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Africa Special Report: The art of conversation

by Kit Chellel

The rewards of doing business in Africa far outweigh the challenges, especially for investors in the ITC market.

Doing business in Africa comes with certain challenges. For one, the journey to work can be a nightmare, as Simmons & Simmons telecoms partner Alex Shepherd found out during a trip to Nigeria.

Shepherd, then a Linklaters associate, arrived at Lagos airport with 14 colleagues to find that six cars full of armed men had been hired to take them to the hotel.

“People have the impression you’ll bring large sums of money with you,” he recalls. “So you’re at risk between the airport and the hotel. The second time I went on my own and still travelled to the hotel in a six-car armed motorcade. I’ve never been more terrified.”

On the same trip, he saw local lawyers use their laptops to provide light during one of the daily power failures in the city.

But in spite of, or perhaps because of, the risks there are also huge opportunities—and nowhere more so than in the field of information and communications technology (ICT).

Africa lags behind the rest of the world in terms of its IT and phone infrastructure. According to the 2009 report by the International Telecommunications Union, all of the 10 countries at the bottom of the rankings for ICT development are African.

Even in the highest-placed African country, South Africa, only 4.8 per cent of households have access to the internet.

And yet the appetite for communications technology is enormous. “Africa is huge for us,” says DLA Piper head of technology, media and communications for emerging markets Matt Glynn. “Africa has enjoyed 10 percent year-on-year growth for at least the last seven to 10 years, and it’s going to continue running strongly.

“Whether or not there’s a sub-prime crisis in the US has little bearing on whether people need to use their phones over here.”

A century after European colonial powers marched into the continent, phone operators and internet providers are taking part in a modern-day scramble for Africa and its rapidly expanding telecoms market.

Vodafone this month appointed African businessman Sam Jonah as a non-executive director, signalling its intentions to expand in the region. In October last year the company took control of South Africa's leading mobile operator Vodacom in a deal worth £1.4bn.

Local firm Webber Wentzel acted for Vodafone, which gained interests in the Democratic Republic of Congo, Mozambique and Tanzania through the transaction.

UK law firms are also benefiting from the flow of investment into the continent.

Simmons & Simmons has built links with the largest pan-African operator MTN. In September 2008, the firm advised MTN on the acquisition of fixed-line operator Arobase Telecom and internet service provider Afnet in the Ivory Coast.

DLA Piper's Glynn says 70 per cent of the firm's emerging markets telecoms revenue now comes from Africa.

He points to the arrival of wealthy Middle Eastern investors as a key development, adding: "The more exciting development is the petro-dollar, which is charging into the continent."

The opportunities are so great that investors outside the telecoms sector are also moving in to take advantage. "Africa is one of the first regions where non-operator organisations have acquired licences," notes Glynn.

In 2007, Mubadala, an arm of the Abu Dhabi sovereign wealth fund, bought a licence to operate mobile, fixed line and broadband services in Nigeria for $400m (£282.03m).

West Africa has a population of 140 million and yet only 20 million or so have access to mobile phones.

Mubadala surprised many, but not Glynn, who says that Nigeria is the "pearl of Africa" when it comes to ICT potential.

Mubadala has since entered into a partnership with Middle Eastern telecoms giant Etisalat, now one of the biggest players in the continent.

The flow of money from the Gulf into Africa means that firms with a presence in Dubai and Abu Dhabi—such as Denton Wilde Sapte, DLA Piper and Simmons—are well-placed to win instructions.

But Glynn says that having a presence on the ground in Africa is also important. "The reality is you've got to have the network to be able to support it. You can't just be an international firm that rides in," he asserts.

DLA Piper has the largest network of any international firm in Africa, with associated firms in South Africa (DLA Cliffe Dekker Hofmeyr) as well as in Egypt, Ghana, Tanzania and Zambia. It has yet to open integrated offices in Africa, but joint CEO Nigel Knowles admits the region is on his radar.

Gide Loyrette Nouel has also been making strides in French-speaking parts of the continent, with offices in Tunisia and Algeria and an association in Morocco, while Simmons lawyers based in Paris are targeting former French colonies.
Another challenge for lawyers operating in Africa is the regulatory environment, which is not as welcoming to investors those in Europe and the US.

Combined with the ever-present spectre of corruption it is little wonder that so few firms have ventured into the market.

But Shepherd believes these obstacles can be overcome, pointing out that with little regulatory frameworks in many jurisdictions, lawyers often find themselves advising on what international best practice is rather than on the finer points of local law.

“If you take the UK, the Communications Act is 590 pages long. The Nigerian Telecommunications Act is 13 pages long,” he says. “The reality is that you can piece it together relatively quickly.”

The next wave of investment in Africa will be centred around the internet. There are currently at least 10 undersea cables being laid around the continent, says Glynn, leading to billions of dollars worth of investment and some major mandates for international law firms.

These include the Seacom (see box), EASSy and Teams projects in east Africa; Infraco and Uhurunet in south and west Africa; and Tunisie Telecom’s scheme in the north.

They will bring a more reliable phone network and faster internet connection, with demand for the internet in many countries far exceeding expectations.

The private equity venture behind the Seacom cable, for example, has secured business worth $350m (£246.78m) ahead of completion in June, recouping around half its original investment.

For the intrepid communications lawyers, there will continue to be opportunities in Africa, where the march towards modernisation shows no signs of slowing despite the global recession.

That’s if they’re willing to brave the power cuts, armed guards and an obscure regulatory framework.

“You need to be there to do the job,” says Shepherd. “But not many lawyers are willing to do that.”

Seacom: Laying the foundations

The Seacom undersea cable will connect Kenya, Tanzania, Mozambique and other countries in south and east Africa with the rest of the world.

As well as increasing telephone and internet capability, the cable will have sufficient capacity to accommodate high-definition TV in time for the World Cup in 2010.

Hunton & Williams associate Bainbridge DeWeese worked on the project on behalf of Mauritius-based private equity venture Seacom, which has spent $700m (£493.55m) laying the high-speed cable.

“This was easily the most challenging transaction with which I have ever been involved,” DeWesse says. “In addition to the vast landscape of jurisdictional issues, we were basically closing two massive transactions simultaneously—the debt financing on a project finance basis and the equity financing.

“The lenders were saying they wouldn’t close until the equity side was completed, and the equity investors were saying they wouldn’t close until the debt side was completed, so we had to do both together.

“In addition, we were up against very tight timelines due to the terms of Seacom’s construction contract with Tyco Telecommunications, the contractor actually building the cable.

“Tyco had several other projects lined up, and was telling Seacom that if it couldn’t make the next payment due under the contract by the stated due date, then Seacom would lose its place in line.

“In the final weeks leading up to closing, we had as many as 14 lawyers working around the clock at various times, and that’s just on the Hunton side.

“The sheer volume of documentation—he binders take up almost two feet of shelf space in my office—gives you an idea of how challenging the closing was.”

Advisers:

Seacom: Hunton & Williams, led by partner John Beardsworth, worked with Benoit Chambers in Mauritius, Seth Dua in India, Edward Nathan Sonnenbergs in South Africa, Anjarwalla & Associates in Kenya, and Ringo & Associates in Tanzania.

Lenders (South African bank Nedbank Capital and Investec): Herbert Smith worked with Bell Dewar & Hall in South Africa and Uteem Chambers in Mauritius.

Equity investors (including Industrial Promotion Services, Venfin and Herakles Telecom: White & Case in London, DLA Cliffe Dekker Hofmeyr in South Africa.