Africa – Continent of Opportunity or Complexity?

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agenda

agenda

- case study
- why invest in Africa?
- challenges of doing business in Africa
- regulatory requirements
- local tax considerations
- consequences for investors
  - Swiss implications
  - US considerations
- addressing risks

case study

case study

Your client is a

- Swiss based family. Beneficiaries are resident in Switzerland and the US
- The family wealth is housed in a tax-compliant Liechtenstein Foundation. The Foundation owns shares in underlying a company registered and tax resident in Switzerland
- The family wants to invest in the hospitality industry in Africa and has identified South Africa where they want to set up hotels in game reserves
- You have been asked to advise on the commercial risks and tax considerations of the proposed venture

why invest in Africa?

who is to blame?

- colonialism = fragmentation
- post colonial period = reinforcement of initial carving up
- Yuval Noah Harari (Homo Deus - A Brief History of Tomorrow [Penguin, 2017]):-
  - "As bureaucracies accumulate power they become immune to their own mistakes. Instead of changing their stories to fit reality, they can change reality to fit their stories. In the end external reality matches their bureaucratic fantasies, but only because they forced

who is to blame? (cont.)

- reality to do so. For example, the borders of many African countries disregard river lines, mountain ranges and trade routes, split historical and economic zones unnecessarily, and ignore local ethnic and religious identities. The same tribe may find itself riven among several countries, whereas one country may incorporate splinters of numerous rival clans. Such problems bedevil countries all over the world, but in Africa they are particularly acute because **modern African borders don't reflect the wishes and struggles of local nations. They were drawn by European bureaucrats who never set foot in Africa.**"

who is to blame? (cont.)

- imperialist fragmentation has been reinforced by more recent behaviour of African governments and nations
- fragmentation intensified as a result of nationalism, regionalism and short-term opportunism
- opportunism mainly external but also internal

African jurisdictions	Merger control (anti-trust/competition law)	Company legislation and regulation	Securities takeover regulations (takeover regulation panel, etc.)	Established capital market (recognised stock exchange, etc.)	Banking sector regulation (Banks Act, central bank, banking regulator, etc.)	Insurance regulation (long and short term, financial services authority)	Other financial services regulations (e.g. asset and/or fund management and financial services authority)	Telecoms regulations (mobile network licences, etc.)	Other sector regulations (e.g. gaming, fishing, transport)
Algeria	●		●	●			●		●
Angola	●	●			●	●		●	●
Benin	●	●	●		●	●	●		●
Botswana	●	●	●	●	●	●	●	●	●
Burkina Faso	●	●	●		●		●		●
Burundi	●	●	●		●		●		●
Cabo Verde	●	●	●	●	●	●	●		●
Cameroon	●	●	●	●	●	●	●	●	●
Central African Republic	●	●	●		●		●	●	●
Chad	●	●	●		●		●		●
Comoros	●	●	●						●
Cote d'Ivoire	●	●		●	●	●			●
Democratic Republic of the Congo	●	●	●		●			●	●
Djibouti	●		●	●		●		●	
Egypt	●	●	●	●	●	●		●	●
Equatorial Guinea	●		●	●			●	●	●
Eritrea	●		●	●	●	●	●	●	●
Ethiopia	●	●	●		●	●	●	●	●
Gabon	●	●	●	●	●	●	●		●
Gambia	●	●	●		●	●	●	●	●
Ghana	●	●	●	●	●	●	●	●	●
Guinea	●	●	●	●		●	●	●	●
Guinea-Bissau	●	●	●		●	●	●	●	
Kenya	●	●	●	●	●	●	●	●	●
Lesotho		●	●	●	●	●		●	●
Liberia	●	●	●	●	●	●		●	
Libya	●	●	●	●	●		●	●	
Madagascar	●	●	●		●	●		●	
Malawi	●			●	●			●	●
Mali	●	●			●	●	●	●	
Mauritania		●			●			●	
Mauritius	●	●	●	●	●	●	●	●	●
Morocco	●	●	●	●	●	●		●	●
Mozambique	●	●		●	●	●		●	●
Namibia	●	●		●	●	●		●	●
Niger	●	●			●	●		●	
Nigeria	●	●	●	●	●	●	●	●	●
Republic of the Congo	●	●			●	●		●	
Rwanda	●	●		●	●	●	●	●	●
São Tomé and Príncipe		●	●	●			●		
Senegal	●	●	●		●	●	●	●	●
Seychelles	●	●		●	●	●	●	●	●
Sierra Leone	●	●	●		●	●	●	●	
Somalia			●	●			●	●	●
South Africa	●	●	●	●	●	●	●	●	●
South Sudan	●	●	●		●		●	●	●
Sudan	●	●	●	●	●	●		●	●
Swaziland	●	●	●	●	●	●	●	●	●
Tanzania	●	●	●	●	●	●	●	●	●
Togo	●	●	●		●	●	●	●	●
Tunisia	●	●	●	●	●	●	●	●	
Uganda	●	●	●	●	●	●	●	●	●
Western Sahara		●	●	●	●	●	●	●	●
Zambia	●	●	●	●	●	●		●	●
Zimbabwe	●	●	●	●	●	●		●	●

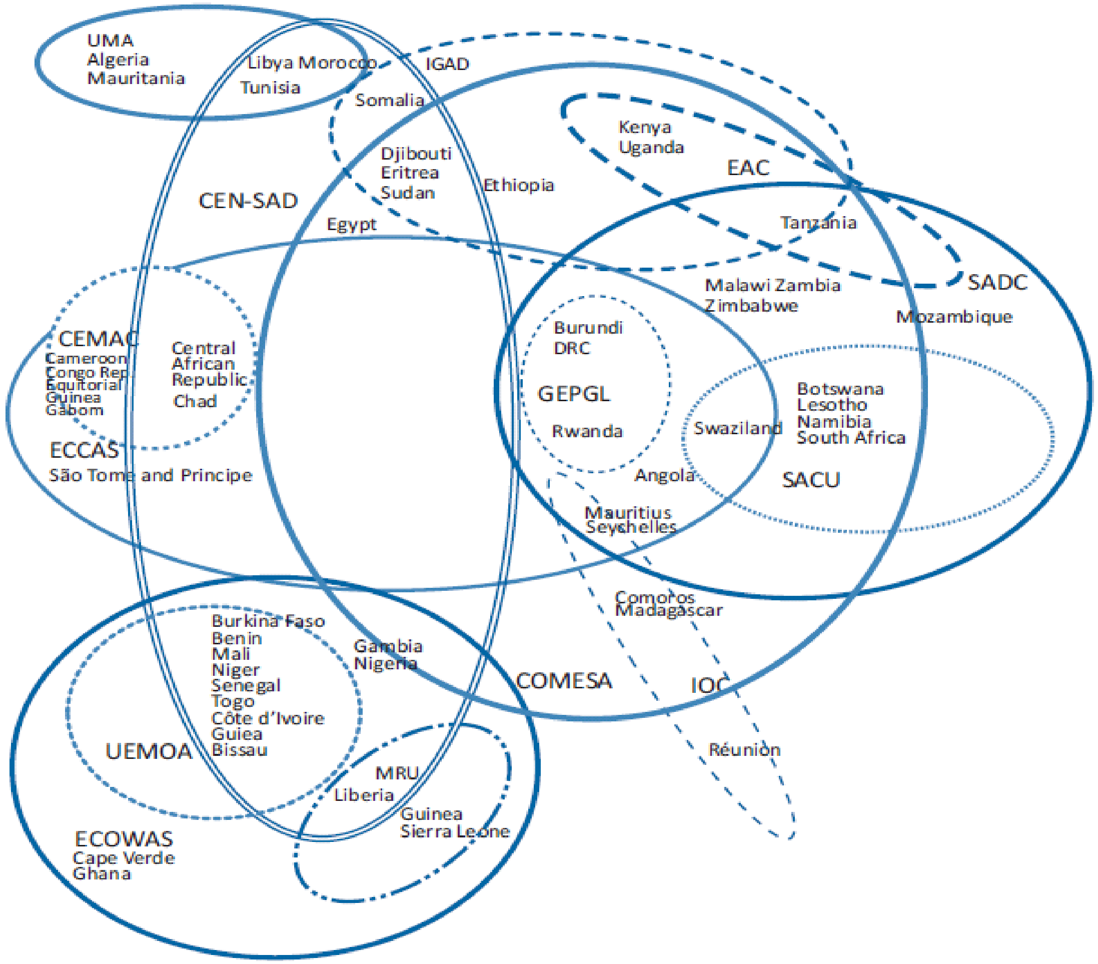
Less regulated environment	Between zero and three of the abovementioned categories met
Moderately regulated environment	Between four and six of the abovementioned categories met
Highly regulated environment	Between seven and nine of the abovementioned categories met

Disclaimer: This schedule reflects company law and related legislation in the various African countries as at May 2017. This legislation is subject to regular change. Entities conducting business in Africa should therefore contact ENSafrica for advice before proceeding.

the African Spaghetti (Dr Iraj Abedian)

Africa’s Regional Integration Policy Needs Streamlining…..

Regional trade agreements in Africa



Source: Economic Commission for Africa

Pan-African
INVESTMENT & RESEARCH SERVICES

Africa in 82 years

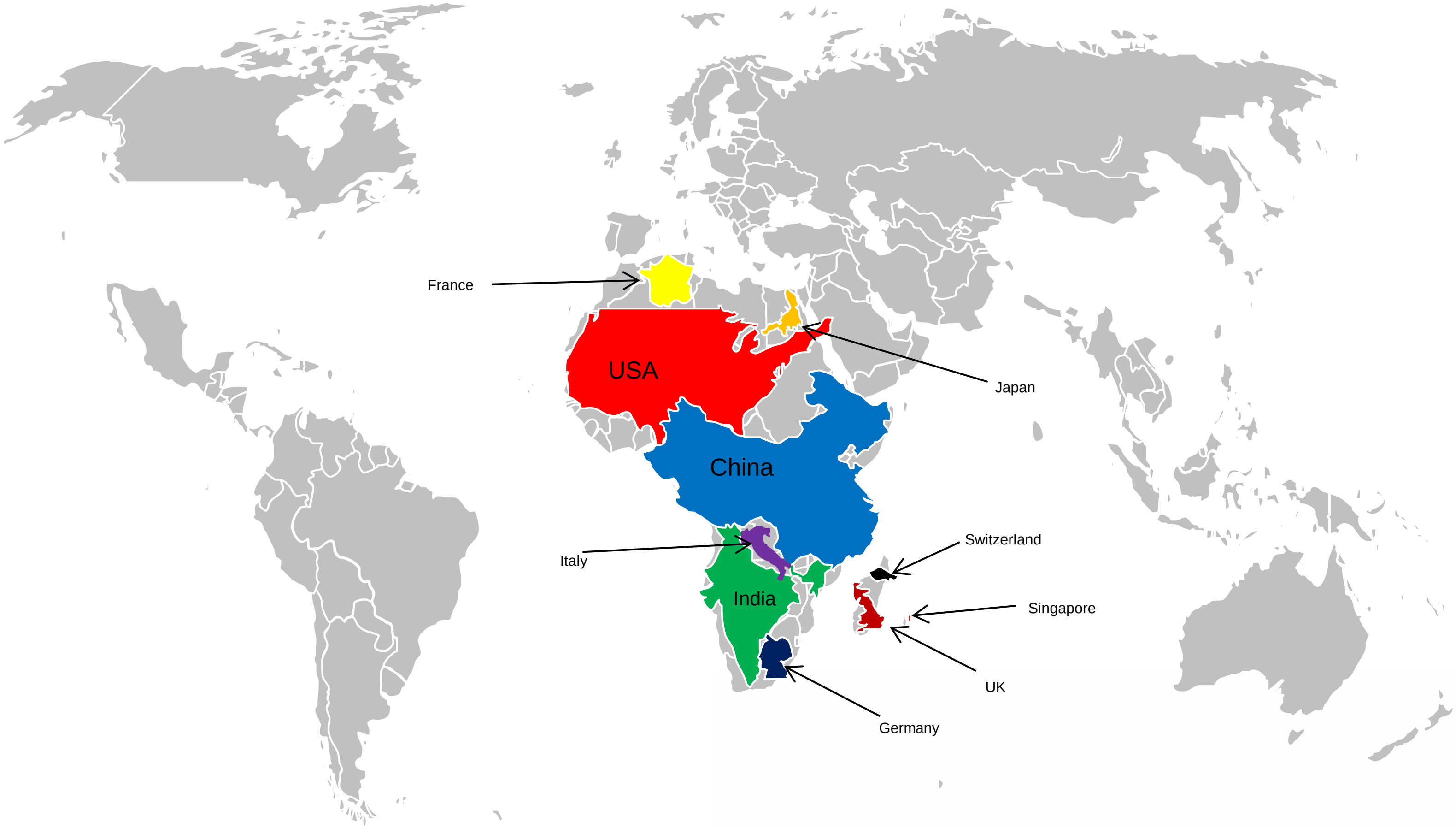
Africa on the Rise....

Most populous countries by 2100

- India 1.5bn (projected)
- China 1bn
- **Nigeria 794m**
- US 447m
- **DR Congo 379m**
- Pakistan 352m
- Indonesia 306m
- **Tanzania 304m**
- **Ethiopia 250m**
- **Uganda 214m**

United Nations Department of Economic and Social Affairs/Population Division. *World Population Prospects: The 2017 Revision, Key Findings and Advance Tables*.

world map


France
USA
Japan
China
Italy
India
Switzerland
Singapore
UK
Germany

why invest in Africa?

- Africa needs 'connectors'
  - infrastructure projects in roads, rail, ports, airports, power, IT required for growth
- African trade barriers are falling, potential in intra-African trade
  - free trade between and within the different economic blocs to boost the regional economy
- customers are changing
  - growth of the middle class results in improved buying power
- digital transformation
  - significant mobile adoption - cross sectoral opportunities
  - innovative ways of doing business in the region
- Africa is diversifying
  - economies are moving beyond commodities to agriculture, tourism and other

Source: World Economic Forum

sub-Saharan Africa economic development

- capital investment for infrastructure
  - in December 2017 the African Development Bank (AfDB) approved a USD100-million infrastructure loan to reduce the infrastructure funding gap in sub-Saharan Africa
  - in May 2017 the AfDB and the African Development Fund ADF signed a USD100-million loan to fund DBSA's infrastructure financing activity across Africa
- oil producing nations are poised for recovery as oil prices improve
  - at least nine countries have planned LNG project at different stages
  - Africa is the worlds greatest under-explored region

industry opportunities

hospitality: hotel chain development

- demand for world class accommodation on the continent had grown and hotel chains are working to meet this demand
- AccorHotels, Marriot, Hilton and Carlson Rezidor are some of the top chains with planned hotels in sub-Saharan Africa
- Kenya has the highest proportion of pipeline rooms under construction with 3 100 rooms expected between 2017 and 2022
- hotel pipeline growth slowed down in 2017 with a 12% growth compared to 46% in 2016 due to macro economic factors and commodity prices
- development often delayed due to lack of access to long term affordable financing and bureaucratic challenges

hospitality: hotel chain development (cont.)

hotel chain development pipelines in Africa: 2017 - 2021			
	Hotels	**Rooms**	**cumulative new rooms**
2017	100	14,421	14,421
2018	117	19,670	34,091
2019	87	17,295	51,386
2020	55	10,332	61,718
2021	20	3,671	65,389

scheduled vs actual hotel openings: 2014 - 2016			
	Scheduled	**Actual**	**Actualization**
2014	73	19	26%
2015	75	27	36%
2016	119	56	47%
Total	**267**	**102**	**38%**

Source: W Hospitality Group

retail infrastructure projects

country	project details	project value	project start date	project end date	project status
Ghana	Accra Mixed-Use Development Perennial Real Estate Holdings Ltd (PREH) (55%) and Shangri-La Asia Ltd (SLA)	USD90-million	1 July 2015	31 December 2021	• 55,003m² of office space, a 21,494m² shopping mall, parking and related facilities • October 2017: approval received from the Ghana Environmental Protection Agency
Ghana	Garden City Shopping Mall – Ashanti The Methodist Church Ghana (MCG), The Asanteman Council (TAC), and Retail and Realty Ltd (RRL)	USD130-million	1 July 2011	31 March 2020	• mixed-use complex on 5.6ha of land • Phase I: 20,000m² three-story shopping mall with a clinic, a pharmacy, a beauty shop, banks, restaurants and a cinema hall • Phase II: nine-story, 180-room hotel and a 2,500m² office complex • October 2017: execution phase

Source: World Market Intelligence

retail infrastructure projects (cont.)

country	project details	project value	project start date	project end date	project status
Mozambique	Maputo Business Tower Correios de Moçambique, E. P (CdM) in partnership with Green Point Investment Group (GPI)	USD110-million	1 April 2009	na	• 42-floor commercial tower, shopping centre, parking spaces and a helipad • October 2017: execution phase
Mozambique	Shopping Center Development – Nampula African Property Investimentos Lda	USD60-million	1 April 2016	na	• restaurants, fashion shops, banking related facilities and parking spaces • June 2017: property developer Atterbury completed the first phase of Pemba Shopping Mall, through a joint venture with TradeHold Africa • September 2017: execution phase.

Source: World Market Intelligence

retail infrastructure projects (cont.)

country	project details	project value	project start date	project end date	project status
Uganda	Entebbe International Airport Expansion Civil Aviation Authority	USD433-million	1 October 2011	31 December 2033	• new control tower, baggage and technical building, a runway-end safety area, taxiways, vehicle access control road to the airport, shopping mall, passenger check-in areas, aprons, and the relocation of oil tanks • November 2017: execution phase
Uganda	National Theatre Redevelopment - Central Region Government of Uganda (GoU), through Uganda National Cultural Center	USD100-million	1 January 2017	31 December 2020	• 36-story mega shopping mall, including restaurants, retail units, arcades, art galleries, bars, cinemas, and underground car parking lots • September 2017: planning phase

Source: World Market Intelligence

retail infrastructure projects (cont.)

country	project details	project value	project start date	project end date	project status
Zambia	Lusaka Society House Center Redevelopment National Pension Scheme Authority and Zambia National Building Society	USD100-million	1 January 2010	31 March 2018	• commercial building, including a 160 room four-star Hilton Garden Inn hotel, 12,000m^2 retail mall, 7,000m^2 A-grade offices, 1,100-car parking garage and other related facilities • December 2017: execution phase
Zambia	Warehouse and Shopping Facilities Development Program Actis	USD200-million	1 January 2016	30 June 2018	• warehouses and shopping facilities across Zambia, including shopping centres, retail units, distribution centres, warehouses, storage units, packaging units, administrative and parking facilities • September 2017: planning phase

Source: World Market Intelligence

oil and gas development

- high oil and gas opportunities in Ghana, Ivory Coast, Mozambique, Nigeria, South Africa and Tanzania
- domestic gas demand expected to increase significantly in Lagos, Johannesburg, Dar es-Salaam and Nairobi
- gas distribution lines are planned in order to establish domestic gas economies for most cities
- Ghana, South Africa and Ivory Coast are planning re-gasification import facilities to improve their power sectors
- Fairfax Africa Fund plans to build USD4-billion oil refinery in Ethiopia
- Dangote Oil Refinery expected to be operational in 2019 with 650 000 barrels produced daily

Source: ITE Oil & Gas

oil and gas development (cont.)

oil and gas projects				
Project	**Cost**	**timescale**	**location**	
Kenya crude oil pipeline	USD2.1-billion – USD5-billion	2017-2021	South Lokichar Basin to Port Lamu, Kenya	• Exploration work by Tullow in the Lokichar Basin uncovered 25 metres of net oil pay early in January 2017 • Kenya's true recoverable levels estimated at 750 million barrels of oil
Coral South FLNG Project - Mozambique	USD7-billion	2017-2021	Rovuma Basin, Mozambiqu e	• Coral South field, discovered in 2012, has 16 trillion cubic feet of gas still to be extracted • production expected to start in 2021, with peak capacity expected to top out at 3.2 million tons a year • project work currently concentrated on the necessary FEED requirements
South Africa offshore exploration	Varies	2012 – onwards	Offshore South Africa	• offshore South Africa might contain as much as 314 million barrels of oil • South Africa also has s much as 390 trillion cubic feet of recoverable shale gas

Source: ITE Oil & Gas

challenges of doing business in Africa

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overview of Africa

country risk ratings*

Country	Risk rating /5	Risk category	Ease of doing business /183
Angola	**3.51**	**High**	**172**
Botswana	**2.37**	**Moderate**	**59**
Ghana	**2.65**	**Medium**	**64**
Kenya	**3.50**	**Significant**	**121**
Malawi	**3.25**	**Significant**	**157**
Mozambique	**3.18**	**Significant**	**146**
Mauritius	**2.05**	**Moderate**	**19**
Namibia	**2.49**	**Medium**	**87**
Nigeria	**3.94**	**High**	**131**

**As per Global Insight, 27 June 2013. Rating political, economic, tax, legal, operational & security risk.*
World Bank Ease of doing business Guide, June 2012.

overview of Africa

country risk ratings* (continued)

Country	Risk rating / 5	Risk category	Ease of doing business /183
South Africa	**2.54**	**Moderate**	**39**
Tanzania	**3.30**	**Significant**	**134**
Uganda	**3.45**	**Significant**	**120**
Zambia	**3.00**	**Medium**	**94**
Zimbabwe	**4.37**	**Very high**	**172**

**As per Global Insight, 27 June 2013. Rating political, economic, tax, legal, operational & security risks.*
World Bank Ease of doing business Guide, June 2012.

overview of Africa

general challenges and risks

- Bureaucracy & red tape
- Victimisation of large foreign companies
- Language & culture
- Corruption
- Labour issues
  - Appointing & retaining competent staff,
  - Work permit quotas
- Exchange control
- Tax uncertainty
  - unclear legislation & interpretation
  - practical application
  - local advisors

challenges in Africa

- poor infrastructure
  - road and rail infrastructure in poor condition
  - theft and vandalism
- government interference increases contract risks
  - lack of transparency and accountability in legislative process and legal frameworks
- power shortages
  - underdeveloped energy grids result in power outages, demand exceeds supply
- corporate governance standards
  - standards vary; companies often unable to adhere to international codes like Basel III and King III
- political uncertainty
  - political conflict results in investor uncertainty
  - corruption linked to politics affects the business environment
- exchange control restrictions and currency shortages
  - repatriation of funds often problematic

comparative risk ratings

Global Competitive index (2017-2018)

Country	Risk rating /137
Angola	-
Botswana	63
Ghana	111
Kenya	91
Equatorial Guinea	-
Mozambique	136
Namibia	90
South Africa	**61**
Tanzania	113
Uganda	114
Zambia	118
Zimbabwe	124

World Bank ease of doing business index (2018)

Country	Risk rating /190
Angola	175
Botswana	81
Ghana	120
Kenya	80
Equatorial Guinea	173
Mozambique	138
Namibia	106
South Africa	**82**
Tanzania	137
Uganda	122
Zambia	85
Zimbabwe	159

Corruption Perception index (2016)

Country	Risk rating /176
Angola	164
Botswana	35
Ghana	70
Kenya	145
Equatorial Guinea	-
Mozambique	142
Namibia	53
South Africa	**64**
Tanzania	116
Uganda	151
Zambia	87
Zimbabwe	154

practical challenges

- legal systems
  - English, French, Portuguese
  - OHADA
- legal uncertainty
  - unclear legislation and interpretation
  - practical application
  - local advisors and their cost
- language and culture
- bureaucracy and red tape
- victimisation of large foreign companies
- South Africa “big brother” attitude
- corruption
- labour issues
  - appointing and retaining competent staff
  - local empowerment
  - loyalty

regulatory requirements

regulatory requirements

- foreign investment registration
  - “one-stop shop”
  - minimum capital
  - indigenisation / local empowerment
- licensing
  - trading licenses
  - general / industry specific / subcontractors
  - municipal licenses
  - advertising approval
- tax registration
  - single / regional
  - directors
- immigration
  - work permit quotas
  - various permits required

regulatory requirements

- exchange control
  - registration of investment and agreements
  - limitations on royalty and other payments
- statutory / company secretarial
  - branches vs subsidiaries
  - certification / notarization of documents
  - director PIN required for company registration
  - local directors
  - public officer / legal representative / process agent
- display of licenses / information
- non-compliance
  - material penalties
  - cross-reference between departments

bilateral investment treaties

- Bilateral Investment Treaties (BIT) have been existing for many decades
- Goal of creating a favourable investment climate by protecting and stimulating investments:
  - Protection against discriminatory expropriation
  - Guarantee of fair and equitable treatment
  - Guarantee of equal treatment, prohibition of discrimination based on nationality
  - Right to repatriation of income
  - Sometimes right to fulfilment of host country’s undertakings re an investment (Umbrella Clause)
- Who is a protected Investor? What about “Treaty Shopping”?
- Beauty: Arbitration, where company/taxpayer is a claimant and a party (unlike in mutual agreement procedures under double tax treaties)
- BIT may be a means to tackle adverse tax treatment in the host country but probably not mere double tax issues.

sanctions to corruption

- Zero tolerance towards bribery
- Trend to total transparency
- Main risks: substantial penalties, damage to reputation, forced withdrawal from future business opportunities...


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Glencore Paradise Papers

Revealed: Glencore's secret loan to secure DRC mining rights

Paradise Papers show world's biggest miner lent millions to Israeli billionaire on condition authorities agreed to a deal

● **The inside story of Glencore's hidden dealings in DRC**

5 Nov 2017


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Glencore Paradise Papers

Paradise Papers prompt criminal complaint against Glencore

Rights group formally asks Swiss attorney general to investigate firm's mining links with Democratic Republic of the Congo

21 Dec 2017

sanctions to corruption

- US: Foreign Corrupt Practices Act (FCPA)
- UK: Anti-bribery act
- Switzerland:
  - Active bribery, including of private individuals, has been prohibited at least since the 1940s (unfair competition act)
  - 2000: Prohibition of bribery of foreign officials / no longer tax deductible
  - 2003: Companies may become subject to criminal sanctions
  - 2006: Prohibition of passive private bribery
  - 2016: Private bribery recognized as an ex officio offense
  - Also applicable if the person bribed is abroad!

sanctions to corruption

Art. 322^{octies} Swiss criminal code (Bribery)

Bribery of private individuals

1. Any person who offers, promises or gives an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage for that person or a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion is liable to a custodial sentence not exceeding three years or to a monetary penalty.

2 In minor cases, the offence is only prosecuted on complaint.

sanctions to corruption

	Swiss official	Foreign official	Auxiliary of a third party in the private sector
Bribery in to cause the public official to carry out or to fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion	- Ex officio offense - Custodial sentence of up to five years or monetary penalty		- Ex officio offense - Custodial sentence of up to three years or monetary penalty
Undue advantage without direct link to illegitimate act or for general «grooming» or «sweetening» purposes	- Ex officio offense - Custodial sentence not exceeding three years or to a monetary penalty	No criminal offense under Swiss laws	No criminal offense under Swiss laws

tax considerations

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overview of Africa

- Most African countries have source based tax systems
- High withholding taxes
- Good treaty networks in respect of various jurisdictions

overview of Africa (cont.)

- Offshore company in a jurisdiction with a double tax agreement
- Offshore company contracts with clients and sub-contracts functions to the African entity
- The offshore company pays an arm's length fee to the African entity
- Alternatively the African entity contracts with the clients and the offshore company extracts pre-tax income from the African entity

investing into Africa

- Employees are typically seconded from their host employer to the African entity or the offshore company depending on, *inter alia*, the duration of their period of service in the African jurisdiction
- The main gateways to Africa are South Africa and Mauritius

Tax risks

- exceptional tax on expatriates
- social security on expatriates
- withholding tax
  - services rendered in/out of country
  - cost recoveries
  - double tax agreements & claiming of credits
- reverse VAT
  - claiming of credits & appointing of agents
- deductibility of head office expenses

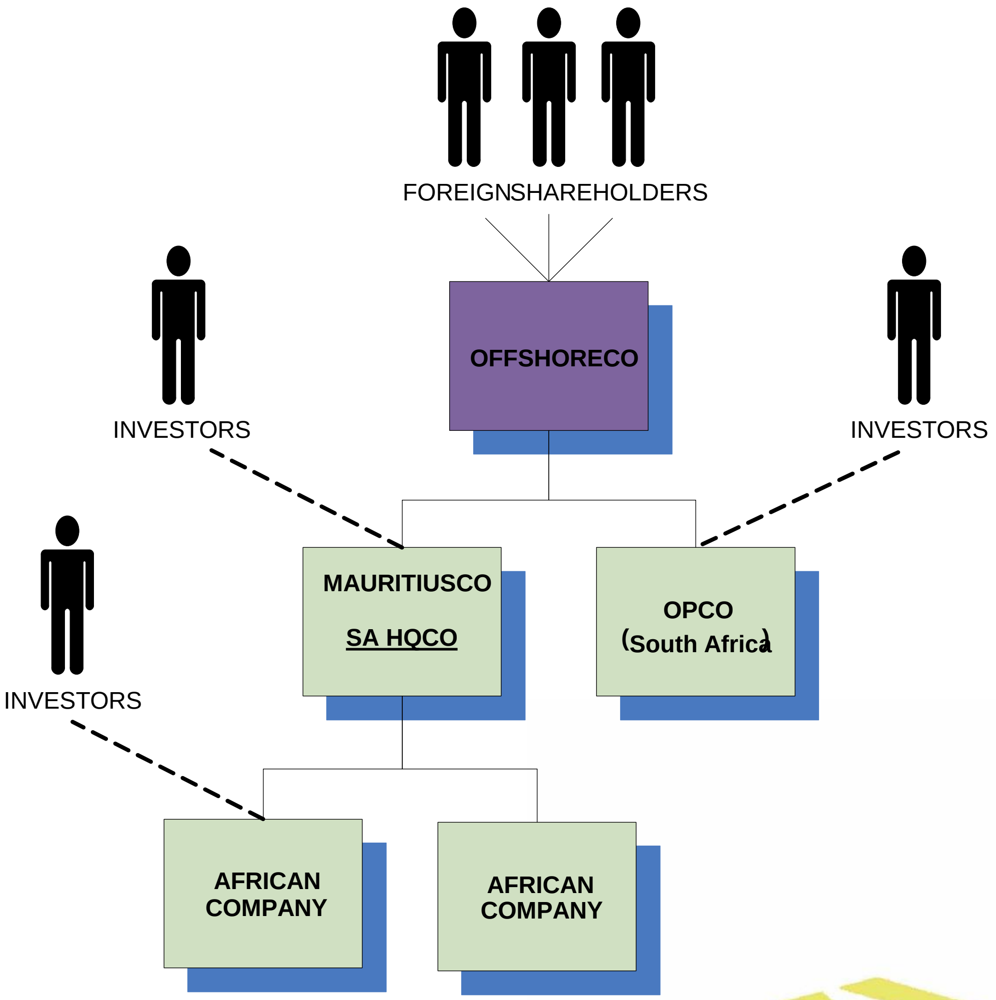
tax risks

- withholding tax
  - services rendered in / out of country
  - sale of goods / local purchases
  - double tax agreements and claiming of credits
  - services deemed to be royalties
  - original withholding tax certificates
- employees’ tax
  - exceptional tax on expatriates
  - social security on expatriates
  - residence status of employees
  - taxing of fringe benefits
- corporate income tax
  - deductibility of head office expenses
  - deductibility of payments to low-tax jurisdictions
  - cash-based accounting
  - transfer pricing

overview of South Africa

- Withholding tax on dividends and royalties
- Withholding tax on interest
- Corporate tax rate of 28% for companies and branches
- Transfer pricing is based on the arm’s length principle
- South Africa has many double tax agreements
- Tax rulings may be obtained in order to achieve tax certainty
- Typical investment vehicles are companies, branches and partnerships

investing into Africa



tax consequences for Swiss owners

- Swiss corporation serves as investment vehicle for the family. Will benefit from double tax treaty protection.
- Dividends (more than 10% ownership) from African investments are effectively not taxed: Participation Relief (no subject-to tax requirement)
- The Liechtenstein foundation should be covered by Swiss advance tax rulings:
  - No negative impact, foundation to be disregarded for Swiss tax purposes
  - No optimisation of Swiss tax position
  - Works also with US beneficiaries
- Liechtenstein structures were also used in the past by Swiss businessmen to collect legitimate income payments from Africa but to shield them from Swiss tax authorities. Tax regularization is easy and recommended (but not for free): only back taxes and interest are due for ten years, no penalties if disclosure is made by the taxpayer.

addressing risks

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addressing risks

- understand the regulatory requirements per country
- appreciate practical operating environment in each
- calculate tax and regulatory costs upfront and include in tender price
- also budget for advisory and compliance costs
- appropriately structure projects from the start
- implement and maintain the agreed structure
- ensure every team member understands relevant requirements
- appoint competent, reputable advisors
- be compliant – non-compliance is expensive