Guide to business development ON THE AFRICAN CONTINENT

France Invest

Association of Investors for Growth

INTRODUCTION

The African continent now has 7 of the 10 most dynamic economies in the world, and this growth is sustained in the longer term by powerful demographic drivers: the population is likely to grow from 1.2 billion to more than 4 billion in 2100 according to UNICEF.

This growth is accompanied by growing needs in various areas. This concerns issues related to food (agricultural production, processing of commodities, related logistics, etc.), urbanisation (construction, transport, energy, water and waste management, etc.), the needs of a booming middle class (consumer goods, cultural services, etc.), education and the development of health infrastructure.

Accordingly, the African continent currently represents a real investment and growth opportunity for the majority of companies located in France and Europe.

Implementing a business development policy, however, requires dealing with a number of complexities. These are mainly due to the wide variety of situations that exist within countries, in a context where a distribution of activities between different countries allows for a better distribution of risks. These risks are associated with any deployment in developing economies, or are related to managing operational complexities such as human resources management or the proper control of financial flows and accounting data.

The main objective of this document is to provide a number of "focal points" to business leaders to help them ask the key questions when faced with the business development opportunity that the African continent represents.

1 WHY DEVELOP BUSINESS IN AFRICA?

The most often cited reasons for the attractiveness of developing business in Africa are related to the continent's growth, its demographic vitality and access to natural resources:

- **Strong and resilient economic growth**: average GDP growth of 5% since 2002, despite global economic slowdowns. Sub-Saharan Africa is home to 7 of the 10 most dynamic economies in the world (and 10 of the 20 largest).
- **Sustained population growth in Africa**: Africa is the second largest continent in the world (in terms of surface area and population) with more than 1.3 billion people and 52 cities with more than one million inhabitants. Africa's population is the youngest in the world, with an average age of under 20, and an improving level of education: according to projections, nearly 100 million young people will have completed secondary education in 2020 compared to 69 million in 2010.
- **A continent richly endowed with natural resources**: Africa holds a significant share of the world's resource reserves, for example, the continent accounts for 10% of global oil exports.

Over the past decade, less than one-third of Africa's real GDP growth has been generated by natural resources and the vast majority of growth has been - and will probably continue to be - driven by consumer spending, industry and services, with increasing emphasis on the domestic market.

It is therefore useful to point out that each company can find a response to its own challenges in Africa, whether in terms of access to a production area, to business opportunities, or in some cases to technologies, thanks in particular to:

- **A growing workforce**: a working-age population of more than 736 million, a figure expected to reach one billion by 2030, creating the world's largest workforce, surpassing both China and India;
- **An increase in Africans' consumption power**: the African middle class numbers more than 310 million people, nearly three times more than in 1990. Private consumption in Africa is already higher than in India or Russia: it increased by more than $550 billion between 2000 and 2010 and is expected to increase by another $410 billion by 2020 (projected at more than $2,000 billion in 2025);
- **Rapid urbanisation**: Africa will urbanise faster than any other region of the world, with nearly 190 million more people moving to urban areas by 2025;
- **A continent of innovation**: Africa is the birthplace of the first mobile currency, M-Pesa, the internet could account for 10% of GDP by 2025, and it is also the fastest growing market for off-grid energy. The lack of pre-existing infrastructure has actually become a strength by driving the continent to move directly to the latest technologies in many areas.

Furthermore, this growth across the continent is accompanied by an environment that is increasingly conducive to business activity, and we can cite in particular:

- **Growing regional integration**: this integration continues to provide additional growth opportunities for leading companies looking to expand into adjacent and/or complementary markets. So far, regional integration has been driven mainly by the private sector. In the future, regional integration is likely to be strengthened through the implementation of regulatory and strategic initiatives at the continental level.
- **A gradual improvement in governance**: African countries continue to evolve. Many African countries are moving away from autocratic rule, and stable democracies are developing with hybrid governing structures. Macroeconomic governance has improved significantly: public debt and inflation have declined thanks to debt relief and improvements in the know-how and manner in which governments exercise their powers, and in the governance of local central banks.

2 HOW DO I CHOOSE MY DESTINATION?

Given the great diversity of local situations across the African continent, a business development plan should rather be part of a gradual geographical extension on the continent, if only to gradually limit the impacts of less favourable economic developments in a given country. The development in question may, for example, be the result of a period of political instability or the impact of a fall in commodity prices.

However, the choice of the first country of establishment is often of crucial importance for business development on the continent, particularly for SMEs whose resources allocated to geographical expansion will be more limited than those of mid-caps or large groups.

2.1. What are the criteria for choosing the target country?

The first step is to look at the opportunities that the company wishes to seize through business development in Africa and to understand how they fit together in terms of strategic objectives.

The company can have several types of objectives:

Building up business volume by selling goods or services in the target countries, either through an "export" approach or through a "local" approach with a presence in the target countries in the form of partnerships or a direct presence, e.g. by creating a subsidiary or acquiring a company;

Benefiting from a more competitive production base by taking advantage of lower-cost labour, energy or commodities or optimised logistics thanks to a local presence.

A self-assessment is important to ensure that the company is well positioned to meet these objectives. There are many fields to explore:

- **Is business development in Africa a strategic or a secondary issue?**
- **Will the company be prepared to dedicate the required resources?**
- **What is the acceptable level of risk for the company and its shareholders?**

How can the "addressable" market be defined?

In the case of an approach aimed at growing the business volume locally, it is crucial to first determine the "addressable" market, i.e. the "size" of the opportunity, i.e. that represented by the volumes that the company can reasonably achieve over time. Is a middle class of hundreds of millions of people across a continent, ultimately living on just a few dollars a day, spread across many countries with little economic integration with each other a market within reach?

For those who wish to sell goods or services to the general public, best practices for defining the "addressable" market consist, for example, by asking the following questions:

Does the target country have a critical population size?

What is its per capita GDP in relation to its Gini coefficient[1]?

Comparing per capita GDP with the Gini coefficient gives an idea of income gaps. For example, a high GDP coupled with a high Gini coefficient (example of oil-producing countries) is often the symptom of the absence of a middle class.

Is there available information on household consumption or, as the case may be, business spending? How will these figures evolve in the coming years?

For example, household consumption is expected to reach USD 2,065 billion for the continent in 2025[2] (vs. 1.628 billion for France in 2018). Three countries, Nigeria, Egypt and South Africa will alone account for more than half of this spending. Francophone sub-Saharan Africa[3] with 11% of spending will remain behind East Africa (15%) and North Africa excluding Egypt (13%). Carrying out the exercise at the product or service category level will allow for a more detailed analysis.

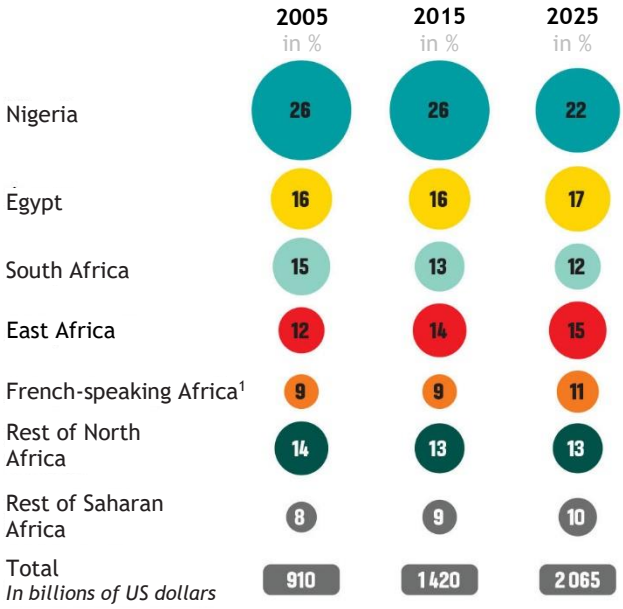
Is the target country a good starting point to cover neighbouring economies? Is it part of an economic area (e.g. ECOWAS, WAEMU, EAC, etc.) ?

If so, this country could be part of a regional hub.

What are the limiting factors?

Among the factors often mentioned are a lack of infrastructure and local capacity, lack of coverage of distribution channels, high customs duties, etc.

Share of household consumption (2005 - 2025) at 2015 prices



Source:
McKinsey "Lions on the move";
Oxford Economics; HIS;
African Development Bank

[1] *The Gini coefficient is a statistical measure of the dispersion of a distribution in a given population, developed by the Italian statistician Corrado Gini. The Gini coefficient is a number ranging from 0 to 1, where 0 means perfect equality and 1 means perfect inequality, for example one individual has all the income and the others have no income.*
[2] *McKinsey "Lions on the move"; Oxford Economics; HIS; African Development Bank*
[3] *Includes 15 countries in Central and West Africa, excludes North and East Africa*

How to conduct a country risk analysis?

Opportunities are assessed not only in terms of the investments required, but also in terms of the risk factors that need to be assessed for each target country. Country risk is often defined as "*the risk of occurrence of a loss resulting from the economic and political context of a foreign State in which a company carries out part of its activities*[4]". African countries have weaknesses in terms of international investment. A study of these weaknesses is part of an analysis of the risks associated with the company's development.

A multi-criteria analysis grid can be an effective tool for establishing a fair assessment of risk factors, which must then be held up against (i) the investment horizon and (ii) the degree of risk that the company is prepared to take.

The risks that are then most often identified and should be taken into consideration are:

- **Social and political instability**: As there is a strong correlation between political stability and economic growth, regime changes or social crises can have a significant impact on a company's business in a country.
- **The security environment**: it overlaps with external or civil wars (fortunately less and less frequent in Africa), terrorism, lack of control over the entire territory, etc.
- **Risks associated with economic policy, inflation and exchange-rate fluctuations**: the consequences of changes in public policies can be manifold and may lead to higher taxes, high inflation, currency depreciation or even exchange controls.
- **Risks related to commodity prices**: several African economies are dependent on commodity price developments. Depending on the company's business, these prices can work in both directions, but it is nevertheless certain that significant fluctuations can destabilise some countries' economies.
- **The health situation**: some territories may experience epidemics (Ebola virus, malaria, etc.) which must be taken into account when selecting areas to set up within countries.

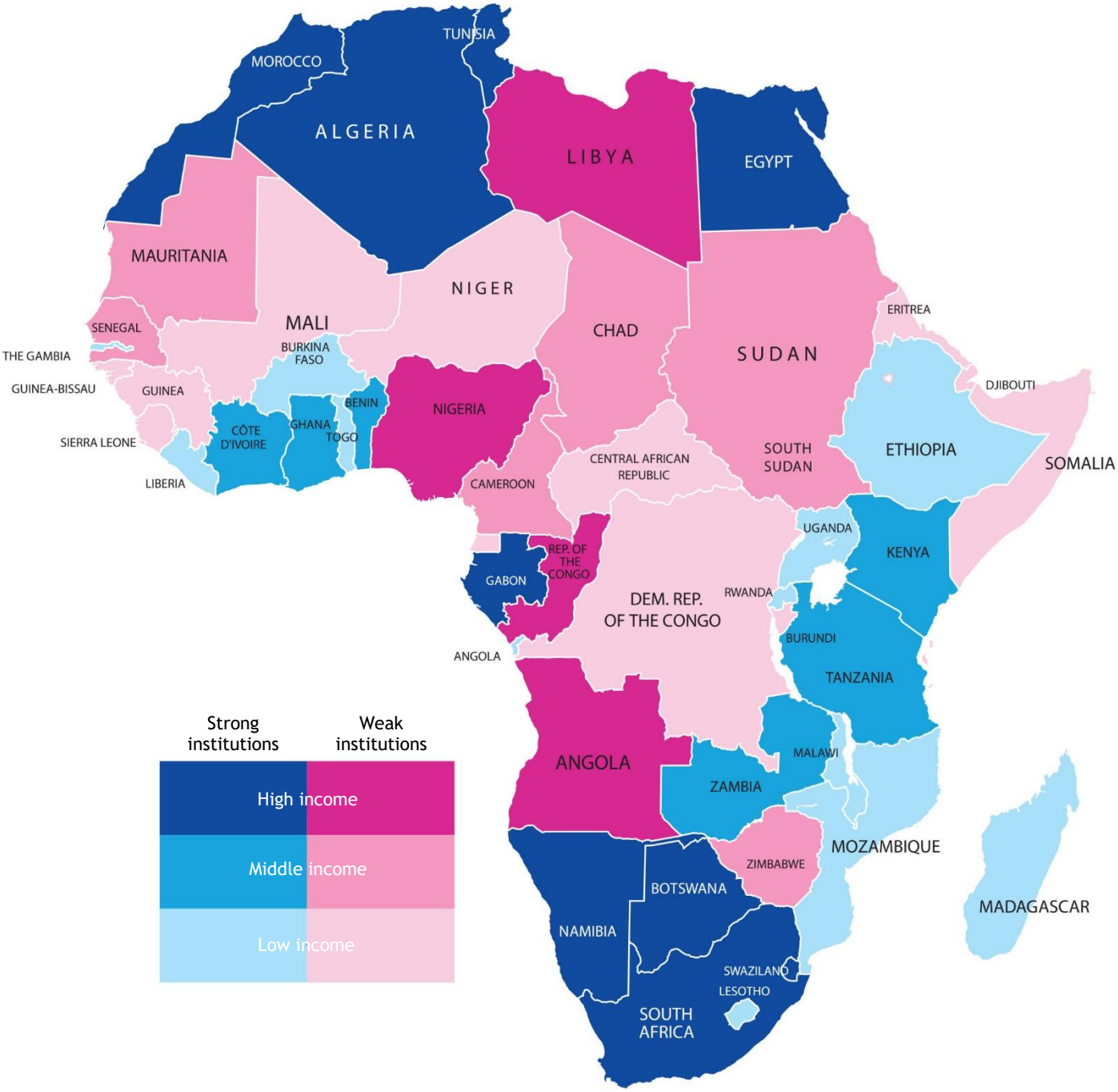
How to summarise the "opportunity/risk" pair for the purpose of comparing options?

Each company can develop its own "risks/opportunities" matrix according to its own challenges and, for example, it is possible to cite the "Institutions/Income" matrix, which is an interesting tool to categorise countries by opportunity and risk profile:

- **High-income countries with weak institutions** have pockets of wealth that constitute "addressable" markets, while an absence of strong institutions puts pressure on the private sector. Companies wishing to develop business in these countries will probably have to make a major effort to forge local relationships and manage potential crises in these countries, where the main challenge will ultimately be to be resilient;
- **Middle-income countries with strong institutions** have more developed or developing middle classes that demand premium products, but at lower prices than in Europe. These markets can be attractive targets for companies offering consumer products;
- **High-income countries with strong institutions** benefit from strong infrastructure, ports, education systems, a large middle class, and sometimes established competition.

4 Bernard Marois, Le Risque-pays (Country Risk), PUF

Example of "Institutions/Income" matrix for 2016



Source: Forbes "A New Map For Business In Africa", May 2016, Strategy&(PWC Network), World Bank data

"Choose your country" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

	Macroeconomic factors
☐	Demographics
☐	Gross domestic product (GDP)
☐	Economic growth
☐	Economic integration with other countries/areas
☐	Social and political context
☐	Maturity of governance (informal market, corruption, etc.)
☐	Security environment
☐	Monetary risks
☐	Level of taxation of the company's business sector
☐	Legal and tax risks

	Infrastructure and resources
☐	Infrastructure (airports, roads, electricity, health, education, etc.)
☐	Availability of skilled labour
☐	Availability of necessary basic resources

	"Addressable" market
☐	Gini coefficient, indicators of income inequality and standard of living
☐	Household and middle class consumption
☐	Corporate spending
☐	Integration of the different value chains (upstream and downstream)
☐	Presence of efficient distribution networks

	Local competition
☐	Presence of local players
☐	Competitive practices between the various players

Note that this selection will be specific to each company and its managers' expectations:

- **While certain criteria are objective (whether or not commodities are available locally), others may be more difficult to identify** (market size in five years, political risk, etc.) and will therefore rather reflect the company managers' ambition or even conviction than a fully analytical approach;
- **Each company must determine the degree of risk it can accept in implementing its development policy, as it is specific to its situation**, and this also depends on each management team's degree of risk appetite.

2.2. How to understand different countries' legal characteristics?

As with other continents, there is no single answer to this question. It is generally considered that different **legal strata**, inherited from the history and culture of each African country, overlap and influence the applicable regulations:

- **A so-called "traditional" or "customary" stratum** applicable in the socio-cultural field (land law, property law, matrimonial regimes, inheritance law, personal law). These rules, which generally have little impact on the running of the business except in a few targeted sectors where the land aspect is important (mining, agribusiness, hotels, etc.), are intended to ensure cohesion of the social group in question (ethnicity, region, clans, etc.) and harmony between its members.
- **A so-called "contemporary law" stratum** mainly applicable in the field of business (company law, commercial paper law, contract law or maritime law). The emergence of this new law was driven by a codification movement in various branches of law (criminal law, labour law, investment law, judicial organisation, etc.) with more than a hundred codes adopted in the aftermath of independence, especially in civil law countries.

What is the applicable law on the African continent?

Very schematically, the African continent can be divided into **four major distinct areas in terms of source of law**, although there are sometimes differences within each of these areas:

The civil law area

This legal system is very similar to that in force in France and applies in more than thirty countries, mainly in **North, West and Central Africa**, about half of which have adopted **French** as an official language (alone or among other official languages). **Portuguese-speaking** countries such as **Angola and Mozambique** are also part of this area.

The **civil law** system is based on a division between **private law** (commercial law, contract law, company law, banking and financial law, etc.) and **public law** (constitutional law, administrative law, etc.).

Furthermore, the law in civil law countries is written and generally codified, with rules applicable in a given subject grouped together in a single collection called the "code", as exists in France with the "Civil Code" or the "Commercial Code".

The common law area

This area operates on the basis of a legal system similar to that in the United Kingdom and comprises around twenty countries, mainly in **East and Southern Africa** (although some West African countries, such as Ghana and Nigeria, are also included). The official or business language in these countries is generally **English**.

This common law system is essentially based on **case law**, as is the case in Great Britain. The main rules of law are **derived from chains of court decisions**, with certain matters also covered by specific laws.

The division between private law and public law is unknown in the common law system and codification of law is more limited.

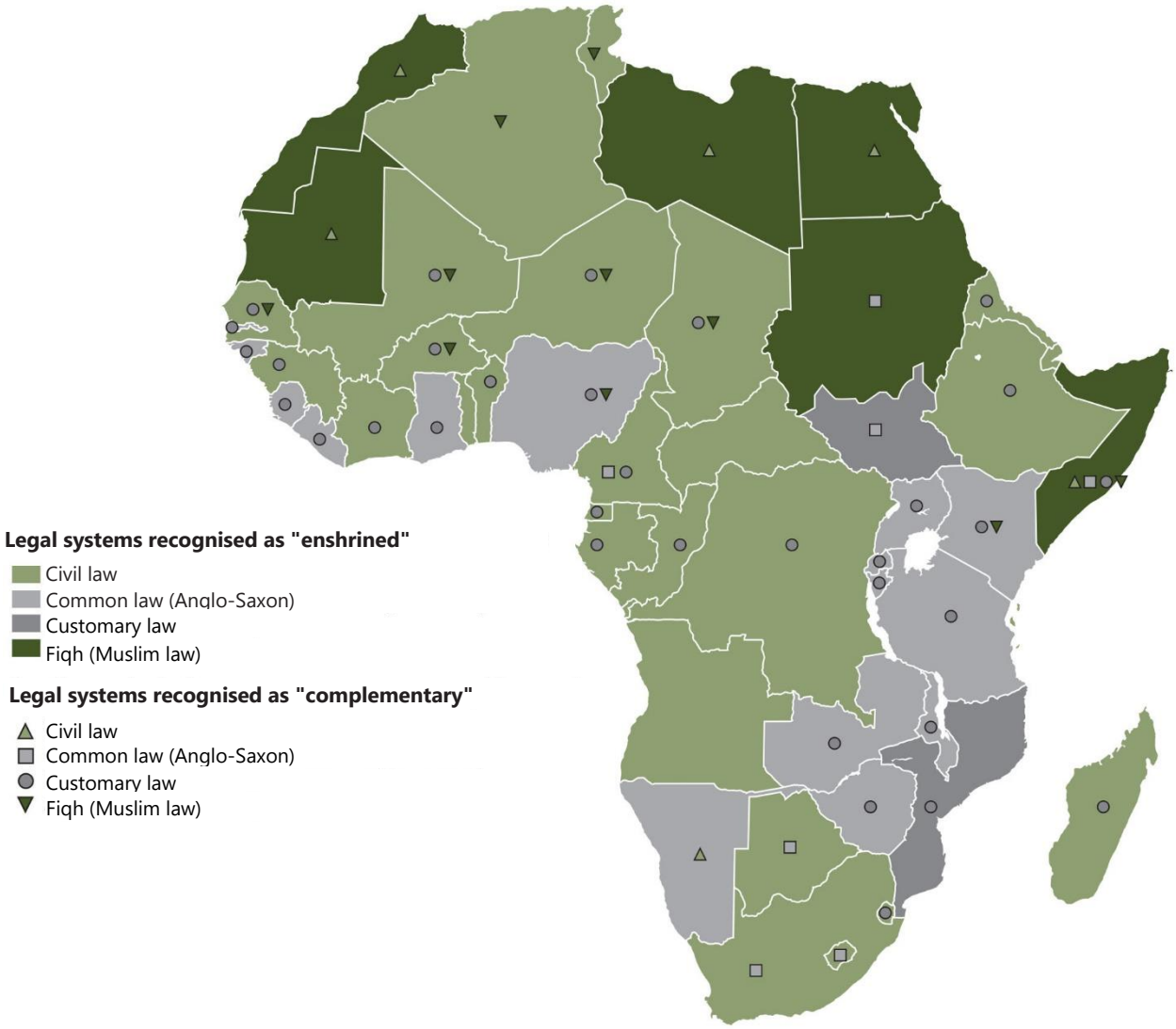
The Romano-Dutch area

This legal system stems from the Romano-civil tradition based on "jus commune" as applied in the United Provinces of the Netherlands in the 17th and 18th centuries (before the Napoleon Code of 1804) and applies in an area made up of South Africa and neighbouring countries such as Namibia, Zimbabwe, Lesotho and Swaziland.

The **Romano-Dutch** system can be described as a hybrid system between a civil law system and common law.

Last, some African countries have adopted a legal system of mixed influence, such as Cameroon, Mauritius and Rwanda.

Large areas of source of law



Source: https://www.cairn.info/ review-Africa-contemporary-2014-2-page-13.btm#

How can belonging to a particular area of source of law have an impact on the choice of country or countries in which to set up?

The **proximity of the legal system** to that of the company's/investor's home country may be one of the criteria for choosing the country or countries in which to set up. The company in question may prefer familiarity by choosing already known legal concepts (e.g. public procurement award rules). This will reduce lead times and costs. An understanding of the rules applicable in this/these country(ies) will then be obtained.

The company may also be tempted to select the country or countries in which it will operate based on the **official and/or business language** in force in this or these country(ies), still with a view to being close to its usual practice.

Accordingly, countries in the civil law area, in particular those where French is the official or business language, could represent more reassuring potential locations for a company based in France. However, a company should not limit itself to this criterion in the choice of location and de facto rule out other areas.

Are there integration areas (economic, monetary, customs, etc.) on the African continent and what can be the advantages of setting up in one of these areas?

In addition to the local rules adopted by each African country, certain rules of law applicable at the level of economic, monetary, customs or legal integration areas may apply in the selected country or countries to set up: a list of the main integration areas, together with a description of their characteristics and the list of their member states, is provided in the Appendix to this guide.

Key integration areas include:

CEMAC AND WAEMU

On the economic and monetary side, **CEMAC** (Economic and Monetary Community of Central Africa), with six member states, and **WAEMU** (West African Economic and Monetary Union), with eight member states can be cited. **CEMAC** and **WAEMU** are two integration areas that have adopted a single currency (the CFA franc in each area, which is however neither interchangeable nor convertible between the two areas) and unified regional regulation in many areas, such as foreign exchange transactions, competition law, taxation and labour law.

CIMA

CIMA (Inter-African Conference of Insurance Markets) is an example of an integration area in the insurance sector, which brings together 14 West and Central African countries.

OHADA

In legal terms, **OHADA** (Organisation for the Harmonisation of Business Law in Africa) has 17 member states, from West and Central Africa. This organisation is a successful example of **harmonisation of several areas of business law** (commercial law, company law, security law, etc.)

All OHADA member countries apply the same rules in the areas in question, which facilitates trade.

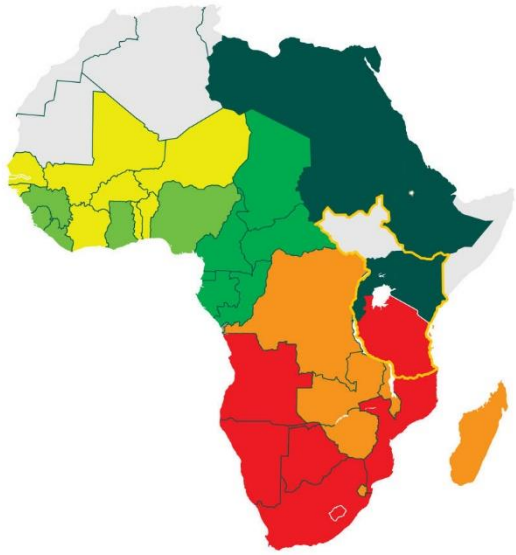
A Common Court of Justice and Arbitration is responsible for ensuring the uniform interpretation and application of these rules and for settling disputes, which provides a certain legal certainty within the OHADA area.

The rules applicable in the OHADA area are very similar to the rules of **French law**. For example, OHADA recognises the main company forms (SA, SAS and SARL) and the main sureties (surety, collateral, pledge, assignment of debt as security and contractual mortgage) available under French law.

If a company/investor sets up operations in an African country belonging to one or more integration areas, its **development within this/these area(s) may be facilitated** as it can benefit from harmonised rules and/or a single currency. This must be assessed on a case-by-case basis in the event that regional development is relevant given the company's business and its internal or external growth plans.

Source: Altaï Consulting

Integrated areas in Africa



WAEMU (West African Economic and Monetary Union)

ECOWAS (Economic Community of West African States)

CEMAC (Economic and Monetary Community of Central Africa)

COMESA (Common Market for Eastern and Southern Africa)

SADC (Southern African Development Community)

EAC (East Africa Community)

Economic integration in Africa

- There are **six main economic and/or monetary communities/organisations active** in Africa:
  - **ECOWAS** - 16 member countries;
  - **WAEMU** - 8 member countries;
  - **CEMAC** - 6 member countries;
  - **COMESA** - 19 member countries;
  - **SADC** - 15 member countries;
  - **EAC** - 5 member countries;
- Creation of **common markets** for goods, workers, capital and even the currency.
- Other economic and political organisations exist and more or less overlap (e.g. Economic Community of Central African States, Arab Maghreb Union, Community of Sahel-Saharan States, Intergovernmental Authority on Development, Indian Ocean Community).
- On 21 March 2018, 44 countries (out of 55) signed an African Continental Free Trade Agreement, with the ultimate goal of creating a continent-wide economic community.
- **In practice** however, many **obstacles to free trade** between member countries of the different unions persist (e.g. introduction of compulsory registration of products with the TFDA in Tanzania, which impacts Kenyan exports).

CHARACTERISTICS OF THE MAIN INTEGRATION AREAS

CEMAC - Economic and Monetary Community of Central Africa

Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, Chad

International organisation established in 1994, headquartered in Bangui, Central African Republic, whose purpose is to take over from the Economic Community of Central African States (UDEAC) and form a free trade area, customs union, common market and economic union.

It has a central bank: the Bank of Central African States (BEAC).

WAEMU - West African Economic and Monetary Union

Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo

International organisation founded in 1994 and headquartered in Dakar, Senegal, whose main objective is to build a harmonised and integrated economic area in the region, with complete freedom of movement of people, capital, goods, services and factors of production.

It has a central bank: the Central Bank of West African States (BCEAO).

CIMA - Inter-African Conference on Insurance Markets

Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Equatorial Guinea, Guinea Bissau, Mali, Niger, Senegal, Chad, Togo

Community body for the insurance sector established to replace CICA (International Conference of Insurance Controls of 1962). Its main objective is to harmonise national laws and regulations, coordinate the exercise of corporate supervision and coordinate the training of African insurance executives in the insurance sector.

OHADA - Organisation for the Harmonisation of Business Law in Africa

Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Equatorial Guinea, Mali, Niger, Democratic Republic of Congo, Senegal, Chad, Togo

OHADA's objective is to develop a harmonised legal framework in the area of business law to promote investment and economic growth. The OHADA Treaty provides for the drawing up of uniform acts that are directly applicable in the member states and whose rules are supranational in nature. This harmonisation takes the form of the adoption of "uniform acts".

List of Uniform Acts: General commercial law; Security law; Road freight law;
Commercial company and economic interest group law; Cooperative company law; Simplified debt collection and enforcement procedures; Arbitration law; Accounting and financial information law and Mediation.

Lastly, it should be noted that the **African Continental Free Trade Area (AfCFTA)** is being set up over a large part of the African continent under the aegis of the African Union, which brings together 49 African signatory countries and which will be implemented from 2020, following the last Union summit in Niamey in July 2020. It aims in particular to create a single market for goods and services, to lay the foundations for a continental customs union at a later stage and to speed up regional and continental integration processes.

What other legal factors may be taken into account in the choice of the country or countries in which to set up operations?

Apart from the company's proximity to the local legal system and the possibility offered in a given country to constitute a regional bridgehead based on its membership of an integration area, a number of other factors should be taken into consideration:

- Ratification by the country of establishment of the **main international trade conventions**, such as the World Trade Organisation agreements and the Vienna Convention on the International Sale of Goods;
- The existence of **bilateral treaties for the promotion and protection of investments** between the company's country of origin and the country of establishment, which provides companies with protection by guaranteeing them non-discriminatory treatment and access to a dispute settlement mechanism, usually in the context of arbitration proceedings. For example, France has entered into around one hundred bilateral treaties of this type, including with around twenty with African countries (the complete list is available on the French Treasury's website: https://www.tresor.economie.gouv.fr/Ressources/File/431791);
- The identification of **recent and/or announced reforms** in each potential country of establishment (whether within the framework of national plans or through sectoral reforms). For example, sub-Saharan African countries have maintained a sustained level of reforms aimed at improving the business environment in recent years;
- The existence of certain **specific restrictions** applicable in the country of establishment, such as the obligation for a foreign investor investing in Algeria to set up a national company majority-owned by an Algerian shareholder (or the "51/49%" rule, currently being abolished/eased), or specific protective measures existing in certain strategic business sectors (in particular the oil and mining sector) and "local content"[5] policies;
- Confirmation of some of the factors referred to above or clarification of locally applicable regulations may also require the assistance of **local and/or international legal counsel.**

[5]*Local content: African national laws that encourage or oblige investors to include local shareholders or employ local people as a priority. For example, 2010 Local Content Bill in Nigeria, 2010 and 2013 laws in Angola, Ghana Local Content and Local Participation Bill 2013 of November 2013*

A few points for further study

HOW DOES INTELLECTUAL PROPERTY PROTECTION WORK ON THE AFRICAN CONTINENT?

With a few exceptions (South Sudan, Eritrea, Somalia), the majority of African countries **provide protection for the main known intellectual property rights**: patents, brands, designs, copyright.
Most African countries have also adhered to the main international conventions applicable in these areas, but **the provisions of these conventions are not always incorporated into national laws**, sometimes raising certain legal certainty issues (such as for brands, see below).

In a context of strong economic development, **interest in these topics is growing** and the Maghreb countries, South Africa and Côte d'Ivoire, *inter alia*, are sensitive to the economic interests of intellectual property rights holders, although the exercise and defence of these rights may prove difficult to implement in some countries.

In addition to the national intellectual property offices present in almost all African countries and the public authorities responsible for the formalities relating to the protection of intellectual property rights, two regional intellectual property offices exist on the continent:

- **The African Intellectual Property Organisation** or "OAPI", which brings together 17 countries, mainly from West Africa: OAPI operates as an integrated area in which industrial property rights are issued for all its member states;
- **The African Regional Intellectual Property Organization** or "ARIPO", comprising 19 countries, mainly in southern Africa: unlike OAPI, ARIPO is a body centralising applications that **result in the issuance of national titles**.

While companies wishing to establish themselves on the African continent can generally **"extend" their existing rights** through international extension mechanisms (international brand, so-called "PCT" patent application, international design), this must nevertheless be assessed on a case-by-case basis according to the target country and the nature of the intellectual property right to be protected:

- With regard to **patents**, the majority of the offices (regional or national) do not carry out an in-depth examination of applications, which limits the value of the title obtained. It should be noted that European patent applications can also be approved in Morocco and Tunisia;
- With regard to **brands**, the enforceability of the international brand system is uncertain and disparate and it will therefore always be preferable to file them with regional (or national) offices.

Lastly, depending on the various intellectual property protection issues, the protection periods are quite similar to what may exist in France:

- *Patents*: despite international harmonisation, the term of protection varies from **10 to 20 years** depending on the country;
- *Brands*: the term of protection is **generally 10 years**, renewable indefinitely;
- *Designs*: their term of protection varies between **5 and 25 years,** depending on the country;
- *Works*: a majority of countries are members of the Berne Convention which recognises the protection of works by copyright from the time of their creation, without any filing formalities, and provides for a period of protection **throughout the life of the author** and, at the very least, for **50 years after the death of the author**. Some countries such as Côte d'Ivoire even provide for a longer period of protection.

WHAT IS THE REGIME APPLICABLE TO THE PROTECTION OF PERSONAL DATA ON THE AFRICAN CONTINENT?

- In a global context of exponential development of **information technologies**, the strengthening of **personal data protection** is a major issue, including on the African continent.
- African countries are set to adopt increasingly strict regulations on **data protection** and **cybersecurity**, including in particular the requirements of the new European General Data Protection Regulation (GDPR): **data governance and protection** is therefore a key factor to be taken into account in any plan to set up a business on the continent.
- In practice, there are now many disparities between different African countries regarding the adoption of a strict legislative framework: **some twenty African countries** have adopted legislation on **privacy protection and/or cybersecurity**, such as Algeria, Guinea, Mauritania and Niger.
- It should also be noted that the GDPR applies to a large extent, due to its extraterritoriality, to any company **established on the African continent** that processes personal data **on behalf of a European entity** or **whose products and/or services are aimed at persons located in Europe.** Some African countries are already in an advanced stage of compliance with the GDPR: this is particularly the case for **Morocco** and **Tunisia**, which are currently working on new laws drawn up on the GDPR model.

"Legal characteristics" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

- ☐ To which area of source of law does the country of establishment belong (civil, common law, Romano-Dutch, mixed)?
- ☐ What is the official and/or business language of the country of establishment?
- ☐ To which integration area(s) does the country of establishment belong (economic, monetary, customs, legal, etc.)?
- ☐ Is the country of establishment a member of the OHADA area?
- ☐ Is the country of establishment a member of the main international trade conventions (such as the World Trade Organization agreements and the Vienna Convention)?
- ☐ Has the country of establishment signed a bilateral treaty for the promotion and protection of investments with the country where my company is headquartered?
- ☐ Have any legislative or regulatory reforms that could impact my business been adopted or announced in the country of establishment?
- ☐ Is my business subject to specific restrictions, such as authorisations, licenses or permits, locally and/or regionally depending on the country of establishment?
- ☐ Is there an exchange control regime in the country of establishment in question and what are the conditions for repatriation of funds?
- ☐ What intellectual property rights need to be protected in the country of establishment and what regime will apply?
- ☐ Has the country of establishment adopted any privacy and/or cybersecurity legislation?
- ☐ Will my company process personal data on behalf of a European entity or offer products and/or services aimed at people located in Europe?

2.3. How do I finance my business development in Africa?

For a foreign company keen to set up in Africa, one of the keys to success lies in choosing the right financing strategy. This strategy depends on the business development approach chosen by the company to set up on the continent and is based on two main types of financing:

- **Export financing solutions**, which meet the needs of a company deciding to approach the African continent from France or through a local, third-party partner;
- **Local financing solutions**, as a company opting for a local presence in an African country cannot generally avoid using local financing.

In all cases, it is crucial that the company does not minimise its needs when estimating its financing requirements, as additional financing may prove difficult or time-consuming to find.

How to obtain financing when the company chooses to export to Africa without setting up a branch or subsidiary?

Exporting can take different forms, depending on the size of the company, the type of products, the financial resources available and many other factors. The two most common forms of export are direct export, whereby the company sells directly to customers or wholesalers abroad, and indirect export, whereby the company uses a partner to enter the foreign market.

It raises the issue of financing more broadly. There are cases where the company exports to Africa without setting up a branch or even a subsidiary. The question of financing methods then quite naturally arises.

It was precisely the development of trade in Europe during the Middle Ages that gave rise to the first forms of international financing.

Under the impetus of the Italian merchants and bankers, the appearance of the bill of exchange encouraged the emergence of major fairs throughout Europe. The merchant handed over money to a banker so that the banker could make a payment in another place through a local correspondent.

As a result, it was emerging countries that drove the development of trade financing.

With a view to supporting foreign trade, bank financing tools have gradually developed throughout history. These tools enable companies to export to Africa without having any physical presence on the continent. Two main tools can be considered:

- trade finance: refers to the activity of banks offering banking products and services to manage, secure and finance commercial or industrial transactions on an international scale between sellers/exporters and buyers/importers of goods and services. It may be appropriate for business development in Africa.

- documentary collection: used to secure payments and services in foreign trade. Commonly referred to as collection remittance, this is a mechanism initiated by the exporter using the services of a bank to collect payment from the importer.

- There are different forms of these, the most common being "documents against payment". In this case, the buyer obtains the goods supplied by the seller only on presentation of documents defined in advance and delivered, in a two-way exchange, against payment via banking channels.
- Documentary collection is simpler and less expensive than documentary credit, but essentially covers less risk. In the event of non-payment, the exporter at least remains the owner of the goods.
- However, it remains much safer than a clean collection in which the exporter sends the trade/transport documents directly to the importer, without recourse in the event of non-payment or non-acceptance of a bill of exchange.

- Documentary collection is governed by the "Uniform Rules for Collections" issued by CCI - RUE 522. Its use is not mandatory but strongly recommended.

What are the local financing solutions available to the branch or subsidiary of a French company in Africa?

When a French company uses a local establishment to operate in Africa, its branch or subsidiary has access to the range of domestic bank financing products and services to finance its operating cycle or investments. The tools available in Africa are traditional banking tools, but note that in most African countries, financing is very often only possible in local currency.

Financing the operating cycle

A company is often forced to incur expenses covered over a more or less long period by its customers' payments for goods and services sold. It can then apply for ordinary bank loans, as these are usually available in most countries except Sudan and Somalia:

Overdraft: it meets cash requirements that are in principle clearly identified and allows the account to be overdrawn up to the authorised amount, in a flexible manner, to settle all types of expenses;

Cash flow loans: they come in different forms or names but always correspond to the availability of funds repaid at an agreed maturity of up to several months, whether they are spot loans to cover a temporary cash shortfalls, campaign loans to finance needs linked to seasonality of the business, or stock financing loans;

Receivables factoring tools: these exist in most African countries, at least in the form of discounting bills of exchange. However, although factoring is becoming more common on the continent, is not yet massively widespread;

Contract guarantees (submission, return of deposit, performance or completion bonds): they are a necessary step for major or public transactions, it being specified that bank guarantees also sometimes meet the requirements of legislators for the exercise of certain regulated professions;

Documentary credit and/or stand-by-letters-of-credit: these instruments are preferred for trading with the African continent because of the level of security they provide to both the importer and the exporter.

Investment financing

To finance investments, which by construction generates a profit that is spread over time, the company generally uses its own funds generated by its own business, those provided by its shareholders, and those provided by banks or other types of investors when a financial market exists - although this is not the case everywhere in Africa.

Regarding the funding provided by banks (usually available in the majority of the different countries of the continent):

Medium-term credit: this is a traditional financing tool with usual repayment terms of 3 to 5 years, 7 years being a maximum term in many countries which requires a particular structuring effort on the part of local banks;

Equipment leasing or long-term leasing: these tools are available in many countries even though they are not yet widespread;

Real estate leasing: this is generally not very developed on the African continent;

Structured loans: large-scale projects (development of a new or innovative business) require appropriate structuring and financing that can be handled by certain banks with specialist teams or teams able to draw on the expertise of a regional or international banking group.

If a local subsidiary is set up, how can local financing solutions be combined with solutions provided by the parent company?

The presence of a local legal entity on the continent has the advantage of a greater diversity of financing solutions that can be combined with each other:

- Guarantee solutions for capital investment;
- Direct access by the local entity to local financing even, though the maturity of the loans remains short in most countries;
- Additional financing options offered by the parent company, which may benefit from guarantee packages. Most of the time, such financing requires compliance with restrictions related to incoming and outgoing financial flows under local or regional financial regulations.

However, the use of domestic financing generally requires a commitment on the part of the company to support its "daughter" or even to honour the commitments made on its behalf, at least via a letter of intent, but most often via a guarantee or even a bank guarantee.

So in terms of financing, the greatest challenge for a company investing in Africa is to find the right balance between the financing it provides directly to its branch/subsidiary in the form of equity or loans and the financing obtained locally. The advantages and disadvantages of using financing from a parent or holding company vs. locally available financing should be compared. This balance depends on:

- Conditions of access to local funding (maturity, interest rates, etc.) for the branch or subsidiary compared to those in France;
- The ability of the parent company to repatriate the funds invested in its branch or subsidiary (dividends, interest payments, repayment of loans between companies in the same group); and
- The stability of the currency and its cost: if the cost is reasonable and the currency is weak, it is better to borrow in local currency, if possible.

"Financing solutions" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

Characteristics of banking players present in the country

- ☐ Geographical presence: national, regional, international
- ☐ Quality, reputation, rating, etc.

Conditions for access to funding resources

- ☐ Local and/or foreign currency
- ☐ Interest rate conditions
- ☐ Maturity
- ☐ Liquidity
- ☐ Possibility of interest on deposits
- ☐ Guarantees to be provided to obtain financing

Foreign exchange regulations

- ☐ Existence of exchange controls
- ☐ Possibility and level of regulatory complexity to pay in foreign currencies from the country (for suppliers or for shareholders/partners)
- ☐ Level of foreign exchange reserves and ease of access to foreign currencies

Flow management
(cash management, means of payment, short-term financing, etc.)

- ☐ Cash management solutions
- ☐ Usual customer/supplier payment methods
- ☐ Existence of solution(s) to secure customer payments
- ☐ Practices in terms of payment terms
- ☐ Short-term financing solutions available

Medium- and long-term financing solutions

- ☐ Type of financing available locally
- ☐ Types of guarantees acceptable locally

3

HOW DO I SET UP IN AFRICA?

Ideally, the thinking about setting up in an African country should take place as early as possible and, if possible, before any contract is entered into in the context of an initial commercial development in the target country.

The main risk is ending up linked to a specific market and/or a local partner under contractual terms that subsequently prevent any other form of establishment or make it financially prohibitive, for a longer or shorter period.

If such a reflection leads to the choice of a method of indirect distribution of goods or services, care must therefore be taken to negotiate the terms and conditions in such a way that this does not preclude a move towards a direct presence in the future.

The choice of partial/indirect control or full/direct control of a market will depend on the following factors in particular:

- The company's international business experience;
- Knowledge of the target market (history, flow, sales forecast, business plan, etc.);
- The company's financial standing;
- Availability of skilled personnel;
- Country risk component;
- Strategic need to control the market and/or need to control certain markets.

Regional or continental considerations should also be given according to the national or regional markets targeted in the short/medium/long term, taking into account the major regional groupings on the continent.

With this in mind, it may sometimes be preferable to opt for a regional "hub" located outside the target country initially planned, to give the company an ability to subsequently expand to several countries in the region while benefiting from recognition of its status, for example within the OHADA area.

In particular, such a regional or multi-country approach generally makes it possible to optimise costs in the long term, even if this is sometimes done in several stages.

3.1 How do I set up a partnership?

For a company wishing to establish a long-term presence on the African continent, regardless of its size (SMEs, mid-caps, even large companies) and its financial standing, it is useful to search for a local partner. In some cases, this is essential or mandatory when required by local content rules.

The business environment may appear complicated in some countries on the continent (see the World Bank's annual "doing business" ranking). A well-chosen local partner can help to better understand a new market, the intricacies of local authorities, etc. In some cases, these partnerships are a legal requirement, such as in Algeria ("49/51 rule", currently being abolished/eased) and in Angola, in certain sectors (e.g. oil in Nigeria) or for certain activities (e.g. distribution activities in Ethiopia).

It is also interesting to point out that this partnership can take very diverse forms, depending on the company's challenges in its business development on the continent:

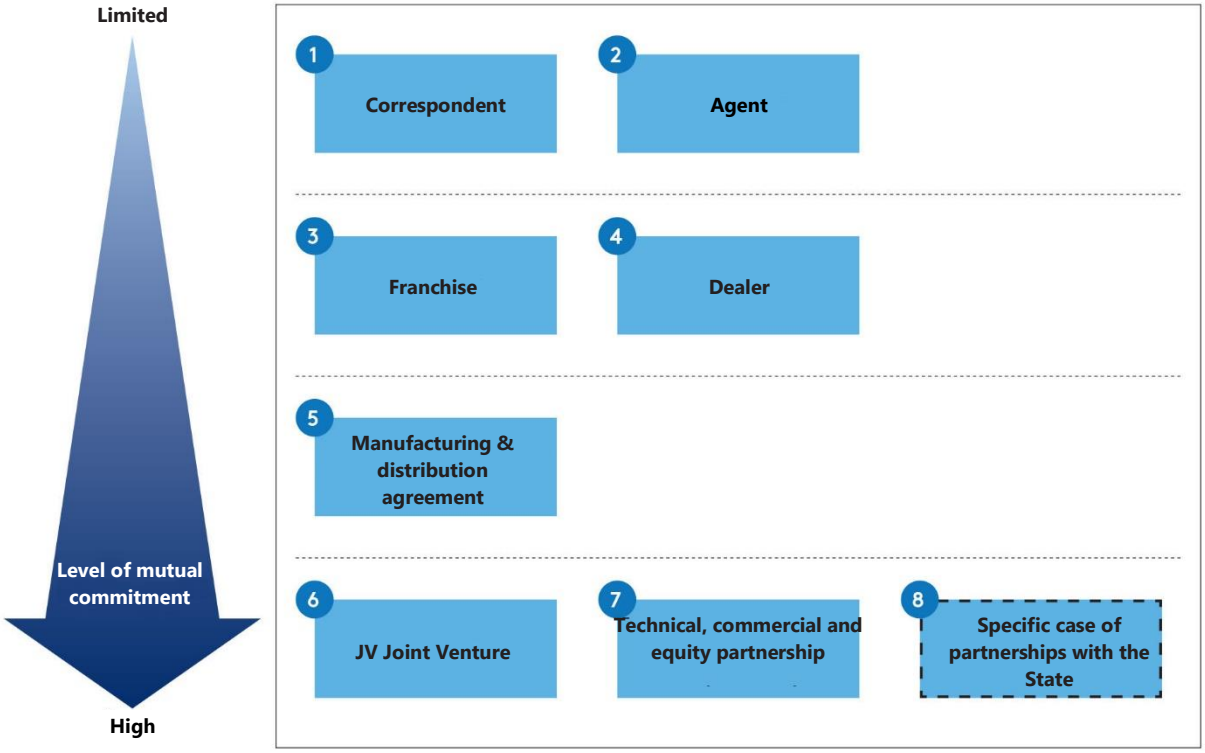
- **Depending on the type of partner**: "local" company (with an established local presence, whether the shareholders are local or international), company with a broader presence, or even an African state (more rarely);
- **Depending on the level of mutual commitment**: from the lowest degree of commitment (correspondent, agent) to the highest degree of commitment (equity partnership).

Thus, in the implementation of a partnership, one of the major issues for the company will be to determine the right degree of involvement and security of its business, according to its current challenges in the country in question.

What forms of partnerships for what purposes?

As a first approach, any partnership can be analysed in terms of the degree of mutual commitment between the two partners. The company must therefore first question the level of "constraint" it is prepared to accept, in its future development and from its future partner. Note, however, that the consequence of a low level of "constraint" will probably be a low level of "control" over the partner in the context of its business.

The different forms of partnership



23

The main characteristics of these various forms of partnership are as follows (from the lowest to the highest level of commitment):

Correspondence contract

The correspondent is a local partner who may be called upon for one-off assignments. International law firms or consulting firms often use trusted local colleagues, with whom they then sign "assignment contracts" whenever a business opportunity arises.

Agent agreement

The agent is a company (or individual) that receives a commission based on the achievement of a specific objective. Groups working on major projects (infrastructure, aeronautics, telecoms) regularly use agents, who are neither employees nor equity partners. They provide in-depth knowledge of the market, decision-makers, the intricacies of public authorities, etc.

Franchise agreement

In this context, the foreign company signs agreements (on brands, licences, etc.) with a local franchised company in exchange for a remuneration (percentage of the revenues or of the margin). This type of partnership is very common in all sectors, particularly in the hotel sector (Accor franchisees, which benefit from the group's management know-how), retail (Casino franchisees benefiting from the Casino brand and products and providing it with local knowledge), and cosmetics (Yves Rocher franchisees).

Dealer agreement

This partnership is similar to a franchise contract, in specific sectors, notably car distribution (GBH Renault dealer in Côte d'Ivoire, or the Groupe Salvatore Caetano Renault dealer in nearly twenty countries in Africa) or other industrial vehicles (JA Delmas exclusive Caterpillar dealer in many West African countries).

Manufacturing and/or distribution agreement

This type of agreement involves the local partner providing production capacity (plants) and a distribution network. For example, CFAO manufactures and distributes BIC pens and L'Oréal beauty products manufactured in the Yopougon area of Côte d'Ivoire (without equity investment for these international brands, for which these African markets remain less of a priority).

Joint venture

Creation of a local company in which international and local partners are joint shareholders, whether or not they have the same percentage shareholding. The "Brassivoire" JV between Heineken and CFAO in Abidjan in the brewing sector allowed the first partner to provide its knowledge of brewing techniques and the second partner to provide its knowledge of the country and its know-how of this sector locally.

Equity, commercial and technical partnership

This form of partnership involves acquiring an equity stake where the partners provide financial, technical and sales resources, and even their respective employees and networks in some cases. For example, a tripartite partnership agreement was signed between the Senegalese start-up InTouch and its partners Total (with a pan-African service station network) and Atos/Worldline (with technological know-how).

Partnerships with the State

These specific partnerships vary from one case to another and may take the form of:

- **Public-private partnerships (PPP)**, particularly in infrastructure. These are comprehensive contracts that may include engineering, construction, operation and also project financing. This is the case, for example, with the leasing contract between the French SME Vergnet and the State of Mali for the supply of drinking water in rural areas or the concession for the container terminal of the port of Libreville operated by Bolloré;
- **Production sharing agreements (PSAs)**, particularly in the oil & gas sector (PSA between junior oil company Savannah Petroleum and the State of Niger).

Total: a development involving many partners

Countries where Total has service stations

More than 4,200 service stations

orange	Partnership signed in 2013: access permitted to Orange Money at all Total service stations
awaiting logo	JV created in 2013 to launch a clean energy generation and storage offering
awaiting logo	Equity stake and roll-out of the Intouch offering in 35 countries
awaiting logo	Partnership signed in 2017 in Tunisia for road insurance services

How can I build and sustain a mutually beneficial partnership?

Like a good marriage, a good partnership requires each of the parties being fully involved in the life of the partnership and each one having a long-term interest in it ("win-win" situation). A starting situation where one of the partners seeks to gain too much at the expense of the other cannot be sustainable in the long run.

Building on solid foundations ahead of the partnership

During the "engagement" period, prior to the partnership, it is advisable to:

- Identify the needs that the partnership will need to address;
- Understand the partner's objectives;
- Find a balance between "degree of constraints" and "degree of control";
- Choose an approach where the issues of interests/risks are fairly aligned for both parties;
- Give priority to "custom-made", depending on the company's challenges.

Thorough due diligence should also be carried out on the planned partner(s):

- *The partner's ability to implement the business development plan*: financial standing, successful experiences from other partnerships, compatible cultures, especially in terms of business practices, etc.
- *The partner's relational networks*: local business relations in the relevant sector, relations with the authorities, PEP (politically exposed person) issues, reputational issues, etc.

As part of this due diligence process, the company can usefully take advantage of all the networks available to carry out this due diligence, such as networks of entrepreneurs, public authorities, local correspondents of the company's partners (e.g. law or audit firm), subsidiaries of French banks, local AFD branches, as well as specialised websites (e.g. world compliances).

Keeping the partnership alive once it has been established

Once the partnership agreement has been signed, the partnership must be "kept alive", which requires:

- An effort to maintain a "win-win" balance between the parties, in the medium and long term, even if it means gradually changing the format of the partnership, as certain issues relating to a more distant future can sometimes be pre-approved such as the terms of a future takeover of the partner, with a purchase option negotiated at entry;
- Management of legal and governance aspects:
  - Signing of well-structured partnership agreements, including clauses to manage a possible separation;
  - Establishment of balanced governance in the management of the partnership;
  - Establishment of clear procedures in the event of disputes (arbitration courts or other).
- Close management of the operational aspects of the partnership, "trust does not rule out control", efficiency is achieved through implementation:
  - Management tools (monitoring of performance indicators);
  - Key people (with particular attention to talent recruitment, ideally local).

Firminich: a partnership with a local university

Interview with Mr Emmanuel Frenck, former Managing Director and Vice-President Sub-Saharan Africa Region Flavors Division - Firminich

This century-old industrial player, a leader in the production of fragrances and flavours, historically operating in South Africa, wanted to find growth opportunities in the rest of Africa.

While Firminich traditionally operated with distributors, this company had the opportunity to cooperate with the Yaba Institue of Technology (Nigeria), with the opening of a laboratory in the university, with Firminich providing equipment, standards and training and the university providing workspace and students.

The benefits resulting from this partnership can be identified as follows:

1. Establishment of a subsidiary at a lower cost, as rents have to be paid in advance in Nigeria (five years for some leases);
2. Access to well-trained human resources;
3. Access to the university population for consumer testing (sampling from across the country instead of on-site testing of concepts);
4. Development of a laboratory at a low cost, which has become a showcase for the company to its local customers;
5. Investment in the country and in education.

Yves Rocher: a partnership to quickly secure a local market share

Interview with Mr Jacek Roznowicz, former Director of South-Eastern Europe & Africa - Yves Rocher

This French family-owned company was developed on the basis of an initial idea: beauty and care by using plants. It is active in the cosmetics, home care and clothing markets, with activities ranging from research and development, cultivation, production and marketing.

This company has internationalised, particularly in Africa, mainly by initially developing partnerships to establish stores .

The thinking for certain countries or strategic target markets was to establish strong partnerships, including clauses that could eventually (10 years) make it possible to take control of operations.

This approach enabled the company to quickly establish a foothold in eight countries (Morocco, Nigeria, Kenya, Egypt, South Africa, Angola, Côte d'Ivoire and Ethiopia).

For example, in Kenya:

- The partnership was developed with an importer/distributor with knowledge of the country, ensuring exclusive distribution for a period of 5-10 years and with exit clauses. This contractual partnership was established with specific sales obligations and objectives.
- The local partner focused on business development while the French company provided store plans, approved locations and provided three months of sales with product inventory.
- The French company also seconded a V.I.E. participant, integrated into the partner's sales team, in order to increase sales.
- This approach enabled this company to quickly secure a level of local market share and build its position, with limited and controlled investments.

"Establishing a partnership" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

Criteria for choosing the partnership format

- ☐ Exclusivity agreement or not (reciprocal or not)
- ☐ Degree of risk sharing/variability of costs according to revenues
- ☐ Degree of control of the local partner
- ☐ Degree of mutual support
- ☐ Degree of information sharing (financial, business, know-how)
- ☐ Reporting methods
- ☐ Terms and conditions for the use of the brand
- ☐ Profit-sharing arrangements
- ☐ Terms and conditions for termination (and any associated penalties)

Partner selection criteria

- ☐ Financial standing
- ☐ Importance of this partnership for the partner (i.e. priority or secondary subject)
- ☐ Business sector knowledge
- ☐ Past success with similar partnerships
- ☐ International exposure (studies, career, family)
- ☐ Practices in the operational management of activities (e.g. monitoring of indicators, search for growth and/or profitability and/or cash generation)
- ☐ Ability to attract talent
- ☐ Ability to train/develop teams
- ☐ Business relationships in the business sector (e.g. suppliers, customers, lessors, influencers)
- ☐ Relations with public authorities (e.g. supervisory ministry, tax authorities)
- ☐ Relations with political leaders (e.g. national officials and their families, local officials)
- ☐ Personal reputation
- ☐ Professional reputation
- ☐ Politically Exposed Person (or not)

3.2. What is the advantage of setting up a local subsidiary?

As with any decision to set up abroad, the choice of a direct presence in one or more African countries requires detailed analysis based on multiple external and internal factors.

Although each African country has its local and/or regional specificities, a direct presence generally takes the traditional forms of a liaison/representative office, a branch or a subsidiary (either wholly owned or in joint venture with a local or international partner).

The choice between setting up, or maintaining, an indirect presence and creating a direct presence, as well as the choice of the form of this direct presence, requires an analysis of advantages and drawbacks based essentially on **determining and quantifying the investments required and analysing and managing potential risks** to structure the project efficiently and clearly.

This approach will need to be adapted to the reality and scale of the plan, the company and the country in question. Also, a methodical reflection must naturally be carried out beforehand.

What are the advantages and drawbacks of a direct presence?

In terms of the advantages/drawbacks of direct versus indirect presence, the following conclusions are generally drawn:

ADVANTAGES	DRAWBACKS
Commercial Control of the industrial and/or sales policy (better knowledge of the market, greater responsiveness, better understanding of customer needs) Increased credibility and image with local customers. Notion of "customer service" as a differentiating factor (local follow-up, international dimension). Optimisation and competitiveness by playing on transfer prices between subsidiary (if applicable) and parent company.	**Commercial** No local partner, "involved" intermediary offering extensive knowledge of the target market. Medium/long term commitment that involves higher risk. In the case of a joint venture or the presence of minority shareholders, risk related to the reliability of the partner(s).
Administrative/Legal Simplification of logistical, administrative, commercial and financial operations. Circumvention of certain administrative barriers, particularly for certain calls for tender. Risk division, as the parent company is not responsible for the actions of its subsidiary.	**Administrative/Legal** More or less significant set-up formalities depending on the country (minimum equity, set-up formalities, etc.). Legal/regulatory constraints to be complied with (e.g.: "51/49 rule" (currently being abolished/eased in Algeria); regulated sectors, exchange control, taxation, etc.). Need to implement local legal monitoring. Need for specialised advice (accounting, taxation, labour law, investment code, etc.).
Financial Economies of scale by streamlining flows, eliminating intermediaries	**Financial** Initial investment and fixed set-up and management costs Need to establish a financial control mechanism for the subsidiary Potential risk associated with foreign exchange regulation and convertibility in certain countries

What are the different possible forms of a direct presence?

First, it should be pointed out that (i) depending on the country chosen, the different direct presence structures may vary and that (ii) in a fairly traditional manner, there is a distinction between a representative office or branch that does not have legal personality and a subsidiary that has legal personality separate from the parent company that controls it.

Branch and representative office

A branch does not in principle have its own legal or tax identity, although this does not mean that its activities cannot be taxed. Accordingly, its functions are generally close to those of a subsidiary (prospecting, sales representation, order taking, sales tracking, etc.) and, as it does not have legal personality separate from its parent company, these activities are then carried out in the name and on behalf of the original French company (or foreign company more broadly) which bears all the risks.

Like a branch, a representative office does not have its own legal and tax personality: it is primarily an observation post for a foreign parent company, which will enable it, for example, to make local contact with various stakeholders (e.g. potential customers, suppliers), provide it with information, and take care of its communication and advertising. However, the representative office can never enter into a contract in the name and on behalf of the parent company, since its purpose is not to carry out a commercial activity. So in principle, it only has a role of intermediary, involved in preparing the negotiation of commercial contracts entered into between local third parties and the foreign parent company.

In both these cases, invoices and contracts must be sent and signed by the foreign parent company, which must also examine its tax status in relation to the activities it carries out in the target country.

ADVANTAGES	DRAWBACKS
Very good knowledge of the market.	Administrative formalities for creation, albeit limited.
Full control of commercial policy.	Absence of a legal "firewall", which means the parent company bears the entire risk (e.g. in the event of a tax audit).
Profits fully integrated in the parent company's results.	Inability to sign contracts with the field representative, leading to a certain heaviness in the running of the business.
Stronger presence in the market than with a partnership.	

Subsidiary

A subsidiary is a company governed by local law with legal personality independent of that of the parent company. A subsidiary, where applicable, therefore buys products/services from its parent company in its own name and at its own risk and sells them locally. In particular, the legal screen created between the two entities provides some risk limitation for the parent company.

A subsidiary may be created by creating a company, buying an existing company or creating a company in partnership with other companies. The latter is often referred to as a joint venture. In some countries, this is the only way to directly penetrate a market on a long-term basis, as regulations prohibit the creation of wholly foreign-owned companies.

ADVANTAGES	DRAWBACKS
Very good knowledge of the market.	Higher initial investments and fixed costs.
Total control of the commercial policy and products considered as national.	Possibly strengthened compliance with local legislation.
Profits integrated in the parent company's results (consolidated view).	Financial control of the subsidiary.
Simplification and profitability of logistical, administrative, financial, etc. operations.	Need to find and recruit locally based managers.
Sharing of risks between subsidiary and parent company.	

As regards the legal forms of subsidiaries, each country has its own specific characteristics and, depending on the source of the local legal system (see above), there will generally be either (i) civil companies, joint ventures, limited companies, limited liability companies, partnerships or other social forms specific to civil company law, or (ii) sole proprietorships, partnerships, limited partnerships, corporations and other social forms of English law.

IDES GROUP: SUBSIDIARIES TO PRESERVE KNOW-HOW

Ides, a French group established in many sensitive regions, helps its French and foreign customers establish and sustain their activities in difficult areas, ensuring the physical and material security of employees and property on a daily basis. Its business is concentrated in airport security services, security of expatriates and guarding of sensitive sites.

This group chose to set up in Africa because it saw it as a continent of the future, offering many business opportunities and little competition, as the security business is highly regulated and demanding in terms of compliance and the fight against fraud. This group has developed it business mainly in French-speaking Africa and more specifically in the OHADA area.

Ides chose to systematically create subsidiaries in all the countries where the group wanted to develop its business, basing the development on its own equity and self-financing, as the objective was to maintain control and know-how in a technical and complex field.

Locally, the subsidiaries work with local partners that have limited power, with financing through shareholder loans, so as to have maximum flexibility in terms of cash management. Furthermore, this form of shareholder organisation gives local authorities a guarantee of local rooting.

The local entity focuses on the commercial and operational activity, with resources being mainly local, with few expatriates who only hold positions in functions related to Operations, Finance and Human Resources.

The management of financial transactions, invoicing (approval) and legal matters is centralised in Paris. There is no local access to the accounts.

A few points for further study

51/49 RULE

The so-called "51/49" rule historically refers to the rule of Algerian law prohibiting the direct or indirect ownership of a company under Algerian law by foreign shareholders, all economic sectors combined. This rule is currently being abolished/eased in Algeria.

Such rules existed in many African countries before being abandoned in the 1980s and 1990s to attract foreign investment.

Note that this term is sometimes still referred to in some countries (e.g. Tunisia, Egypt, Angola, etc.), but in reality this only applies to certain economic sectors considered strategic, in which a foreign majority (or other) shareholder is prohibited or subject to prior authorisation by the authorities (primary agriculture, for example).

Regardless of the country in question, it should be noted that any attempt to circumvent it by means of various mechanisms, including porting, is generally risky. Such arrangements offer little legal certainty or effectiveness and should be viewed with caution if they are offered to you.

FOREIGN CURRENCY OUTFLOWS AND SECURITY OF INVESTMENTS

Most African countries have exchange control mechanisms designed to control and ultimately limit foreign currency outflows, while not curbing foreign investment.

Traditionally, investment codes, foreign exchange office regulations or other central bank regulations specify the conditions under which foreign investments can be made, allowing or not allowing dividends, capital gains and other proceeds from investments to leave the country.

Depending on the country and the transaction in question, it may be necessary to make a simple declaration (prior to or after the transaction) or to obtain prior authorisation from the competent authorities.

This is obviously a major issue to be taken into account when choosing the country (or region) to set up.

Furthermore, one should carefully analyse the procedures for applying foreign exchange control rules for each country being considered, as some countries have tended to drastically restrict, or in practice make it impossible to carry out, foreign exchange outflows even though national or regional regulations should have made such outflows possible.

In addition to the above, the convertibility and stability of local currencies should be examined, especially for countries that are not members of the CFA Franc zone which has a fixed exchange rate against the Euro and benefits from transfer facilities with this zone.

WHAT ABOUT INTERPOSING A HOLDING COMPANY?

When considering setting up a direct presence in one or more African countries, it is advisable to consider the planned relationship with the parent company and its impact on the running of the business and/or taxation and/or cash repatriation issues, as these factors may vary depending on the parent company's nationality.

In particular, it may be preferable for the subsidiary to be owned, where applicable, by a company in a country with the most advantageous investment and/or non-double taxation treaties. Mauritius, for example, stands out for its tax environment and the existing ecosystem to accommodate this type of holding/subsidiaries.

The advisability of interposing a holding company between the parent company and the subsidiary should therefore be discussed with a tax adviser.

WHAT ABOUT FREE ZONES?

In many African countries, as in many other countries around the world, free zones have been developed, such as the Tangier free zone in Morocco, and in Tunisia (a scheme covering the entire territory for companies more than 66.66% owned by a non-resident). Companies setting up in these zones are granted advantageous tax and/or social security exemptions.

This is also an issue to be taken into account in the choice of geographical location and the strategy relating to the business developed, even though these zones have gradually been disappearing in Africa.

"Setting up a direct presence" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

The reasons for choosing a local presence over a partnership

- ☐ Protection issues (brand, know-how, customer relations, etc.)
- ☐ Challenges in controlling the pace of deployment
- ☐ Legal-tax or regulatory obligations

The vision of local presence in the medium to long term

- ☐ Purely local issue
- ☐ Regional issue (i.e. bridgehead to cover several countries commercially)
- ☐ Future regional holding company (umbrella for other subsidiaries)
- ☐ Choice of structure (branch, subsidiary or representative office)

The choice of country of establishment

- ☐ Local market size
- ☐ Local staff (HR, financial, etc.)
- ☐ Ability to repatriate cash
- ☐ Risks inherent to the country (political, commercial, etc.)

Taking tax impacts into account;

- ☐ Identification of factors that affect the determination of local taxable income
- ☐ Effective tax rate on distributed income
- ☐ Identification of levies likely to reduce the profit

3.3. Is business development through acquisition preferable?

Development by acquiring pre-existing companies can be a solution that enables rapid growth by finding an already established player that knows the particularities of the local market and that has already managed to establish a business relationship capable of supporting further value creation.

This is a time-saving solution compared with the creation of a subsidiary and reflects a desire to benefit from the entire value creation, contrary to the creation of a simple partnership. It must, however, be in line with the culture of the acquiring group and more particularly, as this is an investment in Africa, its desire to more or less **leave its comfort zone by accepting to make an equity investment to take control of an entity that is remote and often subject to a management style that may be different** from that practised in France.

What are the African specificities that must be taken into account in the major stages of an acquisition?

The acquisition process generally takes longer than in Europe, for several major reasons:

- First of all, there is **very limited intermediation in the sales process**, especially for small and medium-sized targets. Consequently, the approach to targets requires the establishment of a climate of trust that is **difficult to achieve without an on-site visit and a significant amount of time** for discussion with the target's shareholders and/or managers;
- In connection with this lack of intermediation, but also because of the quality of the information, the **available financial data** that could serve as the basis for an initial assessment sometimes lacks quality (this can vary greatly depending on the country and the target);
- Valuation methods that are now traditional and based on multiples or discounted cash flow approaches may be incomprehensible to sellers who, in some countries, have a **revalued net asset culture**;
- The cost of the transition to "group" standards that exists for each acquisition should not be underestimated in certain countries (e.g. human resources management standards, business conduct standards, accounting standards).

All of this calls for a cautious approach to the "fair value" of a target company, in particular by considering **schemes that give the acquirer a certain flexibility** (purchase of shares sequenced over time, instalment payments subject to conditions, etc.), the approach then consisting in determining the financial and legal conditions that will make it possible to set the final valuation/price and acquisition percentages once the basic data are better understood and trust is established.

In addition, **prior due diligence is absolutely necessary** and provides an opportunity to establish direct contact with the target's management and employees:

- The scope of these due diligence procedures must be well defined, on the basis of both the validation of the strengths sought in the target and the identification of areas of weaknesses/risks;
- On-site implementation is to be preferred over an electronic data room;
- The choice of advisers for the transaction is crucial.

The valuation issue will therefore rather arise after this due diligence phase, followed by contracts being signed. This will be an opportunity to reflect on the level of equity investment, which may be total, partial or gradual, sometimes making it possible to manage the transition towards "group" standards in greater detail.

Integration within the group then presents particular challenges because **distance is often not only geographical, but can also be cultural.** The management of human resources and key personnel will be an essential factor in this area (see below).

What are the main points of attention when making an acquisition in Africa?

The time factor should not be underestimated, at all stages:

- During the acquisition feasibility study;
- During the due diligence process;
- In the discussion phase of the contractual terms; and
- During the integration process.

In particular, making an acquisition in Africa takes longer than in France or Europe. Thus, while acquiring an African company may save time compared with setting up a direct presence, it is worth keeping in mind that such an acquisition may require a **long period of discussion before the acquisition** and then a **long period of integration** that will require mutual understanding efforts on both sides.

Conducting in-depth "due diligence"

At the start of the transaction, the organisation of due diligence or audits is a key point. From a strictly financial point of view, the data are often unsatisfactory and there are countries where there can be several sets of accounts depending on the interlocutors for whom they are intended (tax authority, bankers, management).

Accordingly, it is necessary to make the data reliable before anything else. The accounting principles used are not always in line with a known standard, even if the accounts are certified locally with reference to such a standard. For example, long-term employee commitments frequently introduced to attract talent and compensate for countries' lack of health and pension coverage may represent significant amounts not included in financial liabilities *("mini time bombs").*

In addition, internal control is based more on a tradition of compliance with known procedures that are transmitted orally than on written procedures. Therefore, only a field approach can generally give an idea of the quality of the procedures put in place.

These due diligence procedures may give grounds for negotiating an asset or liability guarantee by placing part of the (recommended) sale amount in an escrow account. Likewise, it is advisable to try to obtain a tax discharge from the seller before the sale.

Lastly, the audit phase is an excellent opportunity to build and refine an action plan (e.g. a 100-day plan) by identifying the first levers for improvement and value creation and a roadmap for the manager.

Understanding the business environment

It is also useful to keep in mind that knowledge of the target market will probably only be possible on site, by devoting time to a proper understanding of local specificities. Advisers with good knowledge of the country may often understand this better as the arrival of a new foreign shareholder may, even apart from any specific regulations, upset balances:

- The employees may have new demands;
- Tax authorities may initiate audits or recall past tax disputes that are not time-barred;
- Minority groups may have outlandish claims when it comes to buying them out as their nuisance power in a local microcosm can be significant;
- The methods used to gain contracts may have specific features that do not comply with the internal rules of the acquiring group and it will then be necessary to assess the risk of loss of revenues in the future.

An acquirer must therefore be able to take time to move from understanding the target and its environment to completing the acquisition itself and, despite the geographical distance and sometimes a linguistic difficulty, must be prepared to travel in order to favour direct contact and face-to-face relations.

Taking time

The valuation and the level of equity investment can be significantly refined after the due diligence phase and on this continent, **time is needed to achieve the goal**:

- Proceeding in stages may seem more restrictive, and sometimes ultimately more costly, but this validates the climate of trust and the feasibility of living together within the same group;
- In a number of situations, apart from any legal constraints, it may be wise to provide for earn-outs linked to meeting certain objectives (not necessarily linked to future profitability) or a gradual increase in the target's equity, even if this may prove difficult to implement for less "sophisticated" sellers.

In the same way, time is an essential factor to ensure proper integration, whether it involves implementing the expected synergies or carrying out work to bring the business up to the standards of the acquirer, which can go far beyond the simple implementation of standardised reporting.

Which advisory partners to help make a successful acquisition?

The choice of advisers is a key factor. It is a question of finding a good balance between, on the one hand, advisers with good experience from the local market and legal and tax constraints, both in their official interpretation and in their effective application, and, on the other hand advisers from outside the target country, with a clear vision of the expectations of the purchasing company and that can provide guarantees of independence.

In the exploratory phase

In an initial exploratory phase, a number of French institutions can facilitate the analysis of the planned target and its environment, by providing the company with country studies and by putting it in contact with experienced advisers, such as:

- Business France;
- MEDEF International, a generalist player on the international scene;
- CIAN (French Council of Investors in Africa), a private employers' organisation dedicated to the African continent that brings together large and mid-sized companies that already have investment experience on the continent and have a pool of "senior advisers" for each area that can shed light on the specificities, strengths and risks for each country;
- Chambers of commerce set up in certain countries, which can provide useful information, albeit of a fairly variable quality depending on the country.

There are also various advisers with strong African experience (advisory banks, audit firms, lawyers) that will be useful from this exploratory phase (e.g. identification of the target, legal and tax environment) to the execution phase of the acquisition process (e.g. approach of the target's shareholders, valuation analysis).

In the due diligence phase

When the company enters the due diligence phase itself, it is first necessary to ensure collaboration with appropriate advisers and to define with them, based on their experience in the country, what they consider to be the optimal scope to be covered by these audits (e.g. market, finance, information system, compliance/CSR, social, legal, tax).

The purpose of these due diligence procedures is to verify the quality of the basic information, although the culture of financial objectivity varies considerably from country to country. In certain situations, this will require a basic approach: cash flow/cash generation/validation of the possibility of transferring cash out of the country. The next step is to validate the target's strong points and its resilience in a new group context, to clarify the risk areas and to quantify the possible cost of moving to international compliance.

In order to offer a double interpretation of the audits ("compliance with local rules" vision/"compliance with the purchaser's reference framework" vision), most international law and auditing firms are able to cover a large number of these aspects by allocating both French and local resources to the audit assignment.

In such circumstances, the assignments:

- are then often led by local and/or specialised teams, with a perfect knowledge of the specific focal points, particularly in areas such as social, legal and tax;
- are managed and coordinated by teams based in the buyer's country of origin, which makes it possible in particular to perfectly translate the main issues of the audits into concepts that can be fully understood by the acquirer's teams, in order to ensure that all existing risk areas or those that may arise from a foreign takeover can be clarified and correctly interpreted by the potential buyer.

BLIND EXAMPLE

A French industrial player, leader in its market, decides to buy a plant in Southern Africa to face local competition and establish itself in Africa.

After the usual financial due diligence and once the acquisition is almost complete at the end of 2015, the group requests a Transition Management Company to validate the acquisition operationally, as it does not have a manager with knowledge of Africa in-house to start up the plant and integrate it into the group's standard. The group is therefore tasked with finalising an audit of the plant, operational due diligence and establishing a 5-year plan.

This anti-competitor purchase operation became intelligent, strategic and essential for this manufacturer.

The integration and development work enabled the Transition manager to increase revenues threefold. From a negative operating income, the transformation it carried out led to a positive EBITDA, changed the product mix and increased the return on investment.

This subsidiary then made it possible to develop a school corresponding to the sector of this industrial player and to become the hub of southern Africa. In 24 months, this subsidiary achieved remarkable development that differed from its business development in Asia.

"Examination of an acquisition" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

- ☐ Availability of concrete general information on the target country (political, economic, legal and tax, monetary stability, general business environment with advice if necessary)
- ☐ Construction of a vision of the potential market according to the operational logic of the investment (e.g. purchase to acquire production capacity versus purchase to conquer a new market)
- ☐ Availability of a team available to travel, negotiate and examine the target
- ☐ Availability of a team to manage due diligence (taking the time required to provide relevant information)
- ☐ Identification of relevant consulting firms (auditors, lawyers)
- ☐ Identification of the possible effects of an equity investment (minority shareholders, employees, social and tax authorities, transition to a formal economy, management of possible compliance issues)
- ☐ Cash flow analysis (financing of the acquisition, possible repatriation of income, management of transfer prices)
- ☐ Risk appetite in view of the expected difficulties
- ☐ Availability of a team to integrate the target (especially financial, HR and organisation plans)

4

HOW CAN I MAKE MY BUSINESS DEVELOPMENT IN AFRICA SUSTAINABLE?

In the running of the business, the priorities are the same on the African continent as in other countries: they are based on factors common to any company such as defining a mission and values, structuring its activity in compliance with local rules, conducting operational management and transformation with the right people.

However, setting up in a new country whose local practices, legal/tax/social/accounting rules, language, culture, etc. are not mastered can be a real headache for a company manager and, in order to effectively manage this new establishment, directly or via a partner, it is often important to:

- quickly ensure close contact with the teams at the new site and identify the local intermediaries that will ensure compliance with the right rules and best practices;
- define a long-term approach to (i) roll out the company's management know-how locally and (ii) ensure the local transmission and appropriation of this know-how and these methods.

So the success or failure of business development on the African continent over time will depend on:

- naturally, first, the quality of the products/services, their pricing level and their suitability for the needs of the local market;
- second, as for any business development project, the quality of execution, which is based in particular on two key components: people and management tools

4.1 What approach to human resources?

Companies that choose to invest on the African continent often need to engage in a process of adjusting their structures, particularly industrial and sales structures, to effectively respond to the challenges and characteristics of the continent. This adjustment leads to an in-depth reflection on human resources to deal with local practices, against a backdrop of challenges in defining an organisation, recruitment, skills development and team loyalty.

How to set up an effective local organisation?

Whatever the form of establishment it chooses, it is important for the company to set up a local structure in line with its corporate performance objectives, based on three main pillars: building an effective organisation, managing HR issues, and adapting to the local culture.

Building the organisation

First, the company will have to define the functions that will be carried out locally and those that will be centralised. Nevertheless, in all cases a real "field commitment" must be ensured for the operational teams, not in a performance control/monitoring approach but in an approach that supports and takes into account the daily problems of the local teams. Second, within the functions that will be carried out locally, certain activities (e.g. legal, tax or accounting monitoring) may be outsourced, in which case attention must be paid to ensure that the correspondents of the relevant functions in the parent company are really involved in the relations with these local partners.

Third, it is useful to remember that:

- It is not always necessary to send expatriates and/or to plan their presence over time; the use of local managers is a good indicator of the sustainability of the company set up. Also, the use of "transition managers" can also be a credible alternative to initiate a business development or to manage a specific situation;
- As understanding the local environment is crucial, diversity in the organisation is an advantage;
- To gain support for the project, motivate teams and empower employees, it is necessary to delegate, trust and therefore offer both autonomy and control by proposing improvement plans.

Managing human resources

In addition to the recruitment and retention issues discussed below, a few ideas to keep in mind:

- In an environment where staff is available, but where they cannot meet the company's immediate need for skills, knowledge transfer to African employees is a key issue. Do not hesitate involving them in the various training programmes that the company may set up, using digital tools if necessary (distance learning, e-learning). In addition, the company may build a tailor-made training programme for certain employees, whether internal (coaching/mentoring) or carried out by local schools/universities.
- To make the company part of its human ecosystem, it is useful to identify the employees who act as a link between the company and its local ecosystem, whether external organisations (e.g. trade unions, ministries) or communities, and in particular those who lead local initiatives, as these make it possible to establish a connection between the company's activity and its economic and social environment.
- It should also be remembered that certain areas of the African continent require a certain vigilance. These areas may be far from major cities or may be integrated into the urban fabric. The safety of employees, whether local or expatriate, is therefore an important issue that must be treated with the utmost attention.

Adapting to the local culture and the mode of communication

It is crucial to understand the environment in which the organisation will operate and it local management often has to spend time in the field and to integrate into the economic fabric. This will notably enable the company to gain credibility and to understand communication codes. On this point, it should also be noted that communication is often less direct in Africa than in France or in Europe (even if the same language is used), and mastery of indirect communication makes it possible to avoid blunders.

How to recruit local talent?

In a context where a long-term presence often requires favouring local staff, these are the preferred option for many companies and the pressure on recruiting these profiles is often strong.

As the talent pool is currently limited in relation to companies' needs, the "value proposition" that companies offer their employees must be carefully thought out:

- What **business plan (**overall for the group and locally for the subsidiary)?
- What are the **pay conditions** (fixed or variable salary, other benefits such as social security cover)?
- What are the **career prospects** (training, development opportunities)?
- What is the discourse on the **company's values/employer brand** (as smaller companies have to "fight" against multinationals to attract talent)?
- What **working environment** (which should as far as possible be close to the working conditions of the other group entities, particularly with regard to the quality of the premises and the IT infrastructure)?

Furthermore, as training and profiles are often less "standardised" than what exists in the country of origin of the company wishing to recruit, an analysis of "human and interpersonal skills" may be a priority in the selection process of management staff and, as an example, it is possible to refer to the work of the firm Egon Zehnder on the subject.

FOCUS ON TALENT IDENTIFICATION (EGON ZEHNDER)

Egon Zehnder has developed an Executive Leadership Profile for leaders who want to identify and develop their talents.

This differentiating model makes it possible to identify potential very early in a career, for long-term development and talent management:

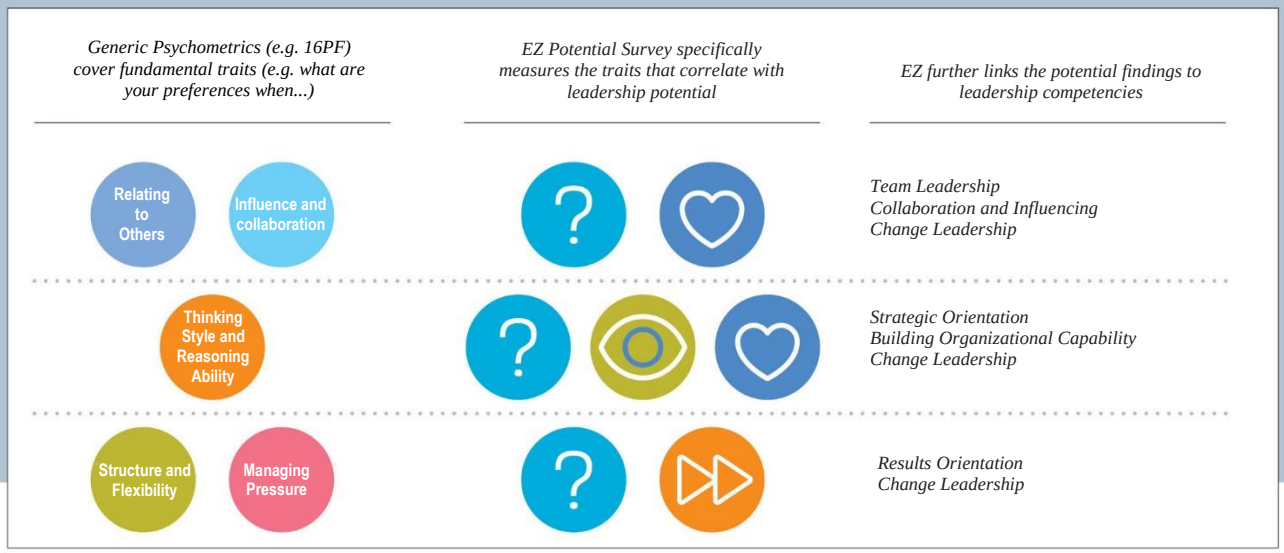
- It eliminates any confusion between long-term potential and the ability to be promoted in the short term;
- It can also help in the development of leaders, by making better use of their strengths but also by optimising or even activating "raw" characteristics (e.g. personality traits).

Using potential from a trajectory perspective helps determine the next "right" position to develop a high level of potential so that the person in question is not overwhelmed in several ways and fails. This model is based on research from a wide range of sources (academic interviews and research, corporate research, books, projects, etc.) as well as on studies conducted by Egon Zehnder and, as far as leaders are concerned, on assessments and recruitments of leaders.

This potential model can be used by companies wishing to bet on young talent. It is based on four factors constituting learning agility:

- **Curiosity**: is characterised by the active search for new experiences, new ideas and the acquisition of new knowledge, the solicitation of feedback, the desire to learn and openness to change;
- **Discernment**: refers to the ability (i) to gather a wide range of information and make sense of it and (ii) to discover new angles to challenge preconceived ideas (create a vision);
- **Engagement**: creating an intellectual and emotional link with those around you, communicating your vision strongly and convincingly, and developing a sense of belonging and support;
- **Determination**: staying the course with courage and determination to achieve the vision and reach the goal despite challenges, while remaining attentive to conflicting signals.

This analysis of potential, combined with an analysis of leadership skills, helps identify and develop talent.



Egon Zehnder©

Lastly, it is also useful to keep in mind that:

- To attract new managers to the company as it grows, it is possible to implement a **talent scouting** approach and identify talent outside the company. It is then necessary to build a relationship with these local talents, to create closeness to understand their motivations and their potential adaptation to the company culture. This way, the day a position opens, they will be prepared to join the company and it will be easier to recruit them.
- As with other topics, the use of **local references**, either formally or informally, can help the company determine whether the selected candidate has a relationship environment that could have an impact (positive or negative) on the running of the business locally.
- The presence of **good universities** nearby can be a criterion to be included before choosing the company location, especially if the "talent recruitment" dimension is critical in the planned project. The aim will then be to gradually forge links between the company and the university (e.g. internship offers, end-of-study projects, involvement of company professionals in the context of the students' academic curriculum) to ensure a flow of quality candidates.
- Particular attention should be paid to **diaspora talent**: while it is positive that those who have left to study or work abroad return to their country, it may generate some risks. These internationally-trained talents may have difficulty in readjusting to local infrastructures, to a complex economic environment, and to the local teams to whom they must pass on their knowledge while avoiding being arrogant. In order to foster the integration and management of these talents, it is useful to favour an approach aimed at offering real long-term career opportunities rather than expatriation conditions that are significantly out of step with local conditions.

How to retain talent?

Talent management in Africa is similar to that in other parts of the world. Career aspirations are the same and are based on autonomy, the possibility of having an impact and fair recognition.

However, in an environment where the pool of local employees trained in management methods for foreign companies is insufficient to meet needs, where competition for talent is intense, where the mobility of well-trained people is strong and the time required to replace a departure is longer, team retention is probably more critical on the African continent than in other regions with, as a criterion of additional complexity, the distance of teams from the company's head office.

However, team retention is more critical in Africa than elsewhere. This is because:

- the pool of local employees trained in the management methods and/or management of foreign companies remains insufficient;
- competition for talent is intense;
- the mobility of well-trained people remains significant;
- the time required to replace a departing employee is longer.

Furthermore, the distance of the teams from the company's headquarters adds a criterion of complexity to the list.

Talent retention therefore appears to be one of the key challenges for any company that wishes to develop over the long term and, more generally, the retention strategy must be carefully defined and applied. At the very least, local managers should benefit from the same level of follow-up and opportunities as managers of the same levels based at the headquarters or in the European entities, with discussions on:

- The career plan and opportunities offered;
- Training (internal or external, face-to-face or online, etc.), both in the development of specialised technical expertise and soft skills (e.g. management, communication);
- Pay evolution
- The cost of developing and managing talent, which must remain reasonable to remain competitive.

Furthermore, to create bonds and "buy-in" with the company, it may be useful to provide for mechanisms that are more extensive or go further than those existing in the company's country of origin, for example:

- Assignment of complex tasks that develop new skills and expertise;
- A mentoring programme with more senior people from the organisation based in Europe;
- Opportunities for international mobility;
- More frequent visits by operational or functional managers based at headquarters;
- Creating an environment where one can learn from failure

It is also important to ask management to pay close attention to identifying potential employees that can support the company's development.

"Human resources approach" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

Human resources challenges

☐ Availability of in-house operational staff to manage/establish a presence on the continent

☐ Availability/maturity of support functions to support the teams in charge of this development

☐ Availability of "senior" teams to travel locally to encourage the teams/understand local issues

☐ Availability of "senior" teams to participate in a mentoring programme

☐ Existence of universities close to the company's various locations

☐ Existence of a formal presentation on the company's "value proposition" to its employees

☐ Existence of a formal presentation on the company's "value proposition" to its employees on the African continent

☐ Availability of HR teams to build appropriate training plans (in MOOC versions if necessary)

☐ Availability of HR teams to set up personalised follow-up of employees occupying functions for which the employee is "scarce"

☐ Identification of projects enabling the company to participate locally in the life of the community

An operational example of talent management

Interview with Ms Patricia Nicolas, former HR Director of the company Africa (code name) in Europe

The company Africa (code name) is a well-known company in the Rwandan market. It is growing and generally quite well structured. However, it was not easy to find in Rwanda an ideal profile for a human resources director; i.e. one who knew the "hard" aspect of HR (payroll, personnel administration, legal, work organisation, disciplinary, etc.) and who was capable of instilling the "soft" side, which was still in its infancy (recruitment, HR development, talent management, careers, etc.), while having a "strategic spirit" in line with the concept of expatriate leaders (having a medium- and long-term HR vision, creating the company's missions, identifying and bringing to life the company's values, representing the company to the outside world, etc.).

During a transition period, HR management was entrusted to an expatriate director. However, the company was aware that it was not possible/desirable to entrust the HRD position to an expatriate and that it was imperative to invest in local resources. Taking into account the shortage of HRDs in Rwanda and the difficulty in recruiting, management decided to identify a talent within the company with the "know-how" to take this position.

No one in the HR department had the capacity to do so. So the choice was made for a Rwandan person from the marketing department: a young woman, with about ten years of experience, European degrees, a very limited expatriation experience, perfectly fluent in the three languages used in the country (French, English, Kinyarwanda), with analytical ability, dynamic and motivated, communicative and with strong interpersonal skills; but with no experience in Human Resources.

Management therefore decided to capitalise on this talent by having her coached by the HR Director of the European headquarters. A specific training programme on all HR aspects was set up over one year. From time to time, the headquarters HRD came to Kigali to give her training but also to guide her in her development. Personalised remote support (via regular Skype telephone conferences once or twice a week) was organised to help this person and offer her appropriate solutions to each question.

Despite the fact that this support project presented risks and a large investment for the company, both in terms of time and money, it was a success for both parties. It enabled the company to find a solution to this too often vacant position, with a person who understands the expectations of European shareholders while having a local mindset with cultural compatibility/adaptability. However, it was also an opportunity to strengthen the motivation of the person who got this promotion by offering her a retraining programme, and by developing a strong sense of belonging and loyalty to the company.

4.2. Which management tools/procedures?

The management process of a company, regardless of its size, is usually defined by the central management teams, whose task is to present and communicate their development strategy, their long-term vision, the target organisation, the key skills and the resources needed to achieve the group's ambitions.

This management process takes into account internal and external stakeholders/factors, by trying to measure decision-making risks, in order to give the management teams at all levels the tools required to properly measure the success of the company's development projects and to identify any deviations.

Therefore, and in order to effectively manage the organisation set up locally, it is crucial to quickly ensure close proximity between the decision-making centres and the new location and also to identify the local intermediaries who will ensure compliance with proper rules and practices.

How to ensure that the applicable rules are mastered?

Prior analysis and understanding of local practices is a prerequisite for any establishment as it is difficult, or even risky, to "learn and do" at the same time:

- In the case of a **partnership**, this factor must be taken into account when defining the type of partnership, so as to clearly identify, on the one hand, the resources required to implement the terms of the planned partnership and, on the other hand, their in-house availability or the recruitment to be carried out if necessary;
- In the case of an **establishment**, the aim will be to define the project's ambition as well as the means to be used during the different development phases of the local entity;
- In the case of an **acquisition**, it is useful to take advantage of the inertia of the transaction to rely on the conclusions of the due diligence to define the short and medium-term action plan.

Beyond this analysis phase, the quality of execution from day one will be equally important and in particular:

- In the case of setting up a **partnership or a subsidiary**, it will be useful to ensure that best practices are implemented from day one and also to quickly put in place tools to monitor the development of the business and prevent any divergence;
- In the case of an **acquisition**, it is preferable to take all key decisions very quickly, in a "100-day plan" approach, or even to ask the seller to start making certain changes even before the actual acquisition of the target.

The company also needs to monitor legal/tax/social security matters. This monitoring will ensure that the company is able to comply at all times with the locally applicable rules, which, as in many countries, are in almost constant evolution. In this respect, it will be useful for the company to maintain links with law firms able to warn it, at regular intervals, of major upcoming changes.

How to master compliance issues?

As in many countries, mastering compliance risk is a challenge on the African continent and one of the risks discouraging many companies in their decision to develop on this continent, as many factors can make non-compliance risk a major issue:

- systemic corruption that may be high;
- oligarchic political and social structures remain predominant;
- development of democracy making discrepancies more visible;
- monopolies, insider trading, major corruption;
- advantages and challenges of a young population in the face of a sometimes elderly ruling class responsible for systemic corruption.

Faced with this challenge, which is sometimes difficult to measure, in-depth improvements are gradually emerging in many countries on the continent:

- strengthening of institutions responsible for maintaining a balance of power;
- bridging gaps in the implementation of legislation;
- support for civil society and free media;
- passing laws to fight corruption.

In this context, it is important to be sensitive to certain fundamental elements:

Communicating corporate values

The company's values covering environmental, societal and governance issues should be emphasised. This must be emphasised at the start of the relationship and the values in question must be the same in all the places where the company is present. This approach will make it possible not only to avoid wasting time with persons whose value base is too far away to allow effective cooperation at a later stage, whether it is a potential partner or a future manager, but also to ensure that business will be run in accordance with the company's expectations in the future. In addition to the risks associated with non-compliance with applicable compliance regulations, potential image risks, both internally and externally, should also not be overlooked in the event of a "deviant" approach to business conduct.

In this respect, it may be useful to communicate the company's code of ethics and provide anti-corruption and anti-fraud training to business partners and require them to comply with these ethical rules, failing which the contract may be terminated.

Knowledge and monitoring of applicable compliance regulations

There are a number of texts in force, applicable on the African continent according to regional conventions or national legislation, some of which have an extraterritorial scope of application that make it possible to sanction companies subject to these laws that commit acts of corruption in Africa. Such laws can expose companies that fail to comply with them to extremely severe criminal penalties in their home countries.

Some texts resulting from national laws have real extraterritorial effect and must be subject to increased vigilance:

- The FCPA (Foreign Corrupt Practice Act) adopted in the United States;
- The UK Bribery Act, adopted by UK legislation;
- The provisions of the French Criminal Code that criminally punish international corruption.

Other texts may be similar in scope to the above-mentioned national laws and take various forms, as evidenced by the examples below:

- The ISO 37001 Standard: "*Anti-corruption management systems*".
- The OECD Convention and its recommendations.
- Multilateral Conventions.
- The requirements of the World Bank and other financial and development institutions.

The extraterritorial scope of certain national or international compliance legislation should therefore be taken into consideration since a subsidiary's activities may have an impact on companies in the same group as well as on its managers, even if they are based in other countries.

It should be noted that certain regulatory aspects arising from the implementation of local compliance rules may have an impact on the rest of the group, or even lead to sanctions for managers in their home countries in the event of non-compliance with these laws.

Thus, a reference can be made to the Sapin 2 law. It was adopted in France and applies to commercial companies:

- with at least 500 employees; or
- belonging to a group with at least 500 employees; or
- whose revenues (consolidated or otherwise) exceeds €100 million.

This law requires the companies in question to implement a very strict anti-corruption system under penalty of administrative sanctions against their managers and the companies concerned. The aim is not only to support large companies but also to encourage others, mid-caps and SMEs, to implement an effective anti-corruption system.

In the United States, for example, the Department of Justice has fined companies in Africa-related cases more in the last eight years than in the previous 40 years combined.

Examples of countries that have developed measures

BOTSWANA

- A successful model: a continuous effort since 1994: interdepartmental integration, zero tolerance, establishment of effective control institutions
- The African country with highest TIindex score: 100

CÔTE D'IVOIRE

- Legislative initiatives and creation of a national anti-corruption authority
- Ensures compliance with international initiatives: EITI (Extractive Industries Transparency Initiative)

KENYA

- Kenyan Bribery Act 2016 Came into force on 13 January 2017
- Law that establishes: an obligation to report, the protection of whistleblowers and ethical behaviour among private sector players

MAURITIUS:

- The so-called BHADAIN law of 2015 to protect whistleblowers

On all these subjects, readers may also refer to the Compliance Guide written by France Invest's Africa Club

(http://www.franceinvest.eu/fr/commissions-clubs/clubs/club-afrique.html)

Implementation of appropriate communication and organisation

To combat the risk of non-compliance with compliance rules, mainly in the context of commercial transactions, players must act regardless of their hierarchical level and, the more the company manager and his/her local representative insist on the need to act transparently and resist any form of corruption, the more the company will be identified locally as a responsible player.

It is in the company's interest to ensure that this issue is understood, applied and verified at different levels of the company, both locally and at the level of its main headquarters:

First line	Second line	Third line
Operational management	HR, IS, legal department Management control, Finance	Internal audit Compliance Manager

Also, beyond the company, vigilance can usefully be extended to local partners to limit any risk of deviation (e.g. distributors, suppliers, customers, co-shareholders).

How to ensure the reliability of feedback?

The operational management of day-to-day performance is an important factor in the success of setting up a presence on the African continent, whether directly or in partnership.

This management cannot be carried out without good visibility of what is happening locally: proper feedback of information from the field is often essential, through those who are in direct contact with customers, suppliers, and more generally all counterparties.

Setting up an effective management system that meets the company's operational challenges often involves the following major steps:

Ensuring good data reliability

It is generally quite easy to recruit efficient accountants locally, particularly in areas close to universities, as the education system in terms of accounting is generally good on the African continent. In some areas, standards are often quite similar to those used in Europe. However, it is advisable to establish a culture of data reliability very rapidly (when the subsidiary is created or acquired) and to explain the importance of this reliability, and to give the teams the means to achieve it (in training and tools).

In addition to making the data more reliable by ensuring that the information is correctly and exhaustively entered by the accounting teams it is often useful to set up a rigorous control mechanism, for example by carrying out an internal audit or by using a statutory auditor, even if the company's thresholds do not necessarily require such measures.

Implementing effective management control close to operations

In addition to accounting records and data reliability, so that the effective management of the company can be the main priority, information on the company's condition must also be easily and regularly accessible, within reasonable deadlines, bearing in mind that, depending on the company, there may be many different types of data to be reported: commercial (sales, order book, prospects, collections, etc.), industrial (units produced, waste rate, etc.), accounting (cash flow, etc.).

The management control team, in charge of effective modelling of economic information management, is usually the key group to assist with implementing the strategy and monitoring its effectiveness.

However, while it is generally quite easy to structure the accounting function, the recruitment of good management controllers often proves to be a more complex task, which may require the use of "non-local" support to structure this function, whether these are one-off assignments carried out internally by teams from the headquarters of assignments carried out by external consultants or transition managers.

Setting up information systems

Regardless of the production or commercial activity, it is sometimes useful to invest in a flexible information system enabling proper management of the business or, ideally, to use the same system as in France to facilitate the interface.

In addition to providing a framework for the accounting procedure, such software limits monitoring with Excel and the associated "creativity", produces reporting more quickly, and provides central teams with real-time visibility on business discrepancies.

These tools are used in particular to:

- Monitor revenues and its growth; and
- Track payments, late payments and average payment terms.
- Track inventories;
- Track current expenses and purchases;
- Prepare financial statements: accounts, cash flow forecasts.

Setting up appropriate reporting, with the right frequency

The more reliable the reporting, with good information granularity and good control of production deadlines, the more effective the organisation will be in its decision-making, which is often a key success factor in rapidly developing markets with multifaceted and particularly mobile competition. Accordingly, the need to put in place an effective operational reporting mechanism may appear more clearly in these new markets than in more mature markets that change less rapidly.

Ideally, this reporting covers:

- The usual sales issues (price/volume analysis by segment, margin on direct costs by segment);
- The trend in "structural" costs locally and before headquarter costs to have an overview of the local entity's actual contribution;
- The consistency between the result as shown in the reporting and the local entity's cash position, and checks by the treasury department to significantly limit non-compliance risks.

It is also often necessary for the central teams to be able to spend time in the African subsidiary to take the pulse of the teams, explain what is expected and the importance of the expected information.

For a proper distribution of roles, the local team will ensure that it anticipates and communicates on local issues while the central team will focus on the proper transmission of the group's expectations.

How to ensure good cash management?

Cash management can sometimes be complicated on the African continent, due to the scarcity of capital (equity and bank debt), longer payment terms, or even unpaid bills, and possible exchange control systems preventing dividend repatriation. In particular, although it is legally possible to move funds in many countries on the African continent, companies often have to wait for a shorter or longer period when sourcing foreign currency.

One of the basic principles of cash management is the concentration of cash at one point, ensuring that money can then be readily available at any point. As this is a development on the African continent, it is nevertheless useful to properly analyse the cash issues entity by entity because (i) it is not always easy to respond in a timely manner to a cash shortfall and (ii) once the cash has been transferred to an entity, it is not always easy to repatriate it centrally.

Ensuring good local cash management is therefore an objective that should be achieved quickly, bearing in mind that good cash management is generally based on three major aspects:

First, having a vision of the impact of all the company's processes on local cash flow, as this reflects all the decisions taken at many levels of the company, for example:

- pricing levels, as the sales strategy is often defined by the sales department (target price) and applied by the local sales teams (volume discounts, for example);
- contractual payment terms granted to customers, defined by the legal department and sometimes adapted by the sales teams;
- the speed of customer reminders, which are often prepared by the financial teams with more or less necessary support from the sales teams;

Second, setting up a reliable cash flow forecasting process, which is often based on:

- reliable tools and competent staff to provide a fairly clear picture of what the cash position should be in the light of expected business developments. This technical aspect of cash forecasting is generally not the most difficult to implement;
- analysis of the discrepancies between the forecast and the reality of the cash position in order to identify any deviation in the application of the company's processes. This aspect may sometimes be more complex to implement, even though it is often the most useful for running the business as it makes it possible to identify deviations, not only operational but also in terms of compliance;

Third, having a clear vision of local funding in terms of cash flow, to avoid any deadlock and anticipate "unforeseen" needs. This is particularly critical on the African continent where additional funding can sometimes be difficult or time-consuming to obtain.

So the key elements of good cash management are as follows:

- defining funding needs properly well in advance;
- as quickly as possible, setting up cash management tools for each entity and carrying out a projected vs. actual gap analysis in order, first, to make the tool more reliable and, second, to understand/identify/process deviations;
- in the running of the business, applying a strict approach to items that have an impact on cash flow, and in particular:
  - *Ensuring proper invoicing*: clarity of contracts, speed of execution, management of unbilled outstandings, etc.;
  - *Ensuring proper collection*: taking into account country specificities, standardising payment terms, ensuring proper follow-up of receivables and focusing on monitoring actual payment terms;
  - *Securing payments* when possible/necessary: taking out insurance, using databases (local: central/international banks: Coface);
- it is also useful to remember that cash pooling can also give the company better control of cash flow.

CASH POOLING

"Cash pooling" means a centralised cash management system that optimises the surpluses and needs of the subsidiaries of the same group, enabling the company to:

- Concentrate its liquidity, ensuring that the Group's money can be available in a single point for maximum return;
- Optimise the state and management of the Group's cash position by reducing financial costs while mitigating any weaknesses in financial markets.

The company's internal funding can then be one of the main sources of financing given the lack of liquidity on the continent.

Nevertheless, restrictive foreign exchange or financial flow control regimes in some countries may make it significantly more difficult to move or optimise cash. Thus, while it is legally possible to move their funds between different African countries, companies may endure long waiting periods when sourcing foreign currency in the domestic market, rendering this approach ineffective in many African countries.

It should also be noted that similar banking solutions may exist, such as "cash sweeping" where cash is moved from subsidiaries' bank accounts to a central concentration account, from where it can be more easily invested. This enables the Group to invest in more financial instruments with better returns.

The best way to implement cash sweeping is the Zero Balance Account (ZBA) which is a system for consolidating the cash balances of several subsidiaries of the same company. This system is designed to leave subsidiaries' current accounts with only minimum amounts to be able to service their contracted debts.

"Management tools" checklist

Non-exhaustive list of factors to be taken into account by the manager on this theme

Legal issues

- ☐ Analysing past and current contracts
- ☐ Having a clear vision of the company's commitments
- ☐ Putting in place mechanisms to keep abreast of regulatory developments

Compliance issues

- ☐ Empowering local management around this theme
- ☐ Communicating around company values
- ☐ Monitoring legislative and regulatory developments
- ☐ Establishing a "whistleblower" procedure managed from headquarters

Accounting and financial issues

- ☐ Setting up an organisation to enter data reliably
- ☐ Setting up an organisation to control/analyse data (e.g. dedicated management controller)
- ☐ Setting up reporting tools (income statement/balance sheet)
- ☐ Setting up regular activity reviews at company headquarter level
- ☐ Implementing signature control (e.g. banks)
- ☐ Having a clear vision of the development plan and its impact on the cash position
- ☐ Implementing cash flow forecasting tools

Contributors

Abdelnor Chehlaoui, Managing Partner - *AM/Capital Partners*
Amaury de Féligonde, Founder & Managing Partner - *Okan Partners*
Boris Martor, Partner Lawyer - *Bird&Bird*
Cédric Sinarinzi, Legal Counsel - *Natixis Investment Managers International*
Danièle Batude, Partner - *BM&A*
Jean-Brice Touye, Director Relationship Manager - *Société Générale*
Jean-Marc Mesure, Head of Africa Desk - *Société Générale*
Johann Le Duigou, Partner - *Sparring Capital*
Khaled Ben Jennet, Managing Director - *AfricInvest Europe*
Kine Seck Mercier, Consultant - *Egon Zehnder*
Marc Petitier, Partner - *Linklaters*
Mehdi Boumedine, Lawyer - *Linklaters*
Pascale Lacombrade, Senior Corporate Relationship Manager - *Société Générale*
Pedro Novo, Executive Director in charge of Export - *Bpifrance*
Rodolphe Baudeau, Co-Founding Partner - *Altai Consulting*
Sofien Sidhoum - *Investment Specialist*
Stan Andreassen, Lawyer Counsel - *Bird&Bird*
William Nkontchou, Managing Director - *Emerging Capital Partners*
Xavier Jacomet, Partner Africa - *Procadres International*