and potential ways to fill it?*

AZIZ MEBAREK: You are right, there is still insufficient capital. But being around for the last 25 years I can tell you that the situation has improved a lot and should continue to improve. Many companies are still in need of professional advice to make them mature and relevant to PE money. We also need to further reinforce the offer, engaging more institutional investors from the African continent (pension funds, insurance companies, family offices, etc) into the different segments of the PE space. Some countries need also to improve their legal and fiscal frameworks to make them more friendly to PE players.

***CAPMARKETSAFRICA:** In view of the changing dynamics of growth on the African continent, do you envisage a shift in the AFRICINVEST's strategy and focus in the next five years? If yes, in what ways?*

AZIZ MEBAREK: As mentioned above we would like to consolidate and increase the size of funds under management in the growth and LBO space for mid and large size companies, while reinforcing our platform, our processes through heavy investments in back and mid-office and IT, and making our team stable through a real partnership and a serious succession plan on which the founders have been seriously working during the past few years. In order to achieve our growth plan, we need to attract more private investors and institutional investors from Africa first but also from other continents including Europe, America, and Asia. We started a debt vehicle a few years ago which we would like to grow further as we also believe that cashflow based long term debt and mezzanine financing is lacking in the continent. We also would like to grow our funds dedicated to the financial sector, our innovation fund and our presence in Europe, and explore opportunities to engage in part of the infrastructure space.

All these initiatives are led by dedicated teams in disciplined ways, with the relevant Chinese walls and appropriate governance to mitigate all kinds of conflict of interest in a satisfactory way, and being compliant with the highest standards.

***CAPMARKETSAFRICA:** On a general note, despite improved political governance and macroeconomic conditions, Africa's share of global private investment for infrastructure projects remain very low. What do you think are the key challenges for investors looking to invest in Africa?*

AZIZ MEBAREK: The key challenge which we are facing in the continent is still the image which we have not succeeded to turnaround in a relevant way through really good success stories. We also need to continue working on improving access to education and its quality and the governance at all levels which are the key pillars for the future of the continent.

Africa has made steady steps in improving its infrastructure, but there is still a lot to do in access to energy, water, waste treatments, roads, airlines, and maritime connections.

***CAPMARKETSAFRICA:** In order to sustain recent rapid economic growth and usher in rapid industrialization, what do you think should be the priorities for policymakers in developing African countries?*

AZIZ MEBAREK: Our policymakers should further strengthen the governance in our countries and open our economies while working on social programs to support low-income populations.

Access and quality of education and health are also key and should be a combined effort between public and private sector initiatives.

Important infrastructure programs on PPP bases should also be considered.

***CAPMARKETSAFRICA:** On a personal note, what do you do in your spare time, when not busy managing the AFRICINVEST?*

AZIZ MEBAREK: I am engaged in several think tanks and associations which have social and economic objectives including supporting basic education.

I try also to give time to my family and friends. I am also passionate about sports. Combining all that is interesting to do is a daily challenge.

***CAPMARKETSAFRICA:** To bring the interview to an end, how would you like to be remembered?*

AZIZ MEBAREK: As someone looking for the good who has played his role along with many others…

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

PRIVATE EQUITY INVESTMENT IN AFRICA'S OIL AND GAS (O&G) INDUSTRY – WHERE TO NOW?


Simon Tysoe, Partner, Latham & Watkins' London


Clement Fondufe, Partner, Latham & Watkins' London


Evelyne Girio, Senior Associate, Latham & Watkins' London

As Africa's economy has grown in recent years, we have seen a high degree of private equity (PE) activity across African industries. Between 2013 and 2018, African PE fundraising reached US$17.8bn, the total value of reported African PE deals reached US$25.7bn[1] and the total number of reported deals was 1022. Total deal volume rose by around 9% last year and many of the 186 reported African PE deals in 2018 were consumer-focused.[2] Similar deal activity is not as apparent in the African energy sector, which in the period 2013 to 2018, accounted for just 3% of all African PE deals by volume and only, but a significant 14% of all African PE deals by value.[3]

Even though PE is no stranger to the energy sector, its focus has for the most part been on North America, where the majority of energy-focused funds continue to seek investment opportunities. PE's interest in the sector has become more global in recent years and it has been reported that PE invested US$12bn in the North Sea between 2015 and 2017,[4] though this was less than PE investment of US$19.8bn in US shale in Q1 2017.[5] Nonetheless, a high proportion of the most significant energy deals in the last 5 years has involved PE funds or their portfolio companies. In 2015, Helios and Vitol acquired 60% of the economic rights and 51% of the voting rights in Oando's downstream business for US$276mn and, in 2016, Helios acquired 49% of the voting rights in Oando's, gas supply business subsidiary, Oando Gas and Power, for US$115.8mn. In 2017, Assala Energy, backed by The Carlyle Group, acquired Shell's onshore assets in Gabon for US$628mn and, Trident Energy, backed by Warburg Pincus, in partnership with Kosmos Energy, each acquired a 50% stake in Hess's interests offshore Equatorial Guinea for US$650mn. In October 2018, a consortium led by Vitol and comprising Delonex and Africa Oil Corporation acquired Petrobras' entire 50% stake in Petrobras Oil and Gas, a company with Nigerian production assets for US$1.407bn. Helios and BTG Pactual hold the remaining 50% stake in Petrobras Oil and Gas which they acquired from Petrobras in 2013 for US$1.5bn.

The fact remains that outside of the US PE investment into energy remains the preserve of funds and portfolio companies equipped to deal with a market that presents different challenges. The common feature in the recent spate of such PE investment activity is that it has almost exclusively originated from buy-out groups with significant industry expertise. Warburg Pincus has been investing in the global energy space since the 1980s and has invested or committed over US$14bn across over 90 energy-related companies. Similarly, Kosmos, backed by Warburg Pincus and Blackstone, is one of the most successful oil companies of recent years.

PE funds are ultimately dependent on the risk appetite of their investors and in this perception is key. Concerns over regulatory and fiscal uncertainty, lack of transparency and political and economic instability, whether real or imagined, shape many investors' view of African O&G. In addition, investment in the O&G sector frequently involves partnering with the host State, heightening potential exposure to the Foreign Corrupt Practices Act. All of this drives a concentration of investment into funds perceived to have the experience to handle this. In turn, funds exercise great scrutiny over the management teams they invest in and, for certain deals, may partner with O&G companies other than their own portfolio companies in order to leverage local knowledge and relationships or expertise in technical operatorship.

Local issues also shape the sort of assets that are attractive to PE. The infrastructure deficit in Africa means that production assets can be isolated due to lack of transportation, especially onshore,

1. AVCA, 2018 Annual African Private Equity Data Tracker with Regional Spotlights.
2. Ibid.
3. Ibid.
4. FT, "Private equity leads the changing of the North Sea guard", 13 February 2019.
5. Prequin report as reported in Reuters "Undaunted by oil bust, financiers pour billions into US shale", 17 April 2017.

leading to a preference for assets located offshore or near existing infrastructure. Of course, the opportunity to invest in such infrastructure is an area in which PE is looking to deploy capital but, typically, these deals involve the acquisition of existing infrastructure plus perhaps brownfield development. The greenfield development of large pipeline infrastructure, especially in non-OECD countries, tends to pose risks outside of and has a timeline inconsistent with, the requirement of most PE houses.

Local currency issues are also problematic. Whilst oil export projects have dollar-denominated offshore cash-flows, many gas projects have significant domestic elements, especially where gas-to-power is involved, meaning investors would have to factor in potentially costly long-term hedging (if available). There is significant interest in building the environment in which infrastructure projects and gas-to-power projects can be established in Africa, and the vocal support of organisations such as OPIC and IFC is very welcome, but in the short-term, the historic preference will likely continue.

Another constraint is the appetite of lenders to provide the leverage PE funds need to optimise their returns. The range of banks offering acquisition finance on African upstream O&G deals, which typically rely on reserve-based lending techniques to size the debt, is more limited. The risk level inherent to O&G lending in Africa can dampen many banks' appetite for lending and leading these deals has become the preserve of a handful of specialist bank teams. Alternatives are sometimes available. Credit funds may offer liquidity but they typically do so at rates which are unattractive for PE investors, certainly as a complete alternative to traditional debt, although they may well participate in a tranche to make up a short-term financing gap. Occasionally, local bank participation is viable, although capacity is constrained for USD loans and even where funding is available the terms are often unattractive. A more viable long-term option might be oil traders with extensive industry knowledge such as Vitol, Glencore, Trafigura and Mercuria, which are more willing to take on the risks inherent to O&G deals in Africa, in exchange for obtaining access to future production at a locked-in price using a pre-payment finance model. They might even be persuaded to invest equity as well. This model has also been adopted by the trading arms of large oil companies such as Shell and BP. However, pre-payment financing is technically optimised for assets already producing oil, whereas exploration assets or those with largely gas output are not suited to it.

The most important factor that PE funds weigh before iinvesting is the viability of exit. PE investors need to secure an exit, whether via a sale to a strategic, a secondary buy-out or a public market exit through an IPO. Since O&G is a cyclical business, careful timing of exits to coincide with favourable markets is necessary. Specialist funds anticipate the need for flexibility and, whilst general buyout funds typically hold their investments for about three to five years, investment horizons for African O&G are typically longer. A preferred exit for PE houses and management teams alike is an IPO. Notwithstanding the infancy of capital markets in Africa, we saw numerous successful IPOs by exploration and production companies outside Africa from 2000 to 2015 when exploration-focused companies found favour. To name but three: Africa Oil Corporation backed by Helios Investment Partners, listed in Toronto and Stockholm in 2007, Ophir Energy, backed by Och Ziff, listed in London in 2011. Similarly, Kosmos, which was initially backed by Warburg Pincus, began trading on the NYSE in 2011. However, since oil price correction in 2014 the IPO markets, especially in London, have not been welcoming to O&G debutantes. Vivo Energy's IPO (backed by Vitol and Helios) on the LSE in April 2018 was the first noteworthy float of an energy-focused company since Seplat (a Nigerian O&G group) raised US$500mn in 2014, and notably marks a shift away from exploration-focused businesses to the downstream, where risks are less and the promise of rising African consumer demand helps the equity story.

Sales to other PE or to strategic buyers can offer a route out, although many of the upstream assets being disposed of are sold by oil majors so the likelihood of acquisition by a strategic is limited unless that strategic is either locally based (e.g. a Seplat) or focussed on late-life assets. Given the uncertainty of exit, many PE investments in the upstream O&G space are calculated to return investment through dividends during the life of the investment with a more conservative value on the exit, a very different approach to the traditional O&G exploration model.

In conclusion, the last five years have seen significant PE activity in African O&G, but this activity has been focused on certain highly experienced funds and portfolio companies looking at certain asset types. The developments that will facilitate greater PE investment are the same developments that will benefit O&G development in Africa more generally – greater infrastructure development, greater local banking capacity, increased transparency and a consequent change in risk perception.

PRIVATE EQUITY IN KENYA: SOME LEGAL CONSIDERATIONS


By **Anne Kiunuhe,** Partner, Anjarwalla & Khanna Kenya
Charlotte Patrick-Patel, Principal Associate, Anjarwalla & Khanna Kenya

The real GDP of Kenya grew approximately 5.9% in 2018 up from 4.9% in 2017 thanks to favourable weather conditions, greater political stability and increased investor confidence.[1] The economy is predicted to experience steady growth in 2019 and 2020 by approximately 6.0% each year,[2] illustrating that the 'Africa Rising' narrative still applies to the country today. This is underpinned by the Kenya Vision 2030, the long-term development blueprint for the country launched in 2008 whose aim is to create "a globally competitive and prosperous country…"[3] and the Big 4 Agenda – an economic plan introduced in 2017 by President Kenyatta which envisages accelerating economic growth to at least 7% a year. The Big 4 Agenda focuses on four pillars: expansion of manufacturing sector, affordable housing, affordable healthcare, and food security and these, in turn, are expected to shape the focus areas for investment by both government and the private sector.

The positive growth in the economy was reflected in the level of M&A activity in the country in the last financial year. All mergers taking place in the country and resulting in a change of control require a mandatory notification to the antitrust regulator – the Competition Authority of Kenya (CAK). There were approximately 150 transactions that were notified to the CAK in the financial year July 2017/June 2018, with a significant number of these being private equity-led. It is predicted that the number and value of investments are expected to increase in 2019.[4] The outlook for Kenya is therefore promising and investors remain attracted to the investment prospects that the country has to offer.

The regulatory and business landscape in Kenya is constantly evolving with continuous reform activity taking place in order to spearhead the Kenya Vision 2030 and bolster the Big 4 economic plan. According to the World Bank's Ease of Doing Business 2019 report, Kenya jumped up 19 places in the world rankings, from 80 to 61.[5] The digitisation of Government to citizen services and payments and the shift away from manual processes has been monumental in tackling inefficiencies in government service delivery and doing business in Kenya. The Business Registration Services and e-Citizen Platform streamlines government services and public accessibility and facilitates person-to-government and business-to - government payments. Public sector digitisation now touches every part of the Kenyan economy enabling investors to do business in Kenya legitimately without the bureaucratic bottlenecks that previously existed.

Notwithstanding the move in the right direction, the country's success is stifled by other challenges which are a cause for concern to investors - Kenya has ranked in the bottom quartile of Transparency International's Corruption Perception Index and is poorly ranked in the Economic Freedom Index which suggests that there are still regulatory and legal hurdles and a "cost" that comes with doing business in the country.

In Kenya, unlike the European Union, there is no overarching private equity legislation and whilst there is a large number of funds operating in or investing in the country only a handful of these are set up as onshore funds in Kenya. Most funds tend to be domiciled offshore and Mauritius is a key jurisdiction for a fund's domicile due to an established track record, investor safeguards and tax considerations. The lack of modern private equity legislation means that the establishment of private equity investors and the investments that they make are governed by a multiplicity of legislation and regulations but without clear fund structures or a favourable tax regime that PE investors would obviously prefer.

1. African Economic Outlook 2019, African Development Bank Group, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2019AEO/AEO_2019-EN.pdf
2. ibid
3. Kenya Vision 2030, http://vision2030.go.ke/
4. https://cytonn.com/media/article/kenya-s-economic-growth-expected-to-range-between-5-7-5-9-in-2019-supporting-a-conducive-operating-environment-and-positive-performance-in-the-major-asset-classes-as-per-cytonn-2019-markets-outlook
5. World Bank, 2019. Doing Business 2019

Nevertheless, reforms continue to be felt. From a regulatory perspective, the 2015 Companies Act and the 2015 Insolvency Act were welcomed changes to historical and outdated legislation, bringing Kenyan company law in line with modern business practices. Significant legal developments have also sought to streamline processes and reduce the number of licences required to do business in Kenya. Parliament has also, in recent years, passed legislation relating to anti–bribery and corruption along with corporate governance codes issued by different industry regulators to align and implement best international practices in the country.

Competition law continues to play a significant role on the timing and cost of investments in Kenya or investments which have a Kenyan element. There are currently two operational competition law regimes that may impact a Kenyan investment: Kenya's domestic competition law; and COMESA competition law. In addition, the East African Community (EAC) competition regime may soon become applicable once the EAC Competition Authority is operationalised. Presently, parties must make a dual notification of a merger if they meet the relevant criteria requiring approval from the CAK and the COMESA Competition Commission. A third notification may soon be required where the merging parties qualify under EAC competition law. The aim of the COMESA competition regime and the EAC competition regime is to be a "one-stop shop" for regional competition law, but this is yet to be achieved. The overlapping and multiplicity of competition regimes and the lack of coordination and harmonisation between the competition authorities increase the cost and burden on investors.

When it comes to private equity, competition law does not take into consideration that the structure of private equity funds and the way investments are made into portfolio companies are distinct from traditional mergers and acquisitions. A broad definition of "change of control" is provided for in competition legislation that takes into account not only a vanilla acquisition of a majority of the shares in an undertaking but also an acquisition of a minority stake with rights which enable the acquirer to 'materially and decisively influence' the business of the undertaking. This, coupled with the fact that at present there are no financial or market-share thresholds in Kenya's competition laws means that nearly every transaction undertaken by a PE fund mandatorily requires approval from the CAK. It is irrelevant, from a competition law perspective, that the investments were made out of separate funds as they would all be treated as a common entity under common control.

A recent challenge faced by investors has been the interest rate caps on bank lending in Kenya at 4% above the Central Bank of Kenya rate. The interest rate cap is seen to have had a significant impact on the country's economic growth and a damaging effect on the financial services sector. On the one hand it has made the financial services sector less attractive as a target investment for private equity investors as the banking sector has experienced diminished returns; however on the other hand banks have been more conservative in their lending and businesses have had to look for alternative sources of financing, including private equity as a substitute. In March 2019, the High Court of Kenya declared the section of the Banking Act that introduced interest rate caps as unconstitutional and required the law to be amended within 12 months.

From a structuring perspective, many investors use Mauritius as a preferred holding company jurisdiction or for setting up of PE funds targeting investments into Kenya due to deal structuring flexibility. The Mauritius-Kenya Double Taxation Agreement (the DTA) whose coming into effect was long-awaited was also seen as an added benefit to promote foreign direct investments. The DTA was however dealt an unprecedented blow as a result of a March 2019 High Court ruling which nullified it due to a procedural defect. We note, however, that this defect is curable by the publication of a fresh Legal Notice which can then be tabled in Parliament. It is not yet clear if the Kenyan Government will lodge an appeal against the decision or publish a fresh Legal Notice.

Although there are still hurdles for private equity investment in Kenya, there are significant reforms experienced in the recent past and promising changes ahead. Kenya remains an attractive investment destination and in a Limited Partner Survey conducted by the African Venture Capital Association (AVCA), Kenya was selected by the second-highest proportion of LPs as an attractive country for PE investment in Africa over the next three years. It is hoped that as the number of private equity transactions grow, legal and structural reforms will continue to be put in place in order to make the country more conducive to private sector investments.

PRIVATE EQUITY INVESTMENTS IN MOROCCO: EMERGING TRENDS

By **Camilia Benani,** Senior Associate, DLA Piper Casablanca, Morocco

In the last 15 years, private equity in Morocco has experienced significant change. In 2016, according to a survey of the Moroccan Association of Capital Investment, MAD305 million was raised and MAD786 million invested in Morocco by private equity. The 2018 annual AVCA (African Private Equity and Venture Capital Association) conference was held in Marrakech, with national and international players representing sectors including agribusiness, education, life sciences, and healthcare, industry, energy, and mining.

Inspired by the European market, the legislator has, for example, recently recognized regulated collective investment trusts and real estate investment trusts (REITs, or OPCI in French). Today, investment funds are a significant source of financing in Morocco for small and medium-sized companies (SMEs).

A key reason for this rapid growth of private equity is Morocco's standing as a financial hub and entry platform for doing business in Sub-Saharan Africa.

Private equity as an alternative to bank financing

The number of investment transactions has drastically increased. The establishment of Moroccan and foreign funds (including Chinese funds in anticipation of direct investments in Morocco as a part of China's One Belt One Road initiative) has multiplied, and the amounts invested in those funds have also increased.

This evolution is also the result of banks no longer granting easy financing, which encourages companies to use private equity as an alternative. The growth is also attributable to the creation of free - trade zones in Morocco (for example in Tangiers and Kenitra) that attract increasing levels of specialized funds, and the implementation of Casablanca Finance City, a financial ecosystem offering a range of legal and tax incentives encouraging private equity funds to locate the headquarters of their pan-African investments in Morocco (such as Wendel Africa, Brookstone Partners and Africa50).

This coincides with a shift of mentality by entrepreneurs and Moroccan family businesses that are increasingly attracted to training programs (particularly through the Elite program of the Casablanca Stock Exchange) covering the benefits of private equity and preparing them for the opening-up of their capital to private equity funds.

Some obstacles to effective growth

This growth, however, can occasionally be hindered by cultural issues, and there is still a long way to go in terms of Moroccan SMEs and family businesses fully opening up to private equity funding. Fears of loss of independence, a heavy financial formalism and interference into family affairs remain prevalent.

In addition, the legal and tax arsenal is arguably not yet attractive enough for some private equity funds in the Moroccan market and is not flexible enough to create incentive management packages. The tax framework must also be clarified, for example by increasing the number of state non - double-taxation treaties, or by adopting the parent-subsidiary tax consolidation arrangement to avoid negative tax impacts.

Management packages

In order to incentivize a company's managers, private equity funds regularly offer management packages, which enable managers to make significant profits when the financial objectives set out by the fund are achieved.

Such packages can take several forms, including a free-share allotment for managers, or preferred shares through which managers receive substantial pay raises when the company has reported a strong performance. Indexing managers' remuneration to the company's performance helps create a motivating dynamic that aligns the investment fund and managers' interests.

Other mechanisms include the signing of "put and call options" (good and bad leaver) by which the funds undertake to acquire the managers' shares when they leave the company, indexing the redemption price with criteria such as the company's performance, or the departure of the manager (for example resignation or dismissal).

A rigid legal arsenal

Morocco's legal arsenal is strict, imposing numerous conditions and restrictions on the creation of preferred shares (whether shares with double - voting rights or priority dividend shares). The implementation of these has two significant limits. The first is the legal requirement of fully paid-up shares, and the second is the requirement of share ownership for at least two years by the same shareholder. Further limitations, with regard to the creation of priority dividend shares, are that the company must have made distributable profits in the last two financial years and that they may not exceed a quarter of the share capital.

Also, apart from a few limited cases, removal of shareholders voting rights is not allowed, nor the issuance of multiple voting rights - save for the exception noted above.

These restrictions make it difficult for investors to implement sufficiently flexible management packages. As such, lawyers must find creative contractual arrangements to fill the gap.

The new investment fund trend

Investment funds in Morocco increasingly behave more and more as corporate actors, becoming long-term investors by diversifying the type of business sectors they operate and invest in, and taking more and more space in the management of the businesses.

With diversification of the product range, private equity actors are no longer confined to their investment policy of minority or majority shareholders, and we see more funds investing both as a minority and majority shareholders and on a long-term basis (for example seven years, instead of three to five years).

As the market grows increasingly competitive, with a shortage of potential targets, the difference between corporate and private equity funds is becoming less clear. In fact, the interests of both private equity funds and corporates are becoming more aligned with regard to a company's valuation and investment policies.

"The legal and tax arsenal is arguably not yet attractive enough for some private equity funds in the Moroccan market and is not flexible enough to create incentive management packages."

Contributor's Profile

Camilia Benani has acquired experience in the field of mergers and acquisitions, notably in advising in the context of leverage buy out acquisitions, joint ventures, corporate reorganisations and transfers operations.

Camilia has handled numerous cross-border transactions involving leading groups in Europe, Africa and the Middle East.

Camilia mostly advises investment funds, industrial groups, listed and non-listed, and management teams in North Africa and Sub-Saharan Africa.

Camilia is also a regular lecturer with the Elite program in Casablanca.

TOWARDS AN ENABLING LEGAL AND REGULATORY FRAMEWORK FOR PRIVATE EQUITY AND VENTURE CAPITAL IN NIGERIA


Folake Elias Adebowale, Partner, Udo Udoma & Belo-Osagie Nigeria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Research and data from private equity industry associations such as the Emerging Markets Private Equity Association (EMPEA), the African Venture Capital Association (AVCA) and the Private Equity and Venture Capital Association (PEVCA) highlight the impact of challenges including global commodity price fluctuation, foreign exchange volatility, security and insufficient diversification of the economy, among other factors, on the pace of activity in the Nigerian private equity and venture capital (PE) industry.

Encouragingly, however, Nigeria remains an established anchor market for PE in sub-Saharan Africa (SSA) with attributes that are still largely unique in SSA outside South Africa: a relatively evolved ecosystem comprising over 20 fund managers active in Nigeria and a growing secondaries market. Targeted PE investments in fast-growing sectors such as technology, verticals, oil and gas, consumer goods, fertilisers, health, FinTech, insurance and industrials, underscore PE's strategic importance for transforming businesses and as a potential enabler of economic, business and social development.

The development of an enabling PE-specific legal and regulatory framework for Nigeria is crucial to the achievement of such goals. The EMPEA Guidelines developed by EMPEA's legal and regulatory committee, advocate principles including the ability to contract freely, with minimum prescription by statute and an efficient, transparent and fair regulatory environment as key to attracting private capital to emerging markets like Nigeria.

In this respect, Nigeria is arguably a little further ahead of the curve than its neighbours. While PE investment has been largely regulated within the generic investment framework, including the companies legislation, the Presidential Enabling Business Environment Council (PEBEC) reforms for business and investment, and (if it receives Presidential assent) by the potentially greater flexibilities and minority protections envisaged by the Companies and Allied Matters Act (Repeal and Re-Enactment) Bill, the Securities and Exchange Commission (SEC) on PE and PENCOM regulations governing investment in fund assets are uniquely among the earliest PE industry-specific regulations to have been developed in sub-Saharan Africa outside of South Africa.

There has been some debate regarding certain features of the nascent Nigerian PE-specific framework that are regarded as impacting negatively or being unduly restrictive of PE activity and investment. These include minimum commitment prescriptions for local funds hoping to attract PFA investment; National Pension Commission (PenCom) restrictions on the investment of pension fund assets in funds that are not SEC-registered or which are not managed by SEC-licensed fund managers; the availability of perceived lower risk assets such as treasury bills; and the tough competition presented by fiscal, business and legal environment in Mauritius, the Cayman Islands and the British Virgin Islands.

In order to achieve its fully potential, Nigeria must have sustainable and enabling legal and regulatory framework and policies including for private equity. For instance, the availability of different partnership structures under the CAMA Bill should provide flexibility for fund structuring and establishment, if the Bill receives Presidential assent. Ideally PE investors should have the flexibility to choose preferred structures for investment e.g. to include open-ended investment companies, real estate investment companies, unit trusts, real estate investment trusts, limited partnerships, limited liability partnerships (without having to use domestic vehicles as intermediaries for committing capital to partnerships).

Efforts made to deepen specialised knowledge and capacity building for stakeholders including regulators, participants and beneficiaries are commendable and should continue. Procedures and processes for registration and for obtaining regulatory approvals should continue to be streamlined: online company registration at the CAC are a good beginning. Managers urge that there should be less burdensome monitoring requirements with thresholds set below which such registration may not be required. An internationally competitive and transparent tax regime that is specific to private equity and venture capital investment would be required to support other proposed initiative and to equip Nigeria to compete with global financial and fund administration centres such as Mauritius, the Cayman Islands and the British Virgin Islands.

The adoption of the Nigerian Code of Corporate Governance 2018 for regulated, listed and public entities on the order of the Honourable Minister for Industry, Trade and Investment – an African PE pioneer–Dr. Okey Enelamah- will hopefully facilitate alignment with international best practices.

There is a need to develop and adopt measures that are specifically designed to boost regulator, PFA and other institutional investor confidence in providing capital for PE investments. PENCOM's Regulation on Investment of Pension Fund Assets has increased allocations by pension funds to PE to 10%, which is encouraging, but sector participants argue, should be much greater. Certain critics have also advocated a reduction in the minimum paid up share capital requirements for fund managers and that the investment of more than the prescribed percentages of pension fund assets in single investments should be permitted.

There have been notable achievements, but the evolution of a discrete legal and regulatory framework for PE in Nigeria that is designed to address the very real challenges and modern realities faced by industry, investors and other participants is important if PE is to properly achieve its potential as a tool for transforming business and social development in Nigeria.

UDO UDOMA & BELO-OSAGIE

Contributors' Profiles

Folake Elias Adebowale is a partner on the corporate advisory/M&A and private equity team at Udo Udoma & Belo-Osagie, and co-heads its oil and gas teams. Folake sits on the legal and regulatory council of EMPEA and represents the firm (a founding member) on the inaugural board of the Private Equity and Venture Capital Association of Nigeria (PEVCAN). She previously acted as co-chair of the African Venture Capital Association (AVCA)'s legal and regulatory committee and headed the legal committee of the Federal Ministry for Industry Trade and Investment's Nigerian Private Equity and Venture Capital Development project. Folake is ranked by Chambers Global, the IFLR1000, Legal 500 and Who's Who Legal and commended in The Lawyer's 'Africa Elite' Private Equity Report. She graduated with a degree in jurisprudence from Oxford University and holds a Master of Laws degree from University College, London. She is a member of the Nigerian Bar.

Olakunle Faisal Uthman is an associate and a member of the firm's corporate/M&A, private equity and oil and gas teams. With a background in dispute resolution, he is a core member of various teams advising on cross-border and domestic equity and asset acquisitions, divestments and strategic alliances, and routinely advises on regulatory and environmental matters relating to the energy (oil and gas and power) sector.

Pamela Onah is an associate and a member of the firm's corporate advisory team, with transactional and advisory experience in M&A, private equity, capital markets, energy and banking matters. She is a key member of various teams advising on various merger, acquisitions, energy and peroleum transactions and on the regulatory environment for the establishment of mutual funds, feeder funds, funds of funds, and registering foreign listed funds on the Nigerian Stock Exchange.

Chisom Okolie is an associate and a member of the firm's corporate advisory team, with experience advising on M&A, PE, capital markets, oil and gas and tax matters. She is a core member of various teams that advising local and international companies and PE firms on equity investments including in the insurance and manufacturing sectors. She has also advised on international lending transactions including syndicated loans and on the establishment of mutual funds.

PRIVATE EQUITY IN ZAMBIA: SOME REGULATORY CONSIDERATIONS

By **Sharon Sakuwaha,** Partner, Corpus Legal Practitioners Zambia

Overview

Over the past few years, Zambian Private Equity activity has remained steady and the country has emerged as an attractive private equity destination. According to the African Venture Capital Association 2018 Annual African Private Equity Data Tracker, during the period 2013 to 2018, Zambia claimed 8 per cent share of the PE deals by value in Southern Africa and 12 per cent share of the private equity deals by volume, second only to South Africa which attracted the highest share of private equity deals in Southern Africa both by value and volume. Target sectors continue to be financial services and consumer goods. Investment in the non-traditional sectors such as tourism, agribusiness continues to grow and to consolidate the Zambian Governments economic diversification drive. Although over dependence on the cyclical copper industry presents challenges of currency and commodity price volatility, Zambia has sought to enhance its economic development through economic diversification under the Seventh National Development Plan launched in 2017. Under the Plan, Zambia aims to achieve economic diversification through value addition and industrialization anchored by agriculture and tourism.

The most significant factors driving growth and interest in Zambia as a Private Equity investment destination are, political stability, steady economic growth, favorable demographics comprising of a growing population, increasing urbanization and a growing consumer middle class. The ease of doing business has also played an important role. In the World Bank's Ease of Doing Business 2019 report, Zambia ranked 87 globally, 8 in Africa, 6 Sub-Saharan Africa and 4 in the SADC region.

Regulatory

At the core of this progress is the favorable legal and regulatory framework. Zambian law does not impose any barriers to private equity operations or impose any restrictions on private equity investments. There are no exchange controls, local content requirements, and ownership restrictions. More recently, barriers limiting access to local capital from pension funds have been lifted. The National Pension Scheme Investment Regulations, 2017 now allows the National Pension Scheme Authority to invest in non-listed equities and, green field investments and socially and economically targeted investments within prescribed allowable limits. Access to domestic capital could further increase private equity activity, particularly in sectors such as infrastructure and energy where the needs of the country are still high, and opportunities abound.

A private equity transaction is subject to merger approval if the combined turnover or value of the assets of the parties meets the prescribed threshold. Zambian Completion law through the merger approval process does not currently distinguish PE investors from ordinary investors and PE investors are subject to the same rigorous approval process and disclosures. The law may need to recognize that PE investors are primarily interested in the financial reward of the merger and not monopolistic conduct, to encourage more private equity activity.

If the target operates in a heavily regulated sector such as financial services the transaction will also be subject to the approval of the regulator in the sector. Similarly, if the target is a public company listed on the Lusaka stock exchange, in addition to the disclosure obligations under the Lusaka Stock Exchange Listing Rules and the Merger and Takeover Rules during the course of the transaction, the approval of the Securities Exchange Commission will need to be sought.

Governance

Corporate governance is a key determinant of investment efficiency. Shareholders' ability to sue and hold directors accountable are essential checks and balances[1] particularly if an investor to take a minority position.

There have been significant developments in improving governance rights. The new Companies Act which came into force in 2018 has enhanced the extent of director liability and protection of

1. Durnev, Errunza and Molchanov 2009.

minority interests, by prescribing codified statutory rules in terms of the duties of directors and greater transparency.

Directors of a Zambian incorporated company are subject to statutory fiduciary duties the breach of which may lead to personal liability or disqualification from being a future director. Directors have a duty to act in such a manner as to promote the success of the company for the benefit of the shareholders collectively. Thus, directors must at all times be mindful of the risk of being found liable for fraudulent trading or breach of fiduciary duties. An equity investor must be mindful that this equally applies to shadow or alternate directors or any person on whose instructions substantive directors are accustomed to act.

The Companies Act recognises both situational and transaction conflict of interest and requires directors to disclose any direct or direct interest in any matter or contract with a company. A director that has an interest in any contract with the company cannot form part of the quorum or vote at a meeting considering the issue.

Private equity investors need to pay particular attention to the target company's compliance history and status at the due diligence stage of a transaction as the more recent legislation being enacted extends personal liability to the directors and any officer of the company that consents to or has knowledge of the breach. Directors appointed by a private equity investor may be held liable for breaches of an investee company and subject to imprisonment or a fine on conviction for non - compliance. The ongoing compliance status of the portfolio company is also important to avoid liability.

The new Companies Act provides for more robust minority rights. A minority shareholder is able to sue the company or a director for any breach of duty owed by the company or a director to a shareholder, without having to sue through the company by way of a derivative action. Greater protection helps foster trust and confidence and, in turn, spurs greater access to finance for entrepreneurs.[2]

Structuring
The investment is commonly structured as a direct or indirect holding of a controlling interest in the target company. If a controlling stake is not available, the structuring considerations are commonly around achieving 'control'. The legal agreements are structured to provide sufficient minority protection rights on the legal as well as the operational side. The equity investor will require veto rights in respect of key issues such as the appointment of directors and the key management team, issuance of shares and changes to the capital structure.

Typically veto rights will not only be limited to those corporate actions requiring consent of the majority shareholder under the Companies Act (such as amendment of the articles, disposals, changing the name and nature of the business, increase or decreasing the share capital) but also other matters such as the power to borrow, ability to form a quorum or make any decisions at board and shareholder meetings, affirmative vote on key financial and commercial matters.

Control investments and minority interests
Control investments have been the preferred investment mechanism because of the ease of exit even though control can be achieved through structuring the governance rights in the transaction documents. Buyers or larger private equity firms are willing to pay a premium for a controlling stake. However, because of the reluctance by entrepreneurs to surrender control, sometimes, a minority interest becomes the only option. Over time, the enhanced minority shareholders protections under the legislation will encourage equity investors to consider minority interest positions. This, however, does not take away the attractiveness of a controlling stake when it comes to attracting buyers at the exit.

Exits
The ultimate objective of a private equity investment is to achieve an exit. Buyouts are the most common exit mechanism. The option of an exit through an IPO on the Lusaka Stock Exchange is available. If this option is considered, PE investors must be deliberate about preparing the company for an IPO and ensuring that the interests of all stakeholders are aligned. There has only been one PE investment exiting through a public listing in 2016.

Rescue Buyouts
The developments in the Corporate Insolvency framework present an opportunity for private equity investors. The new Corporate Insolvency legislation contains a business rescue mechanism that allows the rehabilitation of a financially distressed company if there are reasonable prospects of doing so, which was not possible in the past.

2. Djankov, La Porta and others 2008.

NAVIGATING THE CURRENT PRIVATE EQUITY LANDSCAPE IN SOUTH AFRICA

By **Lydia Shadrach-Razzino,** Director, Corporate Commercial, ENSafrica South Africa
Tshepo Mathabathe, Business Development Manager, ENSafrica South Africa

With the ever-looming realities of Brexit at the fore of global economic outlooks, the global deal landscape has seen some interesting shifts. The African deal environment too has not been immune to this state of flux, as well as socio-political fluctuations within respective sovereign nations on the continent.

In Ghana, for example, the non-oil sectors are experiencing a lot slower growth, though a restructure in the banking sector, where banks have recapitalised, leaves banks in a position where they are better able to deploy some of this capital into non-oil sectors and lead to growth in these sectors. Government are going into their last year pre - elections and they want to ensure that they fulfil some of their intentions, especially now that the IMF programme is complete, they are able to fulfil their own requirements without being guided by restrictions.

The upcoming national elections in South Africa, May 2019, have spooked some in particular and whispers in the industry are that a number of infrastructure deals are on hold awaiting the decision post the polls. From about 2014, once the EU's debt crisis was considered to be improving, news then switched to a negative emerging markets sentiment. What has changed since then? Increasingly the world is looking to invest in emerging markets and the yields we offer. Other emerging markets like Brazil or Turkey are more unsettling than South Africa's, but our South African institutions have been allowed room to breathe as it were over the past few years, they are still viewed as relatively stable and there is room for growth, as long as Eskom keeps the lights on. The mining sector has been in turmoil for the past 10 years, but they are cautiously optimistic about their future. In terms of fixed investment spend, the mining sector has some increasing scope to invest, although deep pockets and patience is what's needed.

The intention of this article is to provide a helicopter overview of the current deal environment and specifically the current private equity deal environment in South Africa. As a result of our access to LP's, fund managers and family offices we are often privy to insights that enable to provide comment in this context.

There are two sources of deals in the market i.e. financial investors and listed companies buying and selling. Research shows that over the last 10 years, SA Corporates have accumulated over R1trn in cash on the balance sheet. There are two ways to spend this cash (i) distribute it to shareholders (whatever form that may take) and/or (ii) use that cash to invest. At the same time over the last 10 years, there has been a great amount of uncertainty in South Africa and our economy has shrunk. Political uncertainty, instability in the mining sector, uncertainty relating to tax and lack of clarity on policies, all further exacerbated by the electricity crisis, which started in 2008, have all contributed in a myriad of ways to a precarious economic outlook for South Africa. An environment of this nature, all makes for the perfect investment storm and resulted in some panic which led to a gradual slow down in the deal-making space

The large deals that we knew from the past, were just no longer there. We did, however, have a few (i) the Woolworths Holdings Limited/David Jones deal, (ii) the Mediclinic deal and (iii) the Famous Brands/Gourmet Burger deal. These deals has all subsequently turned out to have negative outcomes. The Woolworths share price took a knock and the group saw about a ZAR3.5 Billion loss on its ZAR6.9 Billion David Jones impairment, Mediclinic is worth half of what it was and the Gourmet Burger deal also did not bode well for Famous Brands which was once a JSE darling. These were all outward facing deals. The largest inward deal was SAB Miller and other than those, we have not seen deals of any real significance. Private Equity is a sub-category under the "general" deal-making banner and in the same vain, African Private Equity and South African Private

Equity have not performed phenomenally over the last 10 years.

In the last 2 years especially, profits of portfolio companies were down by up to 50% in some instances. This we glean from talking to fund managers and transactors.

The deals that are happening are mainly happening for 3 reasons, (i) because capital must be deployed or it will be lost, (ii) mandates are ending and disposals must be done and (iii) because assets are distressed and must be sold.

There are little happening on the general deal-making front i.e. the "good for deal-making" deals. Two deals that stood out for me in this category are (i) Rockwood's disposal of Tsebo and (ii) RMB Ventures disposal of Tessara to Carlyle (I had the privilege of advising RMB Ventures on this deal)

While deals still continue to happen in the market, deal flow is still relatively slow. There is still a "wait and see" approach to deals at the moment. This could be due to a combination of factors like, buyers are very conservative in what they want to commit in a certain period and sellers are looking at the market optimistically and looking to sell at the highest prices. There are still a number of people in the market still deploying, however, and the market remains competitive.

In terms of typed of deals, there are not a lot of mega deals anymore, other than from the likes of Ethos in the last while, but in the mid-market space, there seem to be more deals there, but there is more competition for deals from that space. Furthermore there is an increasing number of buy and build on type deals happening at the moment, as well as of consolidation type deals where people are rather buying into businesses in the same space, instead of investing money into totally new ventures sectors that will nevertheless attract the "good for deal-making" deals are (i) Education, (ii) Telecoms the Vodacom/Safaricom deal is a very good example of a great deal in Africa for Africans, (iii) Services and (iv) Agribusiness.

Industry intel also suggests that fundraising is also becoming difficult. Even the royalty of SA funds are struggling to raise capital as returns are not so attractive. This once again can be directly linked to the political uncertainty in SA as well as a volatile ZAR. The ZAR has halved in value since 2012.

With all the above said, it certainly is a buyer's market and we all know that the best time to buy is often in distressed times, as the opportunity for creating incredible value is at its highest.

The Outlook – assets are taking some pain, but the strong will survive. The deal-making of the past as we knew it is disappearing. We need to realign ourselves with the environment and get on with it. An environment in such flux allows for innovative solutions to deal-making, which is an exciting challenge for those of us in the field.

Permanent capital type structure also gave you an edge, for example, if you can demonstrate that you have the ability to stay longer than a typical 5-7 years, it does give you the edge over the traditional PE funds. If you can demonstrate that you can assist businesses to operate in the new business landscape, like knowledge of navigating the 4th Industrial revolution, for example, clients appreciate the proactive know-how.

The footprint is also key. If you are a company that wants to grow outside of South Africa and you have the ability to show that you have a successful footprint cross border this can be a benefit.

In order to survive in this shrunken economy, one has to be brave, patient and hardworking. Assets are not going to work for you, you are going to have to make the assets work for you. In terms of getting to do deals in this environment, a lot of it still is a very relationship-based and increasingly so. In times like these, people stick with those they trust.

Keeping to a traditional benefit, is that you bring access to capital and it still remains important to demonstrate this. Deals will certainly happen where the opportunities lie and there are opportunities out there especially in the sectors I've mentioned above. One of the spaces to watch is going to be specialist funds i.e. funds set up for a specific purpose with a mandate to only invest in tech for example. These smaller, more focussed funds are cropping up all the over the place and in my view will prove quite successful.

We remain cautiously optimistic about the future.

AFRICA: WORLD'S LAST GROWTH FRONTIER
A FERTILE GROUND FOR PRIVATE INVESTMENT

LUC RIGOUZZO Executive President and Co-Founder of Amethis Finance

CAPMARKETSAFRICA: *First, let's talk about you. Please tell our readers more about your background and what motivated your choice of career path?*

LUC RIGOUZZO: My roots are in Africa, having grown up in Côte d'Ivoire. I studied agricultural engineering, with the hope of a green revolution in all emerging countries. I consequently started my career in Mexico and rapidly completed my degree in agricultural engineering with a degree in finance. I dedicated my 14 first years as a professional on project financing in the agri-business sector, working for Proparco and IFC in Africa and Latin America. I lived for 6 years as a professional in Cote d'Ivoire and Cameroun. I realized that Africa was going through a unique momentum in a continent's history: transforming into a dense and urban region whilst having started its demographic transition in the 2000s.

The second part of my career has been more managerial, having set up the structured finance department at AFD (Agence française de développement) and then being appointed CEO of Proparco, the French development financial institution.

My rich experience at Proparco with Laurent Demey, my partner at Amethis, convinced us that the private sector will become the main driving force in the African continent. Our overarching ambition was to create private player dedicated to providing equity financing to Africa's private sector, as well as supporting entrepreneurs in their development by putting them at the center of a business network. This network has been nurtured from over 20 years working across the continent. Therefore, we decided to create an investment fund to support Africa's emerging private champions. We partnered immediately with Edmond de Rothschild, whose shareholders were sharing our vision of responsible long-term investment and created Amethis in late 2012.

CAPMARKETSAFRICA: *Created in 2012, Amethis Finance has distinguished itself from conventional investment funds with long-term thinking investment philosophy on the African continent. What is Amethis Finance motivation for investing in the continent? How do you determine which countries, sectors, and companies to invest in?*

LUC RIGOUZZO: Our decision to focus on the African continent stems from two main considerations. First, Laurent Demey and I grew up in Africa and have devoted most of our career to it. We are passionate about what's going on in Africa and Amethis' positioning as emerged naturally out of this history. The second consideration is pragmatic: Africa is the World's last growth frontier. Major demographic, urban and economic fundamental changes are currently taking place. We are also witnessing an improvement in political stability for some geographies. This is making Africa an exciting and fertile ground for private investment.

The countries we are targeting have strong economic growth driven by endogenous factors: strong domestic demand, non-dependency to natural resources rents and resilient to global headwinds. As for the targeted sectors, we focus on the consumer-facing sectors: financial services, consumer goods, agro-industry, health, education, logistics, etc.

Amethis' portfolio illustrates this focus and diversification both sectorial and geographical. Since the launch of Amethis in late 2012, we accompanied 23 entrepreneurs in their growth, in a wide array of sectors such as banking, distribution, manufacturing, food, healthcare, and logistics. In terms of geography, our portfolio spans more than 10 Africa countries such as Kenya, Côte d'Ivoire, Mauritius, Ghana, Nigeria, Burkina Faso, Mozambique, Tunisia, and Morocco.

CAPMARKETSAFRICA: *From your perspective, what has been the overarching theme in fundraising for private equity in Africa over the past year or so? Are you seeing a new breed of limited partners (LPs) coming to the market, or is the LP profile*

today similar to what it was, say, five years ago?
LUC RIGOUZZO: Historically, the DFIs such as Proparco, CDC, or the World Bank have been the traditional players funding the African private equity market. The region has now started to attract a more and a more diversified base of investors. Indeed, family offices, large corporates, and sovereign wealth funds are looking at Africa in a strategic way. Beyond the risk taken and the expected returns, these new fundraising players are looking at the changes taking place on the African continent. Amethis has distinguished itself in that respect. Whilst most investment structures operating in Africa are traditionally financed by DFIs, 90% of Amethis' first fund limited partners are private investors such as family offices and private institutions. For its second fund, Amethis also welcomed major DFIs active on the continent but kept a large base of private investors. This new breed of limited partners coming to the market is a market innovation and we hope this trend will continue in the coming years.

***CAPMARKETSAFRICA:** In terms of valuations for portfolio companies, how would you describe the expectation gap between private equity sellers, and the interested buyers or investors considering a deal? What are private equity firms doing to help bridge this gap and achieve exit in today's market?*
LUC RIGOUZZO: Private equity is not just a financial industry, it is also about entrepreneurship and alignment of interest (especially for Amethis which is mainly a minority shareholder). In my views, the success of an exit depends on 3 points:

- The sponsor, the person with whom the fund will align its interests
- Having a good understanding of the proposed exit
- If there is value creation for the majority shareholder when the minority shareholder exits.

The private equity investor is also expected to bring institutionalization to the business. This, coupled with improved business and operational fundamentals, provides comfort to a wide variety of potential buyers (private equity peers, strategic players, institutional investors, etc.).

If these points are met, the selling shareholders can find common ground and attract new buyers at an attractive price.

***CAPMARKETSAFRICA:** On the exit, what steps can private equity practitioners take from the outset to prepare a portfolio company for exit and generate expected returns? What best practices are they following to capture additional long-term value once the initial value levers have been pulled in the post-deal phase?*
LUC RIGOUZZO: The exit is prepared from the first day of investment. The value-addition from the investor is tied with the alignment of the Sponsor both during the investment period and upon exit. As such, this alignment has to be a crucial part of the negotiation targets. On top of this, in Africa, an active investment profile is required. For Amethis, this is illustrated by a real on-ground presence (hence our 3 offices in Abidjan, Casablanca, and Nairobi) and our hands-on approach which brings value to entrepreneurs. This includes:

- Access to external growth. During our investment period, as an example, Ramco a printing and packaging group in Kenya acquired many companies in Kenya but also in Uganda to expand in East Africa
- Improving governance and operations. Amethis has a strong involvement on board to support growth initiatives. Amethis is an appreciated counter-balance bringing international best practices alongside its knowledge of African markets
- Network and strategic partnerships. This may involve synergies within the Amethis portfolio, the introduction of new customers or partners.

***CAPMARKETSAFRICA:** With China being a significant player in Africa, what are the potential implications for private equity side? Do you have Chinese investment in any of the Amethis Finance managed funds?*
LUC RIGOUZZO: It is true than in the past two decades, China has catapulted from being a relatively small investor in the continent to becoming Africa's largest economic partner. Today, Chinese investments are mainly targeting large infrastructure or private greenfield projects. Amethis being a midcap fund targeting the private sector, our portfolio companies are, for the time being, less attractive to Chinese investors.

***CAPMARKETSAFRICA:** Small- and medium-sized enterprises in Africa are struggling to raise capital. Please, could you explore the factors behind this "missing middle" and potential ways to fill it?*
LUC RIGOUZZO: Small and medium-sized

enterprises are essential on the African continent because they are at the heart of the development process of African economies. They represent about 90% of private companies and employ nearly 70% of the rural population.

However, the smallest companies, are often too informal to raise capital or access to long term debt.

There are potential 2 ways to fill this missing middle:

- Through the private sector with dedicated private equity fund, venture capital,
- But also, with reforms from public authorities in order to support SMEs in their development through credit guarantee schemes (guarantees by governments) for example. More generally, ensuring macro-economic stability would be a major step forward for the financing of SMEs.

CAPMARKETSAFRICA: *Since Amethis Finance is a private institution, how do you balance the need to generate investment return and at the same time ensure the clarion call for impact investment, ESG and to promote Africa's need for sustainable development?*
LUC RIGOUZZO: Amethis believes that economic growth, the investment return, and healthy environment go together. Our mission is to invest, to support in order to act for the impact. Africa suffers an unfair reputation in that respect. We firmly believe that profitable investment and ethics are not mutually exclusive, quite the reverse actually. In Africa, it seems to us impossible to invest profitably in the long run without complying with high standards in terms of environmental, social and governance.

Amethis' strategy consists in acquiring a stake in SMEs to give them financial and human resources they need for their development. Its interventions include significant involvement on the board of directors to support their strategic and commercial thinking, improve their governance, advise them on their growth operations and share with their managers' best practices in environmental and societal aspects. We have ad-hoc internal resources dedicated to environmental and social aspects to accompany our partners in their transformation.

In this field, environmental and societal responsibility ranks high among the priorities of our activities. Amethis recognizes the importance of mainstreaming these considerations into all business activities. This responsible investment strategy relies on two pillars:

- An environmental and social management scheme. The portfolio companies must comply with good environmental, social and governance policies: adherence to the principles of good ESG in the widest sense;
- A development impacts management scheme (DIMS). The portfolio companies must comply with Positive Development Impacts as Amethis aims at combining positive financial and development impacts, which are systematically measured and discussed at Investment.

These positive investments make it possible to meet challenges and seize opportunities offered by the African continent (education, health…).

Having said that we should also be humble, as most of the founders of the companies we are partnering with, were already very ambitious in the ESG fields before our entry in equity. They often choose us also because we share these values.

CAPMARKETSAFRICA: *On a personal note, what do you do in your spare time, when not busy managing the Amethis Finance?*
LUC RIGOUZZO: Working in a pan-African fund with 5 offices and clients in more than a dozen countries take a lot of time. Like many private equity fund teams, we work hard and travel a lot.

For me, time is a rare commodity. The rest of my time outside Amethis is dedicated to my family and to share with them my passion for trekking and hiking. Hiking in the mountains of emerging countries every year is a family tradition which has allowed my wife and me to pass this dual passion to our children.

CAPMARKETSAFRICA: *To bring the interview to an end, how would you like to be remembered?*
LUC RIGOUZZO: I am very conscious of the fragility and the vanity of things; I am not sure I deserve to be remembered for something!!! One of the main drivers of my life is my strong interest in other people. I would be happy if my family, my friends and the people I worked with would just remember me as an honest, benevolent and caring partner.

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

RISKY BUSINESS

MANAGING AND MITIGATING RISK IN AFRICAN M&A TRANSATIONS

Deepa Vallabh, Head of Cross-Border M & A, Africa & Asia, CDH, LLP

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Introduction

The African merger and acquisition ("**M&A**") market is both alive with possibility and fraught with risk. African M&A transactions are often highly complex transactions due to the different legal frameworks in place, the social and political climates, and the ever-changing commercial landscape.

Dealmakers may experience difficulty in executing transactions across Africa for various reasons such as a lack of understanding and knowledge of the environments in which they operate, non-adherence to country-specific requirements, diminished investor confidence due to unpredictable political environments or economic instability which results in hesitation in terms of partnering with local businesses.

Despite the challenges faced, there still remains an increased appetite to invest in Africa. Efficient and well-managed companies seeking to engage in M&A transactions may gain a global competitive advantage and an opportunity to leave a significant mark on the African landscape.

The African M&A market is still relatively small in comparison to international markets however, the increased supply and production of natural resources has bolstered production in consumer-focused sectors and has resulted in improved economic growth in a number of African countries. Studies suggest that the return on foreign investment in Africa is substantially more than in any other developing region.

Risks of investing in Africa

Investing in Africa can be tricky and plagued with uncertainty. Regional conflicts such as civil wars and regime changes have led to political and social instability in many African countries. The effects of this instability have been detrimental to the price of commodities and have caused volatility in the markets. Inaccessibility to education and a short supply of skilled workers remains a challenge to foreign investment in Africa and particularly hampers the ability for foreign investors to partner with local business and enter into joint venture agreements.

Further, a lack of infrastructures such as roads, electricity and internet accessibility create logistical difficulties which hinder business development and investment potential.

Perhaps one of the biggest risks regarding African investment is the constantly changing African regulatory framework. The myriad of complex legal systems creates uncertainty for foreign investors. Couple this with stringent exchange control regimes and various local ownership requirements and the complexity of M&A transactions rises considerably.

Risk mitigation mechanisms

Macro and micro-economic factors must be carefully investigated before embarking on a transaction. The M&A process should be carefully monitored throughout the different stages of transacting and exit strategies should be duly considered.

Some of the key risk mitigation tools to be considered include the following:

Thorough due diligence reporting. Whilst conducting comprehensive due diligence is common practice, some finer detailed market and insurance risks and reviews are excluded from the overall reporting. Dealmakers should therefore ensure that they do not underestimate the liabilities and overestimate the asset value of a target company. A cautionary approach should be applied in this regard, particularly for cross-border transactions where a detailed forensic analysis and scrutiny into local risks ought to be conducted thoroughly from the outset.

It is advised that legal counsel is sought in order to conduct the most thorough and full due diligence investigation, particularly if the transaction is a cross border M&A transaction

Local partnership to combat regional political and security risks. Political instability, terrorism and civil wars are a major deterrent in attracting investments as the risks remain high in some countries. The impact of the challenges currently faced in certain regions is evident and limited sector knowledge often leads to delays in executing transactions. Investors are therefore encouraged to partner with trusted local advisors who are able to provide guidance in respect of risk mitigation mechanisms to maneuver around these types of country risks as the yield on the return may potentially be high for those prepared to take calculated risks in what would typically be deemed to be an 'unattractive' region to conduct business.

Partnering with local companies can be facilitated through joint venture arrangements. These joint venture arrangements can be unincorporated, whereby the relationship is regulated by a partnership agreement or joint venture agreement. Alternatively where relationships are governed by stricter regulation, an investor should consider incorporated joint ventures whereby a company or separate legal entity is formed by the parties. There are advantages and disadvantages applicable to each scenario and it would be prudent to seek legal counsel when considering which option best suits the investors' intention.

Comprehensive analysis of regulatory environments. Investors should be cognizant of regulatory, environmental and country specific nuances. The stringent regulatory laws and policies in place may impose liabilities on investors which may inherently be assumed in a merger or acquisition.

While some regulatory requirements and legislative changes have had a positive impact on the consumer, these regulations also impose strict requirements on companies which, if not adhered to, may result in large financial losses and sanctions.

Potential liabilities which may arise when transacting and tax efficiencies are primary concerns for investors. Dealmakers should consider different tax regimes when structuring transactions to reduce liabilities and attract more foreign investment. For example, in South Africa, the South African Revenue Service has established a special dispensation under the Income Tax Act, 1962 which provides a number of benefits to qualifying companies classified as external companies. Qualifying companies are, in specific circumstances exempt from paying certain taxes and may gain access to some exchange control benefits.

Detailed review of organisational structure and the cost of human capital. Dealmakers are encouraged to consider human capital issues in the work environment in the early stages of the M&A process. With the continued development in Africa and the movement towards international practices, close attention should be paid to global trends. For example, in Japan, it is a requirement that employees gain tangible benefits when an M&A transaction is executed.

From a local African perspective, traditional employment practices and judicial developments ought to be carefully considered by investors. Recent court decisions indicate that private equity investors may become liable for the existing liabilities and obligations of their portfolio companies. Private equity firms considering embarking on deals in Africa may also be subject to ongoing compliance requirements of the portfolio company in respect of employment law and labour force management issues.

Conclusion

Despite the challenging, and often unpredictable markets, Africa is considered one of the world's most rapidly growing economic regions with internal and external trends indicating that there is still an opportunity for a further surge in economic growth across the continent.

As Africa develops and grows, the enhanced infrastructure and technological developments will provide exciting opportunities for investors. There are niches available to foreign investors and these can be accessed to grow a company's African and global footprint.

Thorough due diligence, local partnerships and a greater understanding of the regulatory framework in which an investor is seeking to operate will accelerate and unlock investment potential and assist in ensuring that risks are adequately mitigated when transacting in Africa.

"The African merger and acquisition market is both alive with possibility and fraught with risk."

ON THE NEW DRC MINING CODE:

TO PROMOTE GREATER ECONOMIC AND SOCIAL DEVELOPMENT?


By **Tshiamo Maseko-Poisson,** Executive, LNP Attorneys Inc. | **Athi Jara,** Director at LNP Attorneys Inc.

On 09 March 2018, the Democratic Republic of Congo ("DRC") promulgated its new mining code, namely the 2018 Mining Code. The 2018 Mining Code substantially amends the previous mining code, the 2002 Mining Code. The preamble of the 2018 Mining Code states that the liberalized approach adopted by the 2002 Mining Code was in line with the country's goal to be more competitive in attracting mining investment. Although the 2002 Mining Code succeeded in increasing the activity of the sector as a whole, the expected revenue, economic and social development were less than satisfactory.

It is worth noting that the 2002 Mining Code was adopted one year before the official end of the Second Congo War, also known as the African World War, which lasted five years, between August 1998 and July 2003, involving nine African states and claiming millions of lives. The DRC's mining sector had been reduced to almost inexistence, with less than ten mining companies active between 1997 and 2002.

To overcome this shortcoming, the 2002 Mining Code set up legislation with the objective of a fast and transparent procedure for granting mineral rights within a wider favorable tax, customs and foreign exchange framework. For fifteen years the tax regime of the 2002 Mining Code was relatively generous by international standards.

The 2018 Mining Code appears to have three main objectives, namely: greater State participation, increased local ownership and increased mining royalties and tax revenues. The hope is that these more onerous requirements will lead to greater economic and social development and result in increased revenue for the country flowing from the exploitation of its mineral resources.

State participation

The "free-carry non-dilutable" equity share for the State has been increased from 5% (under the 2002 Mining Code) to 10% (under the 2018 Mining Code). Additionally, the mining exploitation license is renewable on condition that the holder transfers 5% of the shares or the shares of the capital of the company at each renewal, in addition to those ceded previously.

Local ownership

The 2018 Mining Code introduces a mandatory requirement of 10% of the shareholding in mining companies to be held by Congolese nationals.

Preference is further given to Congolese nationals with regards to subcontracting. The new code requires mining companies to comply with law 17/001 of February 2017, applicable to subcontracting in the private sector. The law aims to promote small and medium enterprises with Congolese capital, to protect the national workforce. It is the responsibility of the mining company to find suitable subcontractors.

Mining royalties

The increase of mining royalties has been one of the main concerns of industry regarding the 2018 Mining Code.

In the 2002 Mining Code mining royalties were calculated on the basis of the amount of sales of the merchant products after the deduction of certain charges such as the cost of transport, insurance and the quality control of the commercial product for sale, amongst others. The royalty rates under the 2002 Mining Code were 0% for standard construction materials, 0.5% for iron or ferrous metals, 2% for non-ferrous metals, 2,5% for precious metals, 4% for precious stones and 1% for industrial minerals, solid hydrocarbons and other substances not specified.

The royalty rates under the 2018 Mining Code are calculated on the basis of the gross commercial value. The royalty rate increases vary from 0,5% to 2% with the new rates, going from 0% for commonly used building materials, 1% for iron and ferrous metals and for industrial minerals, solid hydrocarbons and other substances not specified, 3.5% for non-ferrous or basic metals, 3.5% for precious metals and 6% for precious and coloured stones/gems.

The 2018 Mining Code also introduces a new royalty: the 10% royalty for strategic substances.

A new super tax?

According to Decree n° 18/042 of 24 November 2018, cobalt, germanium and colombo-tantalite (coltan) are the three substances considered strategic in the DRC. This is due to their use in high technological industrial sectors, the ICT sector, the renewable energy sector and the military. With the increased demand for batteries, the price of cobalt has increased globally and the DRC is regarded as world's largest cobalt producer. Cobalt's price quadrupled between 2016 and 2018 and according to Bloomberg New Energy Finance estimate's, by 2030 the substance's global demand could be 47 times it was in 2017.

In addition to the mining royalties, the 2018 Mining Code provides for a 50% special tax on windfall gains or super-profits. Windfall gains or super-profits refers to profits made when the prices of materials or commodities experience an exceptional increase, greater than 25% compared to those included in the bankable feasibility study of the project.

Both the 50% tax on super-profits and 10% the royalty on strategic substances are significant in light of the strategic substances becoming hot mining commodities in the recent past.

Security of tenure

The stability clause of the 2002 Mining Code is reduced from a period of ten years to five years under the 2018 Mining Code. The freezing clause guarantees stability that the law of the 2018 Mining Code will apply to the fiscal, customs and foreign exchange regimes until the end of a period of five years. This may be the biggest concern and grievance of the industry players, many of whom may have based their investment on the ten-year period under the 2002 Mining Code.

The strides taken by the DRC to increase greater State and local participation as well as to increase mining royalties and tax revenues are part of what has been termed as "resource nationalism". In this way, the DRC joins other Francophone and Anglophone African countries (including South Africa and Tanzania) in its increase of the local content requirements in its mining sector. From 2010, mining codes throughout Francophone Africa have been characterised by the turning away from the past trend of liberalisation by giving way to greater regulation, state participation and beneficiation. What remains to be seen is whether the 2018 Mining Code will indeed result in greater economic and social development for the country? Or whether the more onerous provisions will deter potential investors in one of Africa's most mineral rich nations?

Contributors' Profiles

Tshiamo Maseko Poisson is an executive at LNP Attorneys Inc and heads up our Francophone Africa Department.

Tshiamo graduated from the prestigious law faculty of the Université Paris Ouest Nanterre La Défense where she acquired a Master of Law (LLM equivalent) in International and European Union Law in 2011, a Licence (LLB equivalent) in Private Law in 2009. In 2013 she was trained in International Investment Treaty Law & Arbitration by Africa International Legal Awareness (AILA).

She is currently based in Mozambique, a major investment destination in the coming years due to its large natural gas proven reserves. She travels between Mozambique, South Africa, DRC and Côte d'Ivoire. She previously spent a significant number of years based in the DRC, where her work allowed her to advise on the newly adopted OHADA law, mining and beyond. She also worked with government on improving the DRC's business enabling environment, managing processes reform around the construction sector, land and zoning.

Athi Jara is a Director at LNP Attorneys Inc. She heads up the Mining and Environmental Law practice group. Her experience within the mining practice area includes involvement in mergers and acquisitions transactions, conducting mining due diligences, compiling mining title reports, undertaking mining litigation, black economic empowerment structuring in compliance with the provisions of the Mining Charter, giving advice on mining royalties and drafting technical mining agreements.

She has acted for a wide range of mining companies in all mineral commodity sectors, including base and precious metals, coal, gold and platinum group metals. She has also assisted a number of clients with regards to their environmental compliance requirements under South African Law.

THE NIGERIA TRANSFER PRICING REGIME: RECENT DEVELOPMENTS

By **Dr Joshua Bamfo,** Partner & Head, Transfer Pricing Services, Andersen Tax Nigeria
Victoria Seriki, Experienced Associate, Transfer Pricing Services, Andersen Tax Nigeria

Transfer Pricing (TP) is a major international tax issue facing Multinational Enterprises (MNEs) and tax authorities across the world. Many MNEs and tax authorities are becoming increasingly interested in the subject as evidenced by increasing court cases and the heightened drive by tax authorities in enforcing TP compliance.

While tax authorities are interested in ensuring that they receive a fair share of the taxable profits of MNEs, MNEs are also interested in ensuring that they optimise their global effective tax rate. More so, given the fact that about 60% of international trade takes place between MNEs, and globalization is fast changing the manner in which transactions are carried out across the globe, it has become increasingly important that the pricing of Related Party Transactions (RPTs) be reasonable from an arm's length perspective.

Nigeria's first TP Regulations was introduced in August 2012 and it witnessed relatively low level of compliance by taxpayers primarily because it lacked provisions necessary to enforce compliance and failed to provide adequate guidance on some contentious TP issues and transactions. In a quest to address these shortcomings and also drive the implementation of some of the recommendations of the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) project, the Nigerian tax authority published the Country-by-Country Reporting Regulations (CbCRR) and the revised TP Regulations in 2018. These two key developments have increased TP risk for taxpayers in Nigeria as the CbCRR and the revised TP Regulations introduced administrative penalties targeted at driving compliance with both sets of Regulations.

This article focuses on these key recent developments in the Nigerian TP space, the reasons for these developments and evaluates potential implications for taxpayers.

Recent Developments in the Nigerian TP Space

1. Introduction of the Income Tax (Country-by-Country Reporting) Regulations, 2018 (CbCRR):

The key objectives of the CbCRR is to increase transparency and provide the Federal Inland Revenue Service (FIRS or the Service) with relevant information, about members of an MNE Group, required to help carry out effective TP risk assessments. Such information may include details such as revenues, allocation of income, the MNE's global activities, profits, taxes etc. in the various jurisdictions that the MNE Group has presence. The information contained in the Country-by - Country Report (CbCR) will be made available to tax authorities in jurisdictions that are signatory to the OECD's CbCR Multilateral Competent Authority Agreement (MCAA).

The CbCRR requires MNEs headquartered in Nigeria and with a consolidated group revenue of NGN160 billion and above to prepare and submit a CbCR to the FIRS. The CbCR should be submitted not later than 12 months after the last day of the

MNE Group's accounting year.

Prior to that, the Nigerian Ultimate Parent Entity (UPE) that meets the threshold as well as taxpayers who are members of MNE Groups, not headquartered in Nigeria and with Group consolidated revenue equivalent to €750 million, are required to file a notification with the FIRS indicating which MNE member will have the responsibility to file the CbCR in their respective jurisdictions. The notification of the responsible member firm for filing the CbCR is expected to be done before the end of the CbCR financial year starting from 2018 financial year.

Finally, The CbCRR provides specific penalties for non-compliance with the CbCRR, which are perceived to be pretty stiff.

2. Release of the Income Tax (Transfer Pricing) Regulations, 2018 (the revised TP Regulations): The revised TP Regulations, which revoked the 2012 TP Regulations, ushered in a TP specific penalty regime in Nigeria. The introduction of administrative penalties and other changes were aimed at encouraging increased compliance with the TP Regulations among taxpayers and providing certainty in the treatment of certain RPTs.

Other changes introduced by the revised TP Regulations include the introduction of a NGN300 million minimum threshold for maintaining contemporaneous TP documentation; provisions limiting tax deductions on payments relating to intangibles to 5% of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA), among others. The changes also include specific rules for pricing of commodity transactions; detailed guidance for analysing intra-group services; and introduction of the three-tiered approach to TP documentation for MNEs – Masterfile, Local File and CbCR.

3. Publication of Guidelines and Public Notices: The FIRS published various guidelines and public notices to provide clarification on the provisions of the CbCRR Regulations and the revised TP Regulations. The public notice on the revised TP Regulations granted taxpayers up to 31 December 2018 to fulfil all pending TP compliance obligations including the filing of all outstanding TP returns. The notice further stipulated that the penalties imposed by the TP Regulations would apply to taxpayers who fail to regularize their TP compliance status by the deadline.

Potential Implications for Taxpayers

1. Exposure to Penalties for Non-compliance with any of the Regulations

With the increased focus on tax as a viable source of revenue, the FIRS has begun to explore all avenues open to it including the imposition of administrative penalties for non-compliance. While many taxpayers took advantage of the "grace" period and filed their outstanding TP returns and CbCR notification forms by the 31 December 2018, other taxpayers may have been unable to meet this deadline. This has resulted in the FIRS imposing penalties on some of the non-compliant taxpayers. The challenge with this action by the FIRS is that, it is applying the penalties retrospectively in some cases, although the revised TP Regulations is supposed to be applied prospectively.

2. Increased Compliance Burden on Taxpayers

The changes in the Nigerian TP regime in 2018 increased the compliance obligations for taxpayers. In addition to the TP compliance requirements in the TP Regulations (filing of TP returns and preparation of contemporaneous TP documentation), qualifying Nigerian taxpayers are now required to also comply with the requirements of the CbCRR.

Further, with the specific guidelines provided by the TP Regulations for the pricing of transactions like commodity transactions and intra-group services, taxpayers will need to ensure that their TP documentations reflect these new guidelines going forward. This implies potential changes to TP methods previously used to analyse specific RPTs.

3. Increased Information Requests from the FIRS

Given the large number of TP Return filings recorded in December 2018, it is expected that the FIRS would request additional information and TP documentations to understand the disclosures as part of their TP risk assessment to help select taxpayers for full-blown audits. Taxpayers should therefore expect letters requesting their TP documentations and other relevant documents from the FIRS.

Where the FIRS requests for TP documentation for specific years, taxpayers have only 21 days to respond to such requests after which administrative penalties will apply. It has therefore become crucial that taxpayers proactively prepare their TP documentations contemporaneously and collate all relevant supporting documents to ensure that they are readily available upon request.

4. Increased TP Audits and Disputes
Due to the Government's focus on increasing tax revenue coupled with the significant increase in taxpayers' TP disclosures, it is expected that there may be a spike in the number of TP audits going forward. Specifically, with the FIRS' access to information to be gained from taxpayers' submission and automatic exchange of CbCRs as well as the increased TP returns since the December 2018 deadline, the FIRS will have more information at its disposal to efficiently carry out TP risk assessments of taxpayers and identify more for audit. Where it can be established that the RPTs of a taxpayer under audit were potentially mispriced, the FIRS may seek to assess the taxpayer to additional taxes.

Considering the highly contentious nature of the application of the Arm's Length Principle (ALP) there is the risk that TP disputes will increase, especially where taxpayers and the tax authorities have divergent views on TP issues. Moreover, the TP Regulations introduced various seemingly controversial changes that taxpayers may perceive as inconsistent with the ALP and as having adverse impact on their businesses. For example, taxpayers may query the arm's length nature of the limitation of royalty deductions to 5% of EBITDA.

5. Adoption of Dispute Resolution Mechanisms
With the expected increase in TP disputes, it imperative for taxpayers to proactively evaluate their realistic dispute resolution options as part of their TP audit strategy. Some of the key TP dispute resolution options include the FIRS' internal Decision Review Panel, negotiations with the FIRS officials and litigation via the Tax Appeal Tribunal (TAT) at first instance.

Finally, should the FIRS provide further guidance on Advance Pricing Arrangements (APAs) this year as it has suggested, taxpayers may seek to proactively engage the FIRS to agree on appropriate prices for their RPTs to enable them achieve certainty.

Conclusion
Undoubtedly, from the perspective of the FIRS, the recent changes in the Nigerian TP regime have had the desired result of significantly improving the compliance levels of MNEs and domestic group companies alike. On the other hand, from the perspective of the taxpayers, the TP specific penalty regime and increased transparency of the financial information and activities of MNEs mean that taxpayers should be proactive in ensuring that their RPTs are conducted in a manner consistent with the ALP. They should also continue to meet all their TP compliance requirements timely, and proactively compile a TP audit defence file made up of all relevant TP documentations and supporting documents to help mitigate their TP risks.

Contributor's Profile:

Joshua Bamfo is the Partner & Head of Transfer Pricing (TP) Services Practice at Andersen Tax in Nigeria. He has over 10 years' experience specializing in TP whiles working for Big 4 firms in USA, South Africa, Nigeria & Ghana.

Josh was a visiting Assistant Professor of Economics at the University of Delaware, USA prior to starting his career in TP with EY in Atlanta, USA in June 2007. Until recently, he was an Associate Director at KPMG in Nigeria.

Josh is an ardent speaker at TP workshops and seminars, such as, the BNA's Council for International Tax Education (CITE) TP seminar in Atlanta where he won the 2009 Top Star Speaker Award. He has also authored or co-authored about 10 TP articles in globally recognised tax journals.

His areas of expertise are in global and regional TP documentation for multi-national companies, TP planning, Intellectual Property (IP) Planning & Transfers, Cost Contribution Arrangements (CCAs), and Advanced Pricing Agreements (APAs). He has worked on a number of TP engagements in various industries including the Oil & Gas Industry, Consumer & Industrial Markets, Financial Services Industry and Telecommunication & Technology Industry. He has also worked extensively with Nigerian tax authorities in developing their TP capabilities and designing TP manuals.


Victoria Seriki is an Associate in the Transfer Pricing (TP) Group of Andersen Tax Nigeria. She is involved in TP Engagements covering TP Documentations, TP policies, as well as TP audit support for Multinational Enterprises (MNEs) and Domestic Companies.

She is a graduate of Accounting from the Lagos State University and the recipient of Sterling Bank's prize for overall best graduating student in the Faculty of Management Sciences in 2014. Victoria is also a member of the Institute of Chartered Accountants of Nigeria (ICAN).

LEVERAGING EMERGING TECHNOLOGIES FOR SUSTAINABLE DEVELOPMENT

By **Rudi Matjokana,** Managing Executive, Vodacom Business Public Enterprise

Traditional businesses are transforming into digital businesses at an exceedingly rapid pace, as a result of the wave of disruption that has swept across the industry. That is why it's vital for us to ensure that digital solutions are at the core of the business, enabling us to leverage on emerging technologies for sustainable development.

Our networked society is changing the way we live, as the impact and implications of the digital revolution become more evident with each passing hour. The 2030 Agenda for Sustainable Development recognises the great potential for global connectivity to spur human progress and challenges us to ensure universal and affordable internet for all.

Sustainable development through technology Vodacom Group, last year, launched Africa's first commercial 5G service. This is "Africa's first standards-based, commercial 5G service", which is being used in Lesotho. The 5G service uses the 3.5GHz spectrum to deliver fixed-wireless access to two enterprise customers in the country. The immediate benefit of 5G technology, for Vodacom subscribers in Lesotho, includes the quicker deployment of broadband services with fibre-like speeds.

We deployed the same standards-based 5G technology in South Africa, with speeds of more than 700Mbit/s and latencies of less than 10ms. This will exceed 1Gbit/s as new software versions and devices become available. However, until the 4.5GHz spectrum becomes available to Vodacom South Africa, this network will not be available to its customers.

With early access to this technology, entrepreneurs, industry shapers and government will in future be able to work with Vodacom to develop and incubate innovative applications to power digital transformation in Lesotho.

What we've accomplished in Lesotho is an example of what can be achieved in Africa, should the requisite spectrum also be made available.

More needs to be done. We need to expand 4G coverage and keep pace with an increase of more than 45% in sustained data traffic demand. Both of these come at a cost and we have invested R32.7 billion over the past four years.

However, a lack of access to spectrum is hampering our ability to drive down infrastructure costs and in turn, enable us to pass savings to the consumer.

AI & Big Data analysis
We realise the importance of Artificial Intelligence and have implemented it in our call centres, which service over 39 million customers and require a lot of time to tend to customer queries, in addition to trying to identify who is calling, and why they are calling. By implementing A.I, which offers predictive analytics, call centres are able to identify why customers are calling us, and are then able to solve their problems before they even call.

We need to be able to identify our customers through voice recognition and anticipate why they are calling the moment we pick up their voice, utilising machine learning.

Driverless car technology is another key area of focus for us. However, due to the fact that a driverless car cannot operate without sufficient network connectivity, it's up to us to create sustainable partnerships between vehicle manufacturers and mobile network operators, in order facilitate the rollout of this technology.

The Internet of Things
Our prime example of a transformation technology is Connected Farmer, the result of an estimated combined investment of R21 million over three years. The cloud-based web and mobile software solution, which was launched by Vodacom Business, has connected thousands of smallholder farmers to the agriculture value chain.

This small business model has achieved its purpose of turning smallholder farmers into a sustainable realistic and executable food manufacturers and retail businesses, increasing the number of smallholder subsistence farmers in commercial agriculture value chains within South Africa.
We're also working with various municipalities to facilitate the rollout of smart metering projects. We are working with the Department of Health to provide an IoT system that will act as a solution for replenishing stock within hospitals. By partnering with financial services companies, we have been able to create working payments and ordering systems.

Virtual Reality
Vodacom Business has recently introduced Virtual Teacher technology, in partnership with the Department of Education to address some of the challenges facing our education system, particularly in rural and underperforming schools.

The solution is about bringing innovative technology to those who need it most in order to improve learning outcomes for all education segments in South Africa. The future of the country's education system is digital and we must embrace the opportunities this offers to leapfrog infrastructure backlogs and legacy issues in our schools.

Virtual Teacher is a new interactive technology platform that allows an individual teacher or lecturer to deliver lessons in real-time to multiple remote classrooms or locations simultaneously. Through a range of smart devices, learners can join classes from anywhere and at any time. For the first time in South Africa, the technology can be accessed through any personal device.

For example, in a bid to improve the matric pass rate in the Eastern Cape, the Department of Education is using the Virtual Teacher platform to provide extra classes to students at selected districts in the province. Lessons are delivered remotely by some of the country's best teachers, with emphasis on mathematics, science and accounting. Students from various locations are transported to teaching sites in the Eastern Cape, including Mdantsane, Maluti, Lusikisiki and Mt Frere.

Sustainable Development
When it comes to sustainable development, we must ensure that the Fourth Industrial Revolution wave is embraced by South African companies and that nobody is left behind.

ICTs can overcome bottlenecks to progress through sustainable development gains and accelerated technological practices. ICTs are increasingly facilitating efforts to prevent and recover from setbacks that disproportionally affect marginalised and poor populations.

For instance, during disease outbreaks, big data from mobile phones can help track the movement of people, helping to prevent, predict and prepare for the spread of deadly diseases, as was the case with the Ebola crisis in West Africa. Mobile phones were also vital in ensuring timely, accurate payments to those who provided health and other critical services on the frontlines of the Ebola response, enabling them to meet their own needs and provide continuous care.

Mobile devices have the potential to enable real-time tracking and guide recovery measures in crisis-affected countries, to ensure crisis response interventions are more effective. After Typhoon Haiyan in the Philippines, UNDP partnered with private telecom companies to implement emergency cash for work schemes for debris management in poor communities. Participants paid through mobile phones and continued to benefit from mobile banking although the scheme ended.

Governments can foster the use of digital payments and mobile money in ways that expand financial services to poor and marginalised populations, helping them build assets and prepare for the weather and financial shocks. In Africa, 12 percent of adults now have mobile bank accounts, compared with just 2 percent globally, in large part due to the innovation of M-Pesa in Kenya.

In China, digital payments through social networks and e-commerce platforms are bringing financial services to millions, helping low-income populations invest, save and build credit scores. As of September 2016, China's Alipay platform had provided financing to over 4.11 million small and micro enterprises and entrepreneurs.

Globally, decision-makers should work together to identify technologies vital to SDG achievement and take steps to remove obstacles to their adoption. More work is needed, including in research and development, to unleash the potential of big data. Acceptable standards and agreed privacy safeguards are needed to overcome the reluctance to share data and fully tap the vast potential to improve policies, get results, and build the capacity of stakeholders to use and apply data and information to poverty-related interventions.

As a company, Vodacom is transforming into a digital business. We're also looking at what the Fourth Industrial Revolution means for our customers. We're looking at what access to broadband and internet access means to the base of the pyramid customers and how we can make sure that they have sufficient digital literacy so that they know how to use the internet and that they are not excluded due to an inability to use it.

The majority of people in South Africa access the internet through their smartphones, so we have to make sure that people have smartphones, that they know how to use them and ensure that there is sufficient education around our products and services that are meant for people who live in rural South Africa.

The 2030 Agenda for Sustainable Development aims to chart a path of action towards achieving the 17 universal and mutually reinforcing Sustainable Development Goals (SDGs). Achieving those goals will require us to implement new development strategies and innovative resource mobilisation as well as the creative use of both existing and emerging technologies, as highlighted by the 2018 World Economic and Social Survey 2018.

"Traditional businesses are transforming into digital businesses at an exceedingly rapid pace, as a result of the wave of disruption that has swept across the industry. That is why it's vital for us to ensure that digital solutions are at the core of the business, enabling us to leverage on emerging technologies for sustainable development."

Contributor's Profile:

Rudi Matjokana is the Vodacom Business managing executive for public enterprise, with over 20 years' experience in the public sector, business development, sales and corporate affairs fields. He re-joined Vodacom Business from Microsoft, where he led his team in driving digital transformation in the public sector and held various positions, including sales director, executive and corporate and regulatory affairs lead. At Vodacom, Rudi is responsible for driving strategic direction, partnerships, business development and the sustained growth of the Vodacom Business Enterprise Unit.

WHAT ANALYSTS ARE SAYING

ABOUT

AFRICA'S ECONOMIC OUTLOOK AND FINANCIAL STABILITY

AFRICA: External and domestic risks to persist in 2019. The World Bank projected economic growth in Sub-Saharan Africa (SSA) to accelerate from 2.3% in 2018 to 2.8% in 2019, supported by exports and private consumption, as well as due to a rebound in agricultural activity, a rise in mining production, and steady growth in the services sector in some SSA economies. But it noted that the growth projection for 2019 is slightly lower than the previous forecast of 3.3% for 2019, due to slower economic growth in Nigeria and Angola amid challenges in the oil sector, as well as subdued investments in South Africa. It noted that the region's external environment remains challenging, given the slowdown in global growth and tighter financing conditions.

ANGOLA: Economic activity to improve in 2019. Barclays Capital projected Angola's economic activity to recover in 2019, due to the stabilization in oil production and an easing in the government's sharp fiscal consolidation measures of 2018. It forecast real GDP to grow by 1.5% in 2019 compared to contractions of 2.6% in 2018 and of 2.5% in 2017, supported by two projects by Total and ENI that would help stabilize oil output at around 1.5 million of barrels per day. But it noted that Angola's hydrocarbon sector requires further investment to boost oil production in the medium term and projected real GDP growth at 2.9% in 2020.

ALGERIA: Growth to remain subdued in near term. The Institute of International Finance projected Algeria's real GDP growth to slightly decelerate from 1.7% in 2018 to 1.6% in 2019, as it expected the hydrocarbon sector to contract by 0.5% and activity in the non-hydrocarbon sector to expand by 2% this year. It anticipated delays in bringing new gas capacity online, underinvestment in mature fields and uncertainties about reforming the hydrocarbon law, to constrain hydrocarbon output and, in turn, overall economic growth in the near term.

EGYPT: Sovereign ratings upgraded; outlook 'stable'. Moody's Investors Service upgraded Egypt's long-term foreign and local-currency issuer ratings from 'B3' to 'B2', which is five notches below investment grade. It also revised the outlook from 'positive' to 'stable'. It also upgraded the country's foreign-currency senior unsecured ratings from 'B3' to 'B2', its foreign-currency bond ceiling from 'B2' to 'B1', its foreign-currency deposit ceiling from 'Caa1' to 'B3', as well as its local-currency bond and deposit ceilings from 'Ba2' to 'Ba1'. It attributed its rating action to its expectations that ongoing economic and fiscal reforms.

MOROCCO: Agencies affirm sovereign ratings. S&P Global Ratings affirmed Morocco's long-term foreign and local currency sovereign credit ratings at 'BBB-', with a 'negative' outlook. It indicated that the ratings are mainly supported by a moderate public debt level and manageable current account deficit but are constrained by lower-than-peers GDP per capita, high reliance on agriculture and slow fiscal consolidation. It expected real GDP growth at 3.1% in 2019 due to the economic slowdown in Europe, the country's largest trade partner, as well as to weaker growth in agricultural output. In parallel, Fitch Ratings affirmed Morocco's long-term foreign-currency Issuer Default Rating at 'BBB-', with a 'stable' outlook

NIGERIA: Addressing economic challenges is key to unlock growth prospects. Barclays Capital projected Nigeria's real GDP growth to increase from 1.9% in 2018 to 2.5% in 2019, as the impact of higher elections-related spending in the fourth quarter of 2018 would carry over into 2019. It anticipated that President Buhari's second term will be marked by almost the same economic policies that characterized his first term. As such, it considered that addressing economic challenges should be a top priority for the president's second term in order to raise economic growth.

TUNISIA: Economic activity constrained by economic and political uncertainties. The International Monetary Fund indicated that the Tunisian economy is experiencing a modest recovery in 2019. It noted that authorities have continued to implement reforms, but it considered that the country's elevated macroeconomic vulnerabilities threaten economic stability. It forecast real GDP growth at 2.7% in 2019 relative to 2.6% in 2018, supported by the agricultural and services sectors. Still, it noted that economic activity is constrained by elevated political and economic uncertainties, as well as by structural bottlenecks.

2019 | COMMODITY PROSPECTS

CRUDE OIL, BASE AND PRECIOUS METALS

Oil prices reach highest level since October 2018 on expiring Iranian waivers. ICE Brent crude oil front-month prices reached $74.6 per barrel (p/b) on April 24, 2019, their highest level since October 2018, before settling at $72.2 p/b on May 1. Further, oil prices averaged $71.6 p/b in April 2019, up by 6.9% from an average of $67 p/b in the previous month and were nearly unchanged from an average of $71.8 p/b in April 2018. The recent rise in oil prices was driven by the U.S. announcement on April 22 that it will not extend the waivers that allowed eight countries to continue to purchase Iranian oil. In fact, oil prices grew by about $2 p/b on April 22 following the U.S. announcement.

Nickel prices up 21% amid recovering demand and tight supply. The LME cash price of nickel reached $12,868 per metric ton on April 16, 2019, constituting an increase of 21.3% from $10,605 per ton at the end of 2018. The rise in nickel prices was mainly driven by concerns over supply tightness as LME-registered nickel inventories remain around their lowest levels since 2013, as well as by expectations of a supply deficit in the nickel market this year. Further, the metal's price increased due to a recovery in nickel demand amid a rebound in Chinese stainless-steel output, given that nickel is used in the production of stainless steel.

Zinc prices decrease due to recovering supply. LME zinc cash prices reached $2,948 per ton on April 10, 2019, up by 17% from $2,519 per ton at the end of 2018. The rise in the metal's price is mainly due to a significant tightening in the supply of zinc, as inventories dropped last month to their lowest level since October 1991. Also, prices were supported by easing U.S.-China trade tensions amid progress in the trade talks between the two countries. However, zinc prices decreased by 2.6% from $3,000 per ton on April 3, 2019, their highest level in nine months, due to concerns about a possible surge in refined zinc supply as smelters raised production amid attractive profit margins.

Copper prices up 8% in first four months of 2019. LME copper cash prices reached $6,427 per metric ton on April 30, 2019, constituting an increase of 8% from $5,949 per ton at the end of 2018. A weaker dollar, progress in the trade talks between the United States and China, expectations of recovering demand for copper in China, as well as mine disruptions and subsided concerns about weaker global growth, have all supported the surge in copper prices. However, copper prices dropped by 3.1% to $6,225.3 per ton on May 1, 2019, their lowest level in two months, as investors exited their positions due to higher prices and recovering LME inventories.

Gold prices to increase by 4% to $1,320 per ounce in 2019. Gold prices averaged $1,300 per troy ounce in the first four months of 2019 compared to an average of $1,269 an ounce in Prices were supported so far in 2019 by expectations of weaker global economic activity and lower U.S. interest rates. Further, gold prices are forecast to further increase during the remainder of 2019 due to expectations of declining U.S. Treasury yields, as well as to higher demand for the metal. In fact, global demand for gold is expected to reach 4,370 tons in 2019, which would constitute its highest level since 2013, mainly supported by a 3% growth in global jewelry consumption this year.

Silver prices down 8% in 2018 amid trade dispute between the U.S. and China. Silver prices averaged $15.7 per troy ounce in 2018, down by 7.8% from 2017, and traded at a high of $17.5 an ounce and a low of $14 per ounce last year. The Silver Institute attributed the decline in prices in 2018 to the trade dispute between the U.S. and China. It pointed out that, contrary to expectations, investors perceived the US dollar as the ultimate safe-haven asset, which led to the latter's strengthening and to weaker silver and gold prices.


AN ALTERNATIVE ADVANTAGE
Ethos has an unparalleled, 34-year track record of sustainable, superior investment returns.
Specialising in private equity and credit investments, Ethos was instrumental in establishing the asset class in the sub-Saharan region, with a particular focus on the South African market.
The firm's unique understanding of these regions sets it apart as a reliable and committed investment partner across economic and political cycles.
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