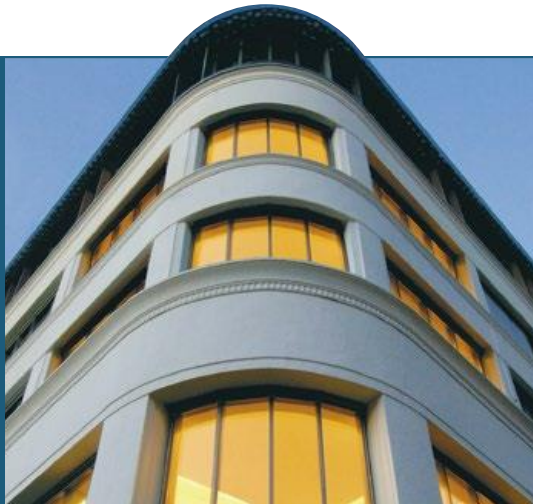


LALIVE



Challenges for investors in Africa: Managing legal risks

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Introduction

- Africa's opportunities
- Africa's challenges / public & private sector
- Africa's diversity
- Focus of presentation
 - I. Legal and political risks for investors
 - II. Minimizing risks:
 - Contractual provisions
 - Investment treaty protection

Some legal and political risks when investing in Africa

1. Legal and regulatory environment

Opacity, risk of unpredictable changes and of corruption

- Taxation
- Foreign ownership of local company /land
- Labour laws and regulations
- Licensing process / permit applications
- Custom clearance

Some legal and political risks when investing in Africa

2. Judicial system

- Inefficiencies, delays
- Risk of partiality and of corruption
- Enforcement of court or arbitral decisions

Some legal and political risks when investing in Africa

3. Political and security risks

- “Resource nationalism”
- Unsettled boundaries / JDZs
- Armed conflicts / political unrest

Minimizing risks when investing in Africa

1. Contractual provisions

- Force majeure clauses
- Flexible timeframes
- Renegotiation clauses
- Stabilisation clauses

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Minimizing risks when investing in Africa:

1. Contractual provisions

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- Dispute resolution clause
 - International arbitration vs local courts
 - International Arbitration Rules - UNCITRAL
 - Seat of the arbitration
 - Applicable law

Minimizing risks when investing in Africa

2. Investment treaty protection

- Based on Bilateral Investment Treaties (BITs)
- Direct investor-state dispute resolution
- ICSID v ad hoc arbitration (UNCITRAL)
- Contract claims & treaty claims

Minimizing risks when investing in Africa

2. Investment treaty protection (con'd)

- Protection
 - Most Favoured Nation (“MFN”) clause
 - Fair and equitable treatment
 - Full protection and security
 - Compensation for direct / indirect expropriation
 - Prohibition of discriminatory measures
 - Free transfer of funds

Minimizing risks when investing in Africa

2. Investment treaty protection (con'd)

- Selected issues
 - Nationality of investor
 - Choice of arbitration vs local courts
 - Legality of investment
 - Defences

Conclusion

- Assess legal, regulatory and political risks carefully
- Negotiate investment agreement to ensure proper allocation of key legal, regulatory and political risks
- Consider carefully dispute resolution clause and investment treaty protection potentially available
- Devise an early exit strategy
- Seek specialist advice – including local consultants

Thank you

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