

# Globalising your practice in the Southern African Development Community region Opportunities and challenges



the global voice of  
the legal profession



*Justice, Honour and Integrity*



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# ***‘Globalising your practice – opportunities and challenges’***

*3 and 4 April 2018, Livingstone, Zambia*

## Introduction

The PPID Activity Fund of the International Bar Association (IBA) awarded funding for a conference held on 3 and 4 April in Livingstone, Zambia on helping lawyers from the Southern African Development Community (SADC) region to face globalisation. It was organised in cooperation with the Law Association of Zambia (LAZ) and the SADC Lawyers Association (SADCLA).

The conference – entitled ‘Globalising your practice: opportunities and challenges’ - followed on the success of its predecessors, ‘Helping Zimbabwe’s lawyers face globalisation’, which took place on 2 and 3 November 2018 in Nyanga, Zimbabwe and ‘Globalising your practice: opportunities and challenges’, which took place in Nairobi, Kenya on 18 and 19 May 2017. The IBA speakers were the same as on previous occasions. Their presentations were adapted to the requests of LAZ and SADCLA to accord with specific SADC needs. The topics covered included:

- instruments on international trade in legal services and their applicability in the SADC region
- creation of joint ventures: different forms of international alliances and their benefits
- international sub-contracting for lawyers
- trends in law firm management
- raising capital in international markets
- arbitration of international commercial disputes

The substantive content of the conference contributions is summarised in the pages that follow.

The final number of registered participants was around 110 per day, the highest ever registered for such a conference, and well over the budgeted figure of 75. Our local partners told us that it was so popular that they had to turn people away, and they are keen to hold another similar conference later this year.

There was also an issue regarding interpretation, because the SADC region includes lusophone (Angola and Mozambique) and francophone (Democratic Republic of the Congo - DRC) countries. We decided not to provide interpretation, because it had not been foreseen in the budget, but it is an issue which we should keep in mind if we go back to the region. Some DRC lawyers finally attended, and reported that they had difficulty in following everything. The other participants were from anglophone countries – Zimbabwe and Zambia.

Evaluation forms were handed out as always at these conferences. The evaluations received were of a high order, averaging 4.1 out of 5.

The conference programme is attached as Annex A.

## Conference report

### 'First day'

#### Welcome

**Linda Kasonde**, President of LAZ, gave the first welcoming speech. She said that globalisation has reached Africa, and this conference is aimed at helping lawyers to face its challenges. She quoted Professor Richard Susskind that lawyers must embrace new ways of working.

**James Banda**, President of SADCLA, repeated in his opening remarks the statement that change is here. His main message was that Africans needed legal work to be done locally - African legal work by Africans. For this to happen, local lawyers needed to improve their skills and be ready. The long-term consequences of the election of President Trump and of Brexit were not yet known, but there might be great opportunities for Africa. African lawyers must be ready for the transactions. He believed that the Zambian government was ready to make the necessary changes so long as they knew that it would be in the interests of the Zambian people.

#### Keynote speech

**The Hon. Given Lubinda**, the Zambian Minister of Justice, said that the theme of the conference resonates well, since e-commerce has shrunk the notion of space.

SADC is underpinned by legal frameworks, which themselves underpin trade and other treaties. But lawyers must adapt to, and embrace, new technology. Otherwise there is a risk of becoming redundant in a globalised world. Technology is changing the courts, e-filing has started in Zambia. Because we now live in a knowledge-based economy, intellectual property rights will be a major force in the future.

The government is an enabler in all this. The government commits itself to the proposition of 'Zambian legal cases to be handled by Zambian lawyers'. For that, the government must clear regulatory impediments. SADC must put in place formal arrangements to keep up-to-date with the latest trends. Zambia must move with the times, and change is inevitable. The entire legal community needs to work together, to act now to avoid courtrooms being filled up with foreign lawyers.

#### Instruments on international trade in legal services and their applicability in the SADC region

**Ben Greer**, former chair of the IBA's Bar Issues Commission's International Trade in Legal Services committee (BIC ITILS) and from the USA, began by quoting from an OECD report regarding the growing awareness that some regulations may be inappropriate in a globalised world, and that a better balance should be struck between the need for regulation and the necessity to ensure competition. In his view also, globalisation is here to stay. It facilitates economic development, but requires a robust legal framework in the shape of the rule of law.

A competent, independent and well-regulated legal profession is a key element of the rule of law, including core values to maintain trust. It was interesting to note that practitioners have reacted more quickly to globalisation than Bars, for instance in the following activities:

- foreign offices where permitted
- networks and other affiliations

- participation in other international activities, e.g. the International Bar Association (IBA)

According to the Chambers Directory, international affiliations are common in the SADC region. The SADC protocol on trade in services is an important step in the right direction.

For the first time, trade in services, including legal services, was covered through the General Agreement on Trade in Services (GATS).

The GATS contains provisions on ‘domestic regulation’ of professional services, which must be ‘no more restrictive than necessary to protect the public interest’.

All WTO members are subject to its general provisions (governmental and non-governmental bodies alike). Members not obliged to liberalise domestic regulation, but they must ‘stand still’ i.e. regulation cannot become more restrictive. Members may, however, make commitments to liberalise regulation.

He spoke about the GATS’ ‘General Obligations and Principles’ including:

- most favoured nation treatment
- transparency
- economic integration (SADC) – which can be faster than the WTO process
- domestic regulation must be administered in a ‘reasonable, objective and impartial manner’

The GATS is predominantly concerned with regulatory measures that discriminate between local and foreign service providers. The right to regulate is acknowledged, but is subject to GATS principles. Members are not obliged to make commitments in legal services, but if they do, these are then subject to GATS principles. With one exception (Botswana), no SADC country has made commitments to liberalise domestic regulation

If legal services commitments are made, they can cover the following issues:

- establishment
- association
- licensing (regulatory status and admission)
- scope of practice
- temporary presence
- privileges
- relationship to courts and arbitral tribunals

As for what Bars should do, he drew the following conclusions:

- Bars must stay in touch with their governments
- regulation should aim for a better balance between legitimate regulatory concerns and maintenance of a competitive environment
- at the same time, regulation must guarantee the core values
- the IBA can help Bars which face problems with GATS and liberalisation, through the work of its BIC ITILS committee

**Stephen Lungu**, a past President of LAZ, said that previous speakers – the Minister of Justice and the President of SADCLA - had already given the messages he wanted to give. He therefore would concentrate his remarks on SADC.

He wondered how international trade instruments would be implemented in SADC, with its great variety of legal systems - Portuguese, French and English common law. On top of that, there are overlapping memberships: for instance, DRC became part of OHADA, Zambia belongs to both the East African Community and to SADC, and these other regional bodies have their own structures. How will the different interests be reconciled?

What kind of local expertise exists among local lawyers to cope with globalisation? Which country has removed its barriers altogether? He mentioned that Rwanda has a very open attitude towards the practice of law by foreign lawyers. But how would the SADC region manage cross-border practice?

In questions and answers following the two presentations, **Thierry Ngoga** from Rwanda explained how Rwanda manages its open lawyer framework. He explained the agreement with the East African Community, and the openness to the wider world e.g. France.

**Linda Kasonde** said it was not enough just to remove barriers: lawyers also needed to be well equipped to undertake the work which might arise.

The Attorney General said that the government tried as hard as it could to ensure that Zambian legal work went to Zambian lawyers, but arbitration clauses sometimes stipulated which lawyers had to be engaged and that could be a foreign law firm

A participant from Zimbabwe said that, when there are difficult transactions, local lawyers will only learn if they are engaged in the work. International law firms should partner with local law firms to ensure this inclusivity.

#### Creation of joint ventures: Different forms of international alliances and their benefits

**Jonathan Goldsmith**, a member of BIC ITILS from the UK but based now in Belgium, began by explaining the benefits of cooperation between East African and foreign law firms, as follows:

##### For foreign law firms

- local law firms provide services they cannot, or do not want to, provide – e.g. to support investment, debt financing, infrastructure projects, as part of regional advice (e.g. to a client wanting to do something with SADC and needing advice on all SADC members), etc
- in order to advertise to clients they have a pan-regional offering

##### For East African law firms

- foreign law firms provide access to new clients/branding
- they enable economies of scale/sharing of back office
- sharing of experience/technology transfer can take place

As for forms of cooperation, he mentioned the following:

##### For individual lawyers

- employment of a foreign lawyer/by a foreign lawyer
- partnership with foreign lawyers



For law firms

- marketing cooperation (e.g. referral networks such as Lex Mundi, or best friends)
- law firm networks and alliances (e.g. DLAPiper/ENSafrica networks)
- partial integration models (joint ventures, *vereins*, etc)
- full mergers

There are regulatory issues, and he listed the principal ones:

- with which foreign lawyers should cooperation be allowed (e.g. WTO list versus one-by-one approved list, etc)
- what work should such joint practices be allowed to do? (e.g. full/limited licences)
- what kind of vehicles should be allowed? (e.g. partnership, limited liability, ABS etc)
- what are the approval processes?
- how to maintain regulatory oversight, and to what level? – should there be regulatory/disciplinary recognition agreements with home country Bars?
- what about insurance/social security/compensation fund contributions
- at what level should the fees be set (they should reflect the true cost of administration and not be a penalty for, or obstacle to, joint practice)
- does the local Code of Conduct apply to the joint practice, and how to deal with particular challenges e.g. names of firms
- be aware that a mix of domestic regulation and international rules (e.g. WTO, trade agreements) will be applicable

He then described the impact of the WTO on joint practice, making the following points:

- the General Agreement On Trade In Services (GATS) covers trade in legal services
- SADC member countries have all been members of the WTO since 1995/6 (except Seychelles since 2015)
- only Lesotho, Seychelles and South Africa have made a commitment on legal services
- the IBA has published a GATS handbook for bars, available on its website, which explains the workings of the GATS as regards legal services
- there are also IBA resolutions – see more below – on international trade in legal services which may be useful to lawyers, such as the one on classification of terms, or most particularly, on the transfer of skills

He showed on a slide the relevant part of the IBA resolution on transfer of skills:

*'WHEREAS the extent and the modalities of Skills Transfer in cross-border legal services by Foreign Lawyers in a given Host Jurisdiction necessarily depend, inter alia, on the extent to which Foreign Lawyers in such Host Jurisdiction are permitted to practice law and to associate with Local Lawyers;*

*WHEREAS a regime permitting the association of Foreign Lawyers with Local Lawyers likely provides the most efficient and effective means of Skills Transfer by permitting Local Lawyers to work with more experienced Foreign Lawyers within the same firm, thus enabling them to gain practical experience and substantive knowledge in a way that would otherwise be impermissible due to the risk of breach of confidentiality'*

*(B) A Foreign Lawyer who is permitted to practice through an establishment in a Host Jurisdiction in association with Local Lawyers may be required, in the course of his/ her practice, to provide, directly or indirectly, individual training and mentoring in relevant legal skills and disciplines, as*

*well as supervised work experience, to Local Lawyers with whom the Foreign Lawyer practices in such association.'*

He also briefly described how joint practice is dealt with in the EU.

Finally, he mentioned that the IBA had published a handbook on joint practice between foreign and local lawyers, to help guide Bars through their problems. There were copies at the back of the room, and participants should feel free to take one. It was also available on the IBA's website.

In the question and answer session, it emerged that no SADC countries permitted formal association (though **Linda Kasonde** said that there was plenty of informal networking), and no participant was in favour of the rules changing.

**Alison Hook**, vice-chair of BIC ITILS and from the UK, talked about Indonesia, where transfer of skills has been used as a condition of market entry. She also described how commitments to legal services are treated differently to goods in developing countries: because services commitments, their speed and scope, are entirely within the government's control, there is no exceptional treatment for opening up on legal services for developing countries.

#### International sub-contracting for lawyers, including practical case study

**Alison Hook** ran the practical case study, the papers for which are attached in Annex B. This took up much of the rest of the day, and involved all the participants being divided into small groups to interact with each other in accordance with the instructions given.

**Charles Mkokweza**, a lawyer from Zambia, then spoke of his experience in international work.

He said there was internal preparation to undertake, such as:

- prepare your firm to work with international partners – think about how you can improve service delivery, confidentiality etc.
- develop your expertise – get to know the law, issues, people and businesses in key economic areas (e.g. become known for a particular sector)
- scale up and build the capacity of your teams to handle multiple assignments, back office work, business development etc.

There is external preparation, too:

- develop your networks within and beyond the region and in business more generally (e.g. 75% of foreign direct investment in SADC comes via South Africa) - don't just talk to other lawyers
- develop your profile and get known outside your own jurisdiction - some work goes to foreign lawyers because they (and their track records) can be found online (websites, directories etc).
- are you a visible expert? Success for a law firm today requires internal management, sales and marketing, and not only expertise in the law
- develop your messages – the services you are selling to potential foreign clients are different to your domestic services



He spoke of various traps, beginning with the approach to rules of engagement:

- divide & rule – international law firms (ILFs) have an upper hand in the bargaining process, as African Law Firms (ALFs) are not sufficiently organised to avoid a race to the bottom in out-competing with each other to discount fees
- rubber stamping exercise - at the individual law firm level, ALFs find it easy to assume liability at a nominal fee for work they did not do by rebadging opinions on local law undertaken by ILFs
- no collaboration - ALFs fail to operate as a collective even where this is beneficial (information sharing, collectively acquiring tool kits like e-reports or e-legislation, artificial intelligence, etc)
- no self-regulation - to compete or work at the same level with the best law firms in the world, ALFs have usually not set themselves any practice standards, apart from the minimum

Then there are traps in the contract for the rules of engagement:

- no transparency - collective fee payable to both ILFs and ALFs are usually not visible, there is no direct contact with the client, no visibility on payment process, and no visibility of the main contract
- one-sided obligations - typically there are no obligations on ILFs, but they are heavily tilted against ALFs (e.g. duty of care, indemnity for breach, duty to acquire insurance, etc)
- one sided set of benefits - no equal treatment as all protections are usually in favour of ILFs
- no right to profits – if the subcontract terminates prematurely, the ALFs right to recover lost margins is usually excluded
- foreign governing law & jurisdiction – although the work is carried out in-jurisdiction, some ILFs will impose their standard terms of engagement, including a foreign governing law and jurisdiction for dispute resolution

He asked whether regulation is a way out regarding rules of engagement:

- should the IBA further develop its resolutions on working in foreign jurisdictions in order to level the playing field?
- should some form of local content in legal services be required e.g. promotion of project/instruction, specific joint ventures or alliances, skills transfer, etc?
- would it assist if there were to be an allocation of the amount of work that could be undertaken annually by IFLs without involving ALFs (e.g. 50% of legal spend payable by an investor client)?
- would schemes such as restriction of practice areas for foreign lawyers, taxation locally of work done in local jurisdictions by ILFs, etc, help?
- should obstacles to law firm development be removed e.g. many SADC jurisdictions limit domestic firms' ability to compete as a result of outdated and uncompetitive codes of conduct (e.g. prohibitions on naming conventions, ownership and legal form)
- what can national Law Societies/Bars and SADCLA do to help raise standards in practice and training?
- how can cooperation through organisations like SADCLA be used to strengthen the hand of local lawyers?

He concluded by saying that SADC lawyers can now package themselves and their expertise in Zambia. But does anyone think that the law now needs to be changed?

**James Banda** agreed that the law needs to be changed, but said that the question was how that should be managed.

Among the points made in the question and answer session was that the ban on advertising meant that lawyers could not publicise what they could do. Without a website, it was impossible to work with foreign counsel. Someone also asked why local lawyers could not respond to tenders. All the speakers agreed on the need for change.

**Diana Sichone**, Legal Counsel at the Securities and Exchange Commission in Zambia, said that the Commission dealt only with LAZ lawyers, but their role was just to rubber-stamp and put their names to documents. They are not well paid, and in general local lawyers do not have experience of working in capital markets. Lawyers should be aware that accountants are moving into that space, too.

**Alison Hook** concluded by saying that it was important that local lawyers think like a business, treat their clients as return customers, sell their unique selling point, even with the specific ethical obligations of lawyers. It was also important for local lawyers to decide in what area they wanted to specialise.

## Conference report 'Second day'

### Trends in law firm management

**George Etomi**, a member of BIC ITILS from Nigeria, opened his presentation by saying that lawyers must be in the dining room of globalisation. He spoke about his chairmanship of the Nigerian Bar Association's Section of Business Law, with all African Bar leaders being called together at its launch. He stressed that local lawyers need to be given the opportunity to acquire the necessary knowledge for international work.

He reported that, in Nigeria, the lawyers acquainted themselves at that time with GATS and WTO developments, and so were able to stop liberalisation because they were not ready for it. Ten years later they are now ready, because they have prepared themselves.

All endeavours need lawyers. For instance, energy growth needs lawyers. Nigerian lawyers are well established in the oil and gas industry. Lawyers cannot wait for the rules to change before plugging into global reality.

He complained that there is no cross-border work being undertaken in the anglophone countries to harmonise business laws, like is happening in the francophone countries with OHADA<sup>1</sup>. Lawyers should talk to governments about proper integration. Young lawyers should be at the head of the revolution. Get involved, he urged them! For all this, the EU is a good model. In addition, there should also be only one pan-African lawyers' organisation.

There were still barriers to integration in African. For instance, on border/immigration requirements, most countries in Africa still have stringent entry requirements for other African countries, making travel within the continent difficult. According to the 'Africa Visa Openness Index', a report published by the African Development Bank, Africans require visas to travel to 55% of other African Countries, compared to North Americans who require visas to travel to 45% of African Countries. In addition, Africans can get 'visa on arrival' in 25% of African Countries, compared to 35% for North Americans.

Most African countries also enact laws and practice requirements that bar or make it impossible for foreign legal practitioners to practise fully in their countries. For instance:

- countries like Kenya, Uganda and Tanzania apply nationality requirements to practise their domestic laws or to be admitted to their respective Bars
- South Africa also has a similar requirement: only citizens and permanent residents are eligible for admission to their respective Bars.
- in Nigeria, non-Nigerians can be admitted into the legal profession to practise; however, they are required to satisfy very stringent and rigid requirements. Currently, the legal position is that no foreign lawyer shall engage directly in any form of legal practice in Nigeria.

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<sup>1</sup> OHADA (OHBLA) is the Organisation for the Harmonisation of Business Laws in Africa, arising out of a treaty signed by seventeen West and Central African nations. Its main aim is to unify business law throughout the member states and to promote arbitration as a means of settling contractual disputes. The treaty is currently applicable to more francophone than anglophone countries.

There are currently eight regional economic communities that are established in Africa, and they form the building blocks of the African Union. These eight are: AMU, CEN-SAD, COMESA, EAC, ECCAS, ECOWAS, IGAD and SADC, and most African countries fall under one or more of these regional blocs. Treaties signed by member states stipulate provisions on free movement of goods, services and labour, as well as provisions that mandate integration and harmonisation across various sectors.

But many of these countries have failed to implement these provisions, despite being signatories to several treaties. The governments of these countries must muster the political will to implement and enforce the provisions of those treaties that call for integration and harmonisation.

In addition, African countries must relax their rules regulating the admission of foreign legal practitioners to practise in their respective jurisdictions. Until such measures are put in place and properly implemented, the legal services sector in Africa will continue to develop at a less than optimum pace.

For example, Ghana has very liberal admission requirements in respect of foreign legal practitioners. Foreign lawyers are permitted to practise in Ghana provided they have the required qualifications from their home jurisdiction. A letter of good standing is required from their local Bar which must be certified by the General Legal Council. The foreign lawyer must also pass the required examination in Ghanaian constitutional law and the customary law of Ghana. Non-Ghanaian citizens are also required to demonstrate seven years post qualified experience (PQE) in a country with a compatible legal system.

Other African countries should adopt more liberal requirements to open up the legal markets in their territory. This would lead to increased job opportunities for African lawyers, improved efficiency and standard of services, and skills transfer amongst lawyers.

His recommendations were, therefore, the following:

- increase collaboration within Africa – not by discarding national regulations but by loosening rules and barriers on entry, etc.
- look to the EU directives as a guide - set out model uniform rules pertaining to lawyers wishing to practise outside their home jurisdictions on a scale that covers the entire continent. These rules must encompass qualification and practice requirements, such as the global standardisation of qualifying certificates and disciplinary measures to be meted out to erring practitioners, operating outside their own jurisdiction
- build capacity through strengthening educational infrastructure and standards of practice
- adjust laws for ease of trade in legal services
- harmonise business laws on a wider scale. Begin by implementing a unified curriculum on business law at university level as a foundation to encourage cross border legal practice in Africa
- national Bars should be more proactive in incorporating an intra-national element in practical training.
- unification of African Lawyers' Union i.e. Pan African Lawyer's Union (PALU) and African Bar Association to provide a more unified voice on liberalisation of legal services

## Raising capital in international markets

**Diana Sichone** and **Juan Javier Negri**, a member of the BIC ITILS committee from Argentina, gave a combined presentation on ‘Raising Capital in International Markets – The Role of the Local Legal Advisor’.

They started by explaining that global and local capital markets exist as part of the financial system, and are concerned with raising long-term capital through shares, bonds, and other long-term investments.

### Types of capital markets:

Primary market/New issue market – where securities are first issued and the issuer receives funds – IPO, bond issuance

Secondary market/After issue market – where previously issued securities trade between investors

### What is a security?

A financial instrument representing a claim and that can be traded e.g. shares/stock, debt securities like bonds

There are two main securities in the global capital markets:

Equity (shares)	Debt (e.g bond)
Capital gains	Credit
Voting rights and pre-emptive rights	Coupon payment at agreed rates
Dividends (share in profitability)	Can convert to equity (special rights)
Board control	Usually no voting rights
Residual value in liquidation	Rank higher than shares

### Why use capital markets?

- alternative source of financing apart from bank-based lending
- better pricing, longer maturities and wider investor base
- funding for riskier investments not supported by banks
- exit route for investors such as venture capital and private equity funds
- price discovery through listing and trading of such securities
- allows for efficient allocation of capital across industries, and by extension, society as a whole.
- wealth generation for savers and investors – attractive investment opportunities with better returns than banks can offer
- investors can manage risks by investing in a diversified portfolio

### Domestic or foreign capital

- there can be challenges in raising funds domestically
- the capital requirements may be too big for a domestic market
- there might be no local appetite to invest in equity seeking capital

### Why might you need foreign capital?

- larger pool of capital and lower costs due to the potential segmentation and saturation of domestic markets
- diversification of country risks and associated economic risks
- potential to hedge foreign exchange risk
- increased global recognition
- tax reduction or avoidance and lower interest rates

### Where to raise capital?

- market considerations
- industry knowledge and best practice
- laws applicable and level of regulation
- financing structuring requirements e.g. accessing Sharia financing
- market liquidity for firm securities
- pricing standards (international or domestic)

### Types of financing

#### Equity financing

- cross/dual listing
- issuing securities through a subsidiary in the foreign market
- global depository receipts
- Euro-equity market

#### Debt financing

- foreign bank loans
- foreign bonds
- euromarket bonds

### Foreign bonds or euro bonds

#### Foreign bonds:

- issued by an overseas entity into a domestic market and denominated in the domestic currency

#### Eurobonds:

- issued in a currency different from that of the financial centre from which they are issued
- often do not provide any underlying collateral or security to the bond holders
- almost always rated by a credit rating agency

### Advantages of euro bonds over domestic bonds

- choice of innovative products to meet the issuer's needs more precisely
- ability to tap potential lenders internationally rather than domestically
- anonymity for investors as issues are made in bearer form
- gross interest payments to investors

- lower funding costs due to competitive nature and greater liquidity of the market
- ability to make bond issues at short notice
- less regulation and disclosure

**Diana Sichone** said that lawyers play a substantial role in capital markets work. For instance, they suggest where bonds should be issued. Lawyers should take action to ensure that local courts are able to cope with disputes which might arise.

### Arbitration of international commercial disputes

**Thierry Ngoga**, member of the BIC ITILS committee from Rwanda, began by painting the economic background. Four of the six fastest growing economies in the world will be in Sub-Saharan Africa (IMF, 2014). UK foreign direct investment in Africa grew from 19.2 to 39.5 billion between 2005-2014. Post-Brexit, the UK is doubling down on African infrastructure investment (UK-DIT, March 2018). Economists generally state that the 21st century will indeed be 'Africa's century'. The relevance for arbitration is that, with such growth, there will always be disputes, and so building/preparing a generation of arbitrators and counsel is paramount to be able to handle future disputes.

At present, 82% of all legal fees in Africa go to offshore firms (EALS report, 2014). The parties in 99% of all African disputes abroad are represented by lawyers and law firms based in the UK, USA and Europe (Judge Edward T, 2013). The cake is not being fairly shared.

There is a link between international arbitration and legal representation. Limitations on the parties' choice of legal representatives contradicts the basic concept of arbitration as a flexible and self-tailored dispute resolution system. Freedom of legal representation is recognised in most national arbitration laws, and by most institutional arbitration rules. Despite this, laws in a few jurisdictions require that counsel in locally-seated arbitrations be locally qualified. This is true in Turkey, Thailand and was formerly true in Singapore, Japan and a few other jurisdictions.

He gave the examples of some arbitral rules, as follows:

The Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (AAA) (Rule-26) state regarding representation: 'Any party may participate without representation, or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing (...)'.

In the Mauritius Arbitration Act (section 31), it is stated that: 'Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the arbitral proceedings by a law practitioner or other person chosen by him, who need not be qualified to practise law in Mauritius or in any other jurisdiction.'

He said that to become a 'safe arbitration seat' it was important to allow a wide choice of representation. The important thing was to focus on the seat of arbitration in the original contract, which would define the applicable law, and so increase the amount of cake for all.

He then showed the following illustrations about the origin of arbitrations and arbitrators:



## Nationality of arbitrators appointed in Africa ICSID cases

So far ICSID has administrated **541 cases**



**120**

cases concerned at least one **African** party, representing **22%** of all cases.

In the process of administering the **120 cases**,

**400** arbitrators have been appointed.

Of the 400 arbitrators, the **top three** appointed nationalities are: **French, Swiss** and **US**. Representing **43%** of total appointments.



**53%**

of the appointed arbitrators for Africa cases hold a **European** nationality

only **10%** of the appointed arbitrators for Africa cases hold an African nationality

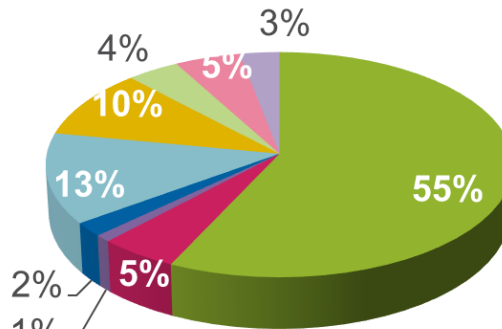


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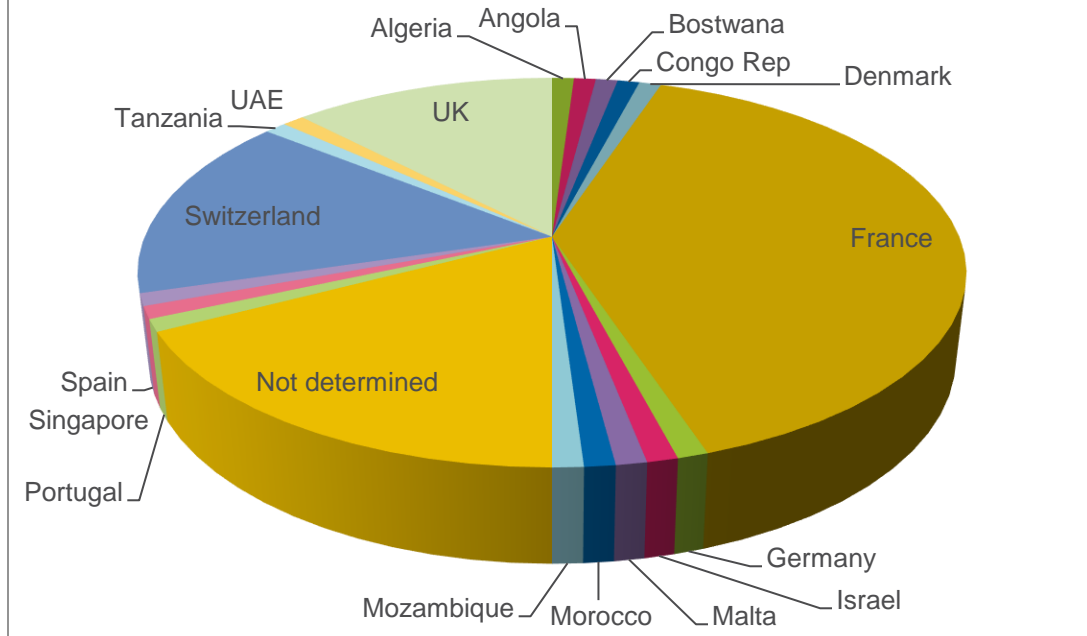
## ICC: Origin of Arbitrators

(2014)

- North & West Europe
- Central & East Europe
- North Africa
- Sub-Saharan Africa
- North America
- Latin America & Caribbean
- Central & West Asia



## Places of arbitration in cases introduced in 2013 involving African parties

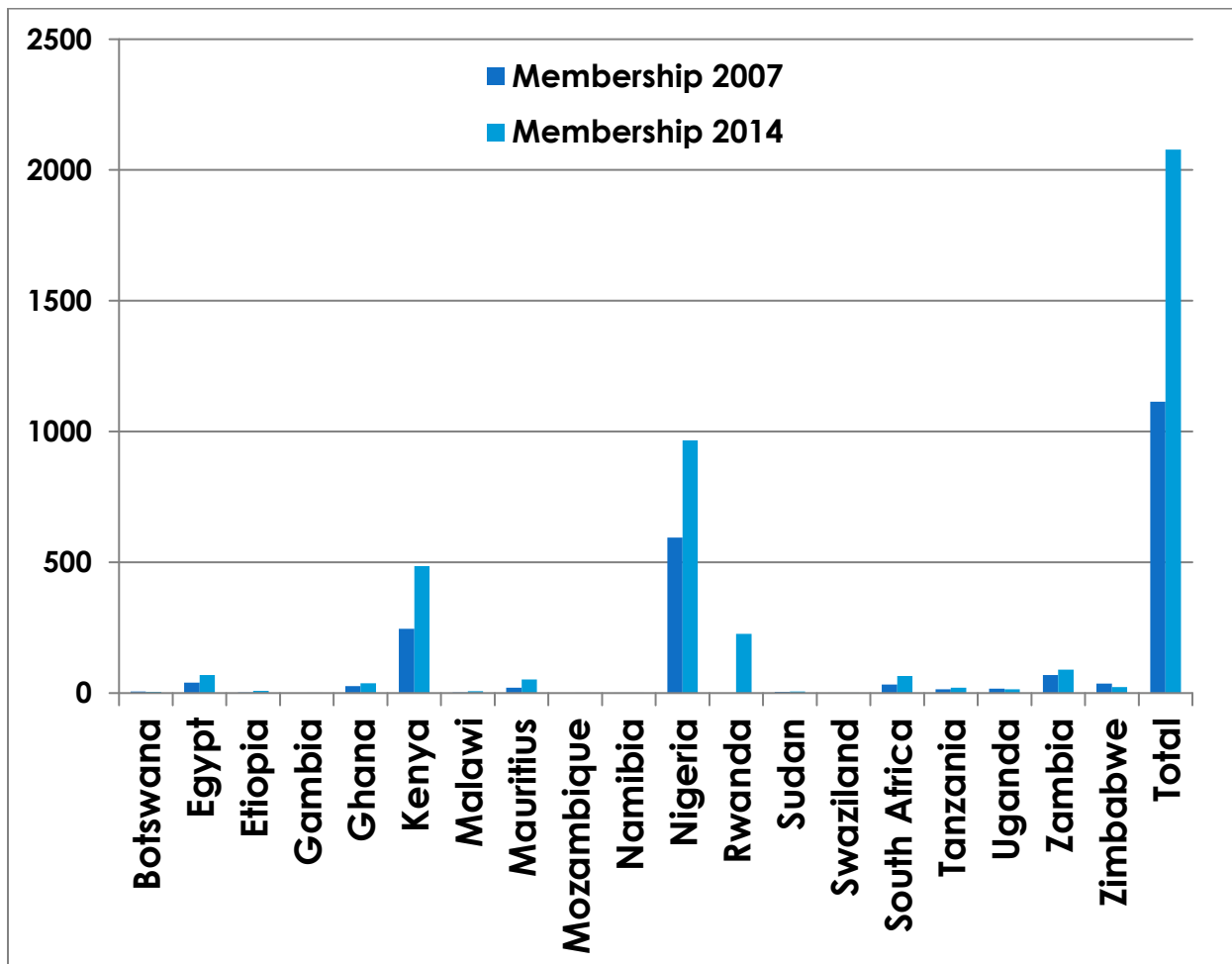


He reported that African-seated arbitrations had risen from 2 to 6 (one arbitration in each of Morocco, Nigeria, South Africa, Tanzania, Egypt, and two arbitrations seated in Algeria), although the total number of African-seated cases remains strikingly low (less than 0.01% of the overall new cases filed). Currently, 95% of arbitrations involving an African party take place out of the continent with counsel and arbitrators other than Africans, as quoted by Justice Yusuf in his 2016 keynote speech to the ICCA.

He also quoted a past president of the ICCA, Jan Paulsson, who said in 1987: ‘When the entire centre of gravity of an investment contract from its negotiation to its performance is in an African country and has resulted in the creation of an enterprise whose physical plant, corporate records and personnel are located in that country, the concept of arbitration in Europe or North America may be not only artificial but truly burdensome.’

He showed the following CIArb-UK statistical data on Africa Accredited arbitrations (membership in 2007 and 2014). In 16 countries, the numbers had doubled in 7 years from 1114 (in 2007) to 2078 members (in 2014):

NO	Country   Name	Membership 2007	Membership 2014
1	Botswana	6	5
2	Egypt	40	69
3	Etiopia	2	8
4	Gambia	0	1
5	Ghana	26	37
6	Kenya	246	486
7	Malawi	2	7
8	Mauritius	20	52
9	Mozambique	0	1
10	Namibia	1	1
11	Nigeria	595	966
12	Rwanda	0	226
13	Sudan	5	6
14	Swaziland	1	1
15	South Africa	33	65
16	Tanzania	15	20
17	Uganda	17	15
18	Zambia	69	89
19	Zimbabwe	36	23
	Total	1114	2078



He mentioned some of the barriers to arbitration in Africa, as cited in the literature:

- the interference of the courts
- corruption
- lack of awareness of ADR in commercial matters;
- limited training of professionals (the issue of capacity building)
- poor legal and regulatory frameworks
- lack of data on enforcement in Africa

He felt that African lawyers needed to admit some of the weaknesses and work hard to improve matters. There had been an effort in the last decade to change perception of Africa. He felt it was time to test African jurisdictions and African arbitrators.

Sample data for arbitrating commercial disputes in sub-Saharan Africa in 2011 showed that the time to enforce an arbitration award in Africa varied from 55 days in South Africa to over a year in Ethiopia (375), Tanzania (425), and Ghana (436). The time to enforce an award in Rwanda varied between 3-6 months (Arbitration User's Perception Survey 2015), with 6/9 cases in Kigali International Arbitration Centre having African arbitrators.

The average dispute resolution time of ICSID cases since 1 July 2003 is 3.2 years or 1,171 days (GAR Journal vol. 4, Issue No 5). And other countries rate as follows: Sri Lanka (720), Pakistan (806), and Philippines (948).

These times have an impact on the seat determination by parties, and sharing the cake in the future may require making your seat "safe".

In the Global Competitiveness Report 2015–16, when dealing with strength of institutions, Rwanda is no. 17 out of 140 countries, after Canada no. 16. Rwanda is ahead of countries such as Australia (18), Belgium (22), Germany (20), France (29), Israel (41), Spain (65) and United States (28). Other well positioned African countries include Mauritius (34), Botswana (37) and, South Africa (38).

In the same report, regarding the ranking of judicial independence, favouritism in decisions by government, efficiency of legal framework in settling disputes etc., some African countries, including Rwanda, Botswana etc., have a higher ranking than some developed countries.

He felt it was important that lawyers trained themselves and Joined the arbitration club through conferences, seminars and publications. African efforts in this direction include:

- an 80 hours training course on international arbitration by AILL ( based in Arusha)
- various training courses provided by branches of CIArb in Africa (Nigeria, Kenya etc...)
- a future study: 'A Study to analyse the Economic loss of Delocalisation of Arbitration from Africa' (to be conducted by AILL)
- international arbitration conferences and seminars with a focus on Africa

In conclusion, he said that it was important to think and rethink the re-localisation of arbitration dispute resolution mechanisms, especially the re-localisation of arbitration to Africa for a future equitable share of the cake, and to reduce progressively the 95% of arbitration involving African parties taking place outside the continent.

The lesson from some African countries, which have tried out African arbitrators and African arbitral centres, is encouraging. Change is possible, it is happening, and the mission of legal practitioners is to contribute towards making it happen more quickly than in the past for the cake to be shared properly.

#### IT solutions for lawyers

This session did not take place due to lack of time. The slides prepared for the session would be published, along with all the other presentations, on the website of the European Lawyers Foundation ([www.elf-fae.eu](http://www.elf-fae.eu)).

#### Closing remarks and conclusions

**Sashi Kateka**, Secretary of LAZ, thanked the organisers and participants for helping to turn the conference into such a successful event.

## Annex A

### Conference programme

#### GENERAL INFORMATION

#### ABBREVIATIONS

##### IBA

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 55,000 individual lawyers and more than 190 bar associations and law societies, spanning all continents. For more information, see <http://www.ibanet.org/>

##### LAZ

The Law Association of Zambia (LAZ) is a professional corporate body established in 1973 by the Law Association of Zambia Act, Chapter 31 of the Laws of Zambia. LAZ represents the legal profession in Zambia and the Association currently has a membership of more than 1,000 legal practitioners. <http://www.laz.org.zm/>

##### SADC Lawyers Association

The SADC Lawyers Association is the representative body of lawyers, law societies and bar associations in the 15-member SADC region. The mission of the Association is to uphold and defend the rule of law without fear or favour. <http://www.sadcla.org/>

##### ELF

The European Lawyers Foundation is an organization that undertakes projects that relate to the exercise of the profession of lawyers, the development of the law and practice pertaining to the rule of law and administration of justice and substantive developments in the law itself, both at a European and international level. For more information, see <http://europeanlawyersfoundation.eu/>



## GLOBALISING YOUR PRACTICE - OPPORTUNITIES AND CHALLENGES

3 & 4 APRIL 2018

VENUE: LIVINGSTONE – PROTEA HOTEL BY MARRIOTT



## 3 & 4 APRIL 2018

### First day

- 8.30 **Registration**
- 9.00 **Welcome**
- President of the Law Association of Zambia, Linda Kasonde
  - President of the SADC Lawyers Association, James Banda
- 09:30 **Keynote Speaker:** Hon.Given Lubinda, Minister of Justice of Zambia
- 10:00 **Instruments on international trade in legal services and their applicability in the SADC**
- International Speaker: Ben Greer, United States of America  
Local Speaker: Stephen Lungu
- 11.00 **Discussion**
- 11.15 **Coffee break**
- 11.25 **Creation of joint ventures: Different forms of international alliances and their benefits**
- International Speaker: Jonathan Goldsmith, Belgium
- 12.25 **Discussion**
- 13.00 **Lunch**
- 14.00 **International sub-contracting for lawyers**
- International speaker: Alison Hook, United Kingdom  
Local speaker: Charles Mkokweza
- 15.00 **Practical case study on international sub-contracting (groups)**
- 16.00 **Solution of the case and close of the first day**

### Second day

- 9.00 **Trends in law firm management**
- International Speaker: George Etomi, Nigeria  
Regional speaker: Sternford Moyo, Zimbabwe
- 10.00 **Raising capital in international markets – a discussion of markets and bonds, focusing on the role of the local legal advisor to an issuer wishing to tap international capital markets**
- International Speaker: Juan Javier Negri, Argentina  
Local Speaker: Diana Sichone (Legal Counsel, Securities and Exchange Commission)
- 11.00 **Coffee break**
- 11.15 **Arbitration of international commercial disputes**
- International Speaker: Thierry Ngoga, Rwanda
- 12.15 **IT solutions for lawyers**
- Jonathan Goldsmith/Alonso Hernandez-Pinzon
- 12.40 **Closing Remarks and Conclusions**
- Linda Kasonde, President of the Law Association of Zambia



## Annex B

### Practical case study

## International Sub-Contracting Practical Case Study – Instructions

### The rules

You will be divided into groups of around 10-12 people. Each group will then be sub-divided into two teams representing a local law firm and an international law firm.

The teams representing the local and international law firms in each group must sit apart and can only communicate through the templates provided or by sending each other supplementary “e-mails”, in the form of written notes on the index cards provided. These can be used to submit a request for additional information or clarification. They can be delivered by a designated team member to the correspondent law firm in their group, who must handover the “email” and return to their home team immediately. The team receiving the request can decide whether, and if so how to answer the requests that come in. If they respond, this must be in the form of a return “e-mail”.

Each team begins the case study with a task which requires them to decide what information to ask of, or to provide to the other group, based on the initial material they have been given. After half an hour, teams must submit the information requested of them to the correspondent law firm in their group, they then undertake a second task based on the information they have received. After a further 30 minutes, the groups reassemble in plenary and give feedback on what they have learned. There will also be an explanation of all of the issues covered.

### Key learning outcomes

- Identify the different interests and perspectives in any deal
- Understand where the additional value added of a local counsel may lie
- Identify the skills required to build a relationship with an international firm

### Activities

- Read initial information provided (allow 10 mins)
- Groups undertake task 1 based on initial brief given to them by completing the template provided (30 minutes)
- Groups exchange templates
- Groups undertake task 2 based on information received from the other group (30 minutes)
- All feedback to plenary

(NB. At any time during the tasks groups may ask supplementary questions of each other by using the email index card system)

### Outline of Session

- Local law firm teams to:

- (i) Discuss, agree on and submit written information (in outline form using template provided) to international law firm counterparts in response to initial request (20 minutes)
 

*(Groups undertaking role of local law firms then receive instructions from their international counterparts)*
  - (ii) In response to new instruction, local lawyers agree on how to fulfil the brief and complete template provided (30 minutes)
- International Law Firm teams to:
    - (i) Devise instructions for local law firm and provide a written request using the template provided (20 minutes)
 

*(Groups undertaking the role of the international law firm then receive completed template from group undertaking the role of the local law firm)*
    - (ii) Given written response from local law firm, International law firm then must determine strategy for fulfilling additional requests from client/financiers, using template provided. (30 minutes)
- Feedback to plenary (all) – open discussion, responding to the following questions:
    - What did you find out from your counterpart law firm during the case study about the deal, or the circumstances surrounding it, that wasn't included in their instructions or responses?
    - How do you think a local counsel can add value on an international deal like the one we have considered?
    - What skills do you think are required to build a good working relationship with an international firm?
  - Feedback on issues which teams could have identified

## The Case Study – Notes for Organisers

(NB – some elements of this information will be given to both sides – neither will know everything – one test is whether they manage to find out more by thinking to communicate with each other via the notes facility which will be provided)

This case study takes place in the fictional Southern African country of Wakanda.

Disclaimer - Everything is invented and many key issues ignored in order to focus on a few key issues.

### The Law Firms

- A. The local law firm is **Wakanda Law**
- B. The international firm is **Creepy Crawley and Bug LLP – (CCB)**, which has offices in New York, Milwaukee and Atlanta in the US, as well as in Paris and London

### The Parties

**The Great Big Bottle Company Inc. (GBB)** is a client of CCB's. They are a manufacturer of soft drinks sold in bottles and cans. They are interested in buying Poptastic Bottling Ltd (POP!) in Wakanda. They want to do this before a US tax deadline which is imminent. GBB is a multinational with bottling and distribution offices in over 50 countries. It is dual listed in London and New York. One of the interests that GBB has in buying POP is that Wakanda has recently signed the EU-SADC Economic Partnership Agreement (EPA). GBB has a good track record in corporate social responsibility.

**Poptastic Sodas (POP!)** was established in 1980. It is a wholly privately owned Wakanda company with four directors who are all Wakanda nationals. One of them, Stephen Marvellous, is rumoured to be in line for appointment as finance minister. The company has 500 employees in 5 locations around the country. It is considered to be a good employer and provides some basic healthcare facilities for its employees and their families.

### Other stakeholders

**Golden Slacks & Partners**, an international investment bank. Golden Slacks are the investment advisors to GBB on this transaction and are helping GBB to raise the money for the purchase of POP!. Golden Slacks has been criticised by the US Securities and Exchange Commission in recent months for its lax oversight of due diligence in some overseas transactions.

**The Government of the Republic of Wakanda** – elections are coming up and the leader of the opposition has made speeches suggesting that there should be some limits on foreign investment, there are fears in the international business community that this might encourage the sitting government, which has a narrow lead in the polls, to increase its popular appeal by threatening some degree of expropriation of foreign investment. Statements from the IFC and World Bank have raised doubts about whether financing facilities for future infrastructure projects would remain open if the government were to take such measures.

**Environmental lobby groups** – POP! has been lobbying the government for improved access roads to some of its bottling plants in the north of the country. The Wakanda branch of the World Wildlife Federation has raised concerns about the potential impact of roadbuilding on the few remaining enclaves of chimpanzee populations.

**Local population** - One of the POP! manufacturing plants in Wakanda is located in the North of the country where rainfall has been sparse in recent years. There are growing complaints from local villagers that the operations of the plant take too much of the available water supply.

### **What the case study is testing**

This case study does not require detailed knowledge of any particular law. It is however testing:

- (i) The ability to respond promptly to queries with relevant information

- (ii) The ability to identify and anticipate issues in a matter that may need exploration
- (iii) The ability to recognise and respond to other perspectives in a transaction

## A. Brief to Wakanda Law teams on responding to initial enquiry

# CREEPY, CRAWLEY & BUG LLP

Attorneys in New York, Milwaukee, Atlanta and London



3rd April 2018

Dear X

Further to our contractual agreement signed on 1st April 2018, we are pleased to provide you with further information on the acquisition which our client wishes to undertake in the Republic of Wakanda.

### The Proposed Deal

Our client is **the Great Big Bottle Company Inc. (GBB)**. They are a manufacturer of a range of soft drinks sold in bottles and cans. They are interested in buying 100% of **Poptastic Bottling Ltd (POP!)** in Wakanda. They want to conclude and announce this deal before their financial year end in a couple of months' time. GBB is a multinational with bottling and distribution offices in over 50 countries. It is dual listed in London and New York.

Our understanding is that POP!, in its current form, was established in 1980 as a wholly privately owned Wakanda company. We further understand that the company is willing to sell to GBB and a preliminary valuation has been agreed. Our clients have asked us to undertake some of the due diligence required to validate this valuation.

The finance for the acquisition is being arranged through the investment bank, Golden Slacks & Partners of New York. This includes funding that will allow GBB to invest in POP!'s facilities in Wakanda and expand both the range of products manufactured and their distribution network.

### Background on the acquisition

Our client has informed us that POP! has four shareholder/directors who are all Wakanda nationals and that the company is registered with the official government registry in Wakanda City as a limited company. We believe that the company has 3 manufacturing and bottling facilities and 5 storage and distribution facilities in different locations around the country.

We understand that the company has a workforce of 500 employees who are based in these 5 locations around the country. We do not have full details on the breakdown of these employees by location or status (e.g. nationals v expatriates).

Our initial research suggests that POP! uses mostly raw ingredients (sugar, water and other vegetable inputs) procured locally but does import some chemical preservatives and flavourings from elsewhere in the region.

### Our Requirements

We now need to obtain from you more information about how you can help us to advise our client. In particular we would like you to inform us:

i) Which areas of the Republic of Wakanda's laws do you think should be taken into account in advising on this transaction? *[Note for Wakanda Law lawyers e.g. company law etc... ]*

(a) What checks would you propose to undertake on our behalf locally in relation to POP!

We have provided the attached template to assist in the provision of this information. We remain open to any requests for further clarification which can be requested by email at [leadpartner@ccbllp.com](mailto:leadpartner@ccbllp.com)

Yours sincerely  
CCB LLP

## **Additional information about the Republic of Wakanda and POP!**

**You have half an hour to discuss and complete the template you have been given, so that your instructing law firm can consider your submission. In addition to what CCB LLP has told you, you also know the following (NB. This may include information which is not relevant – so consider what you have been asked and what is needed at this stage and why).**

The current government of Wakanda, the Allied People's Movement for Democracy (APMD) has ruled the country for more than 10 years (having taken over from the Popular Front of Wakanda (PFW) who are now in opposition at the 2007 elections and secured re-election in 2012). The government's popularity has slumped in recent months however, as people are tiring of austerity measures which the government has had to impose in order to counterbalance the loss of revenue resulting from the fall in commodity prices, on which Wakanda's export earnings largely rely.

POP! is registered at the official company registry based in Wakanda City and it banks with the country's main commercial bank, Wakanda Credit and Commerce Bank (WCCB).

POP!'s operations are based over 30 acres of land based across its five sites. These contain 3 manufacturing and bottling plants in the North, South and West of the country and 5 storage facilities (2 in the North and one each in the other regions of the country), 5 maintenance plants (attached to the distribution facilities), offices including an administrative headquarters in Wakanda City, a fleet of distribution trucks and other vehicles and 5 health clinics for employees and their families which are attached to the manufacturing and bottling operations. POP! invested two years ago in an upgraded fleet of refrigerated tankers.

POP! has been lobbying the government for improved access roads to some of its bottling plants in the north of the country. A major new trunk road has now been included in the IFC's proposed roadbuilding plans for the country. However, the Wakanda branch of the World Wildlife Federation has raised concerns about the potential impact of the roadbuilding plans on the few remaining enclaves of wild chimpanzee populations. The WWF is lobbying for at least one of these enclaves to be turned into a national park but this will require a substantial sum of money.

One of the POP! manufacturing plants in Wakanda is located in the North of the country where rainfall has been sparse in recent years. There are growing complaints from local villagers that the operations of the plant take too much of the available water supply.

One of POP!'s directors, Beloved Marvellous went to law school with the President and it is widely rumoured that he will be made finance minister before the elections.



**Extract from Wakanda Daily News, 31 March**

From our correspondent  
Elections are still more than nine months off but already the PFW (The Popular Front of Wakanda – the country’s main opposition party) has fired the starting pistol. Ageing firebrand and leader of the PFW, Marcus Lastchance, made a speech on Monday calling for a 40% limit on foreign ownership of key assets in the country. Arthur Bigboss, President of the Chamber of Commerce in Wakanda City cautioned on the potential chill this could have on much needed foreign investment. “Wakanda needs capital to fund infrastructure and jobs are at stake if we limit foreign participation” said Bigboss. William Greysuit, IMF representative to Wakanda appeared to warn the President of the Republic against any copycat action in advance of the elections to improve the government’s standing in the polls.”Wakanda has come a long way in recent years but there is room for further fiscal consolidation. The government should be looking to reduce its deficit through better local taxation policies, not by discouraging foreign direct investment”.

**SALE NOTICE**

The Ministry of Finance is looking for purchasers interested in buying the Government’s 40% stake in the Dikdik Brewery based in the Uplands suburb of Wakanda City.

## Response Template for Wakanda Law

[ Instructions: Wakanda Law is a law firm with 10 lawyers and 4 partners based in Wakanda City. Most of the firm's work is local litigation, but it is developing a growing track record in corporate transactions]

On the basis of the initial information you have received from CCB LLP, the additional information you have been given and applying your own experience please complete the template below for submission to CCB LLP

**Legal Matter Title:**

Purchase of Wakanda based Company

**Client Name:**

Creepy Crawley and Bug LLP

**Email Address:**

[leadpartner@ccbllp.com](mailto:leadpartner@ccbllp.com)

**A) What areas of the Republic of Wakanda law do you think might be relevant to this transaction and why?:** (Note: These will then be the principal areas of law with which CCB LLP will assume you are able to assist)

**B) What checks on POP! would you propose to take on behalf of CCB LLP and why?:**

A large, empty rectangular box with a thin black border, occupying most of the page. It is intended for a response form.

Once you have completed this response form it will be returned to CCB LLP.

# Brief to team CCB LLP teams on formulating instructions to Wakanda Law

You are the legal team for Creepy Crawley and Bug (CCB) LLP acting for the Great Big Bottle Company Inc.(GBB).

Your client, GBB, is a manufacturer of beer and soft drinks sold in bottles and cans. It is a multinational with bottling and distribution operations in over 50 countries. It is dual listed in London and New York . GBB is interested in buying a company called the Poptastic Bottling Ltd (POP!) which is a soft drinks manufacturing company based in the country of Wakanda. GBB want to make this acquisition before the end of their financial year so they can make an announcement to shareholders at the AGM.

## **What you know about the proposed deal**

POP!, in its current form, was established in 1980 as a wholly privately owned Wakanda company. The company has four shareholder/directors who are all Wakanda nationals and it is registered in Wakanda as a limited company.

The company is willing to sell to GBB and a preliminary valuation has been suggested. GBB has asked you to undertake some of the due diligence required to validate this valuation and you have already made initial enquiries of the local counsel you have appointed, Wakanda Law.

The finance for the acquisition is being arranged through the investment bank, Golden Slacks & Partners of New York. This includes funding that will allow GBB to invest in POP!'s facilities in Wakanda and expand the range of products manufactured (including a possible expansion into the production of beer). It will also enable GBB to widen POP!'s distribution network to cover neighbouring countries.

## **Background on the acquisition**

You know that POP! has 3 manufacturing and bottling facilities and 2 distribution facilities.

You also know that the company has a workforce of 500 employees who are based at the 5 locations around the country but you don't have any further human resources detail. However you have heard that trades unions are an important political force in Wakanda.

You have found out that POP!'s manufacturing process uses mostly raw ingredients (sugar, water and other vegetable inputs) procured locally but does import some chemical preservatives and flavourings from elsewhere in the region. You understand that ongoing labour problems in South Africa, the future supply of carbonic acid needed for the manufacture of POP!'s main products may be affected. There are other potential sources available in from other countries in the region but these sources attract higher tariffs into Wakanda than the South African supplies.

## **Other things you know**

You have read on Wikipedia that the Republic of Wakanda is a stable democracy, which will be undergoing elections in June this year. You also understand that the fiscal consolidation measures linked to the restructuring of Wakanda's debt last year have reduced the current government's popularity and they are by no means certain to win the election.

However, there is one thing on which both government and opposition agree and that is on the importance of regional integration. Wakanda is expected to join both SADC and accede to the EU-SADC Economic Partnership Agreement in the next 2 years and this is adding to the interest that GBB has in buying POP!, as it could act as a base for wider regional expansion. There is considered to be a high potential for the export of beer and soft drinks across the region from Wakanda.

You know from your experience with other projects of this type around the world that soft drink manufacturing can cause a strain on water resources. GBB prides itself on being a good corporate citizen and is keen to ensure that there is nothing in the POP! deal that might affect its standing as an environmentally responsible company.

**What you have been asked to do by GBB**

GBB's in-house legal team are satisfied that the valuation of the company's core assets matches the purchase price, however they now want to know:

- (a) Whether there are other risks GBB should be aware of in undertaking this deal in Wakanda, either to the company's business or more broadly? *(hint: you might think of these in broad categories first e.g. political, financial etc. in order to help you ask the right questions)*
  
- (b) Whether there are other stakeholders in this deal that they should be aware of and what their interests might be?

You have been recommended to use Wakanda Law, a leading law firm in Wakanda, as local counsel for this deal and they have recently been retained.

**Your Task**

Using the prompts on the accompanying template, you must request the information from Wakanda Law that you think you need in order to meet GBB's requirements.

**You have half an hour to discuss the issues and complete the template legibly so that your colleagues in Wakanda Law can use this for the next phase of their work. At any time during this period you may also ask your colleagues at Wakanda Law supplementary questions using the "e-mail" system.**

# Request Template for further information

**CREEPY, CRAWLEY & BUG LLP**  
Attorneys in New York, Milwaukee, Atlanta and London



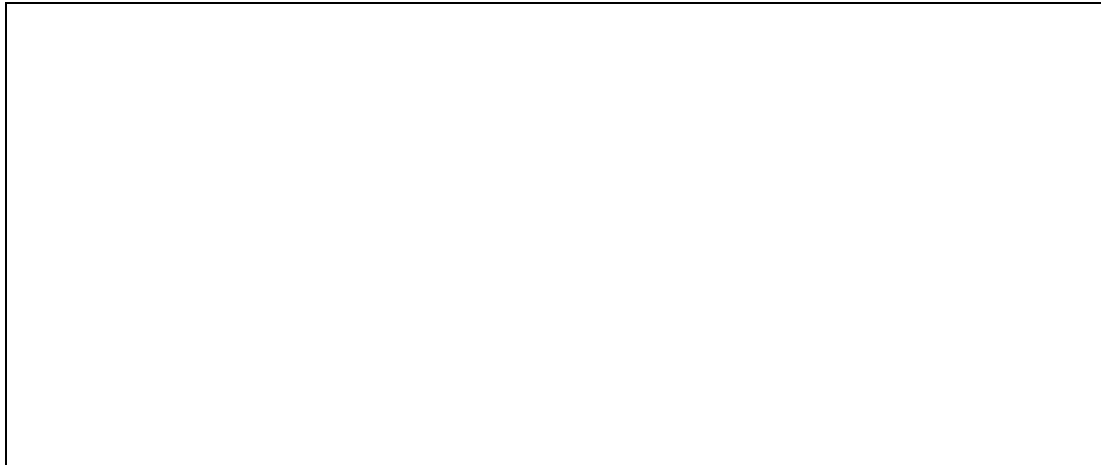
April 2018

Dear Partners at Wakanda Law

We would like to follow up our initial request for information on behalf of our clients GBB Inc. with a request for additional information. We would be grateful if you could answer the questions we have raised below:

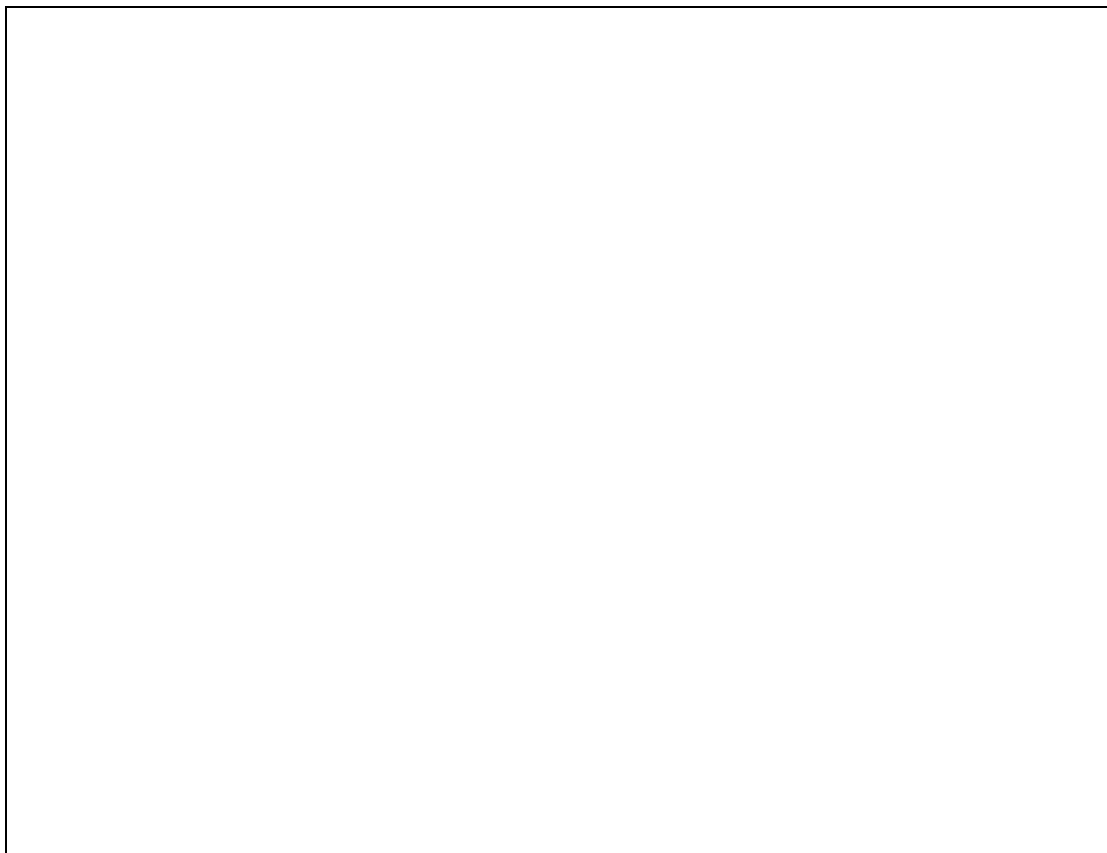
***Q.1 We want to provide further due diligence to our client in relation to the valuation of POP! and so we would like you to alert us to any broader social, environmental, economic or political risks you may be able to identify which might affect the current proposed valuation of the company. In particular, we would like you to give consideration to the following:***

*{instructions to CCB LLP lawyers - Please write in the box below the main issues that you need the lawyers at Wakanda Law to investigate and whether there are particular aspects of these issues you would like them to look at in particular}*



***Q.2 We believe that there may be additional stakeholders in Wakanda, beyond the immediate parties involved in this deal, whose interests may be affected. We would like you to consider the issues that might arise in relation to the following:***

*(Instruction for CBB LLP lawyers – you should write down the stakeholders beyond the main parties who you think might be affected or involved in this transaction and for whom you would like additional information. Please also briefly note what you think those interests might be?)*





Once completed, this form will act as instructions to Wakanda Law for the next stage of their enquiries.

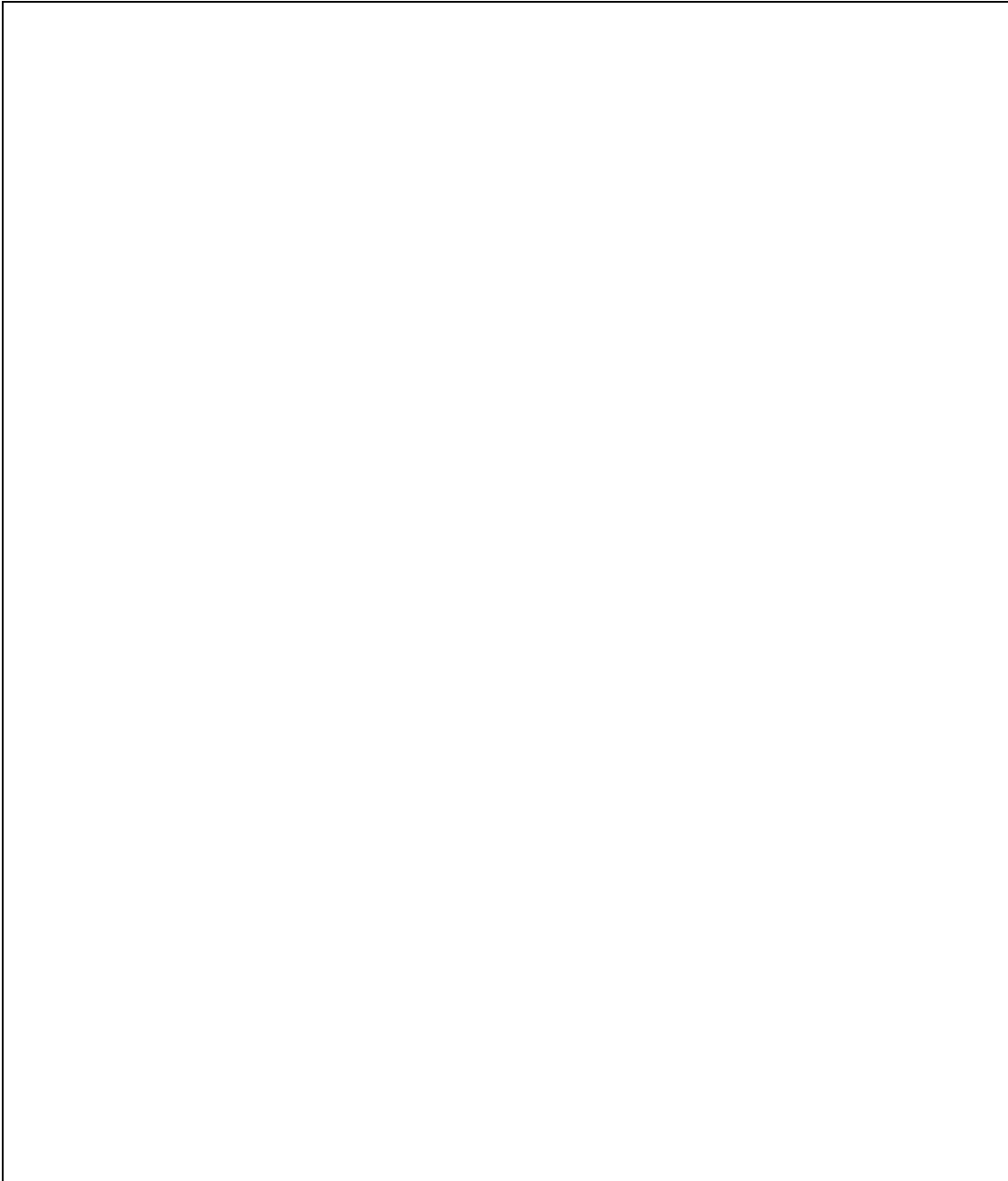
## Brief on Part 2 for Wakanda Law

Read the new enquiries you have received from CCB LLP which are asking you to identify risks for GBB in this transaction and any stakeholders of whose interests CCB LLP and its clients should be aware.

On the basis of the specific enquiries CCB have made of you, and any other information that you have which you think might be relevant, please complete the answer template below

***Q1. Do you agree with the risks that CCB LLP have identified? Can you identify others which you would bring to their attention? Are there opportunities (upside risks) arising from this transaction which you also think are worth flagging?***

**Q.2 Are there stakeholder interests which CCB LLP have not identified which you think might be relevant?** (Hint: Don't forget to review all the information you have been given)



## Brief on Part 2 for CCB LLP

You have received the initial response from Wakanda Law about what they would propose to do to support the task of managing GBB PLCs takeover of POP!

In addition, you have now received the following communications:

### Queries from GBB Inc.

- (i) The GBB internal legal team has raised the need for them to be made aware of any issues that the acquisition of POP! might raise for the company's compliance under the UK's Modern Slavery and Human Trafficking Act 2015, given the company's listing in London.

*[Note: The Modern Slavery Act 2015 (section 54) requires commercial organisations with a turnover of more than £36 million to publish an annual anti-slavery and human trafficking statement. This requires companies not only to undertake on pain of criminal penalties that they have not engaged directly in activities that involve forced labour but also that they have audited their global supply chains to fulfil this obligation. This means ensuring (a) that there is no use of forced labour, bonded labour, child labour or other forms of coerced or exploited labour in any part of their operations or in their supply chains; and (b) ensuring that the management of POP are aware and trained in these obligations in future]*

- (ii) GBB is very interested in the potential benefits of Wakanda joining SADC and signing up to the EU-SADC EPA. They want you to find out what the legal steps might be for this to happen and the potential timeline. They are also interested in what membership of SADC will mean for the access of Wakanda manufactured beverages into other SADC countries.

### Queries from Golden Slacks

- (i) Golden Slacks is arranging financing to fund GBB's acquisition of POP! This is based on the assumption that its investment will allow POP! to expand its production capacity. A critical factor is whether a road building project which the IFC<sup>2</sup> has agreed to co-finance goes ahead, since without the road, the costs of distribution will be significantly higher. You understand that there might be some environmental concerns about this project, however the IFC's Headquarters in Washington are in the process of developing a policy approach which will allow for investments to proceed, provided that environmental compensation measures offset any environmental damage which an investment with a positive economic and social impact might have. Golden Slacks want to know whether this policy will address the potential issue in the roadbuilding programme.
- (ii) Finally Golden Slacks is demanding particular attention be paid to Anti-Money Laundering requirements of the potential deal. One particularly important aspect of this is ensuring that any

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<sup>2</sup> International Finance Corporation – an arm of the World Bank which offers investment, advisory, and asset-management services to encourage private-sector development in developing countries.

"politically exposed persons" (PEPs) involved in the transaction have been identified. A PEP generally presents a higher risk for potential involvement in bribery and corruption by virtue of their position and the influence that they may hold.

NB. You have heard rumours that one of GBB's Non-Executive Directors, Rock T. Goldeneye III, is in line to be appointed to a senior post in the Department of Commerce as part of the Trump administration.

In the light of all of this information, you need to decide how best to respond to your new queries. This means:

1. Identifying the new issues outlined above which need to be addressed.
2. Deciding on which issues you think Wakanda Law could help, on the basis of what they have told you of the areas of law they can cover.

You have the budget to use other counsel in neighbouring countries if necessary, although your partners would prefer you to undertake the work within CCB LLP, if it is possible to do so. You may ask Wakanda Law if they can supply the information you need (by using the 'e-mail' system provided) but a key factor is time and you must finalise your information gathering strategy in the timeframe allowed.

## Second Round Template

*On the basis of the information you have received from Wakanda Law and in the light of the information you have now been asked to provide to your client, you must decide:*

***Q.1 What additional information do you need to answer the new queries you have received?:***

**Q.2 What will you now ask Wakanda Law to do, what will you do in-house or through other third parties?:**

