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From Paris to Africa

Claire Zillman

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Crushed frogs. That's what a witch doctor in Zaire slathered on Jean-Claude Petilon's legs a few hours before he played his first game with a local basketball team. "The frog lotion would make us jump higher," Petilon recalls.

Today, a photograph of the team hangs on the wall of Petilon's Paris office, which is off a courtyard near the Opéra Garnier. Petilon, a French national, is the only white man in the picture. When it was taken, in 1974, he was a young lawyer who had been dispatched to Kinshasa, the capital of Zaire—now the Democratic Republic of Congo—to open an office for what was then Duncan Allen & Mitchell. The U.S. firm wanted to set up an all-purpose office to represent American clients investing in Zaire. Playing basketball was a way to build ties to the community and to understand the culture. "It was essential to be seen as not being there to just make money," Petilon says. "For a foreign lawyer to compete with local firms, you had to be involved in local life."

Africa has been at the center of Petilon's practice ever since, even after he returned to France in 1979. Now a partner at Fasken Martineau DuMoulin, Petilon is one of a small community of mostly Paris-based lawyers who have built Africa-focused practices over the past three decades, after the continent first began attracting foreign investment in the 1970s and 1980s. The Africa bar includes lawyers from U.K. firms Clifford Chance, Herbert Smith, Linklaters, Denton Wilde Sapte, and Allen & Overy; U.S. firm White & Case; and French firm Gide Loyrette Nouel, which has established official offices in Tunisia, Algeria, and Morocco. While some firms are deploying more London-, New York-, or Middle

East-based lawyers for Africa work, Paris still makes a natural base because of longtime Francophone and civil law connections; it's in the same time zone as much of the continent; and it's also relatively close to Africa, making business travel easier. (A Paris-Tunis flight is just two hours, for instance.) While political instability has made doing work in Africa precarious at times—in some countries, lawyers say, it's smart to have security guards meet their flights—veterans say they've fallen in love with Africa's vibrant cultures and hospitable people.

Over time, the work has changed. From mostly sovereign debt offerings, restructurings, and natural resources deals for foreign investor and foreign lender clients, it now includes some corporate deals big

enough to make a more-than-respectable showing in the league tables, such as Bharti Airtel Limited's \$10.7 billion acquisition of telecom company Zain's African assets this year. With the continent's increasing need for electricity and infrastructure and growing interest from Indian and Chinese investors, the dealmaking possibilities are only getting stronger. The International Monetary Fund predicts GDP growth in sub-Saharan Africa will be a half percentage point above the 4.2 percent global average. Projections for the region's 2011 growth currently stand at 5.75 percent, according to the IMF.

"The potential in Africa is enormous," says Stéphane Brabant, head of Herbert Smith's African practice and mining group. He adds: "Africa will be the continent of the twenty-first century. There's no doubt in my mind."

Many lawyers in the Africa club got their introduction to the developing continent by working on sovereign debt restructurings. White & Case, for instance, secured a foothold in Africa in the 1990s when it represented Algeria in restructuring its external debt, says Paule Biensan, head of the energy, infrastructure, project finance, and privatization group in White & Case's Paris office. The country was then in the midst of a civil war. "There were very few firms that would do business with Algeria," Biensan says, "and we were one of them."

Project finance became the other area of interest in Africa for Europe-based lawyers. If any one deal opened up Africa—especially sub-Saharan Africa—for foreign law firms, it was the controversial Chad-Cameroon oil pipeline, which stretches 1,070 kilometers from an oil field in Chad to oil processing facilities on the Cameroon coast. Private sponsors of the deal financed about \$2.2 billion, and export credit agencies and commercial banks financed another \$600 million. A slew of law firms worked on the project, including Herbert Smith for a sponsor, White & Case for the Export-Import Bank of the United States, and Clifford Chance for an export credit agency. "[The project] made people sit up and take notice that a transaction of that size could be done in sub-Saharan Africa," says Anthony Giustini, cohead of Clifford Chance's worldwide projects group and Africa group. "It was a turning point toward deals of that magnitude and complexity in Africa."

Admittedly, the Chad-Cameroon pipeline deal also took decades to complete. The original oil exploration concession in Chad was awarded to Conoco Inc. in 1969, but it took until 2000 for infrastructure construction to begin. Oil production in Chad didn't start until 2003. One of the biggest hurdles to arranging financing was satisfying lenders such as The World Bank Group that the project would meet international human rights and environmental standards. "When these entities are involved, they feel they have a duty to make sure the deals are done right," says Giustini. "These are problems you probably wouldn't run into if you did the deal in a mature economy like—say—Switzerland."

While thirty-odd years may be extreme, an extended time line is not unusual for African deals. Government bureaucracy, civil war, and military coups can delay or upend deals. One of Biensan's projects in Guinea—a proposed bauxite mine and alumina refinery—has been in the works for nearly five years. The deal was originally projected to close in 2008, then 2009—but it was delayed again after a military junta seized power in Guinea in December 2008. "I'm not sure when it will close now," Biensan says.

Finding the right local counsel is another hurdle, since lawyers are relatively scarce in Africa. International firms often find themselves collaborating with solo practitioners or firms of two or three lawyers. Herbert Smith's Brabant draws on 20 years of contacts in Africa, as well as the professional connections of the five African lawyers who work in his firm's Paris office. "Thousands of languages are spoken in Africa. Misunderstandings are common," says Brabant. "That alone is reason enough for strong ties to local counsel." Other firms have taken a more structured approach: Two years ago, Clifford Chance started an initiative—Clifford Chance Africa—that named local counsel in eight different regions of the continent. The Hamza Law Office and Ghellal & Mekerba, both based in Algiers, work on many of Clifford Chance's water, power, and oil and gas deals in Algeria. In Botswana the firm frequently turns to Armstrongs and Collins Newman & Co. in Gaborone.

While some African countries still lack a well-developed body of business law, their legal systems are maturing quickly, lawyers say. "Generally, governments don't hit the roof anymore when you suggest the terms of a contract," says Jacques Bertran de Balanda, a banking and finance partner at Herbert Smith in Paris who often works on deals in Africa. "There is an increasing degree of sophistication among these governments."

The Organization for the Harmonization of Business Law in Africa (OHADA) has been a major catalyst for change: Members of OHADA abide by unified regional business laws, much as states in the United States may follow the Uniform Commercial Code. The OHADA laws are based on French law, since most of the member states are former French colonies. They include project finance hot spots Cameroon, the Democratic Republic of Congo, Côte d'Ivoire, and Gabon.

In the Democratic Republic of Congo, OHADA's newest member, the old business laws "were very heavy, difficult, and cumbersome," says Giustini: For example, a company couldn't be incorporated without presidential approval.

"When law is uncertain, it has a negative effect on doing business," says Petilon. "Deals are done now in defined law. These laws are a tremendous step forward."

The evolution of business law in Africa has enabled more companies to enter into joint ventures, direct investments, and independent infrastructure deals that are relatively free of government input. This dovetails with another trend: African nations are awarding concessions to build new infrastructure to private companies because the governments don't have the capital to fund improvements. For example, in 2008, Allen & Overy advised International Finance Corporation, ABN AMRO Bank N.V., Standard Finance (Isle of Man) Limited, and Société Générale in the financing of the Enfidha and Monastir airports in Tunisia—the first deal of its kind in that country.

The deal mix in Africa is changing in other ways, too. The desperate need for electrical power in some African countries has translated to a boom in energy deals. "When you fly from Europe to some place like Johannesburg, you look down and it's completely dark," says H. Philip Stopford, who heads White & Case's energy, infrastructure, and project finance group in London. "It's not just because people are asleep, it's because they don't have lights to switch on." According to the nonprofit Lighting Africa, about 850 million people in sub-Saharan Africa are without electricity.

Just this year, Gide, Allen & Overy, and Shearman & Sterling negotiated the development of a thermal power station in Togo. Starting in 2007, Giustini and his Clifford Chance team advised coal exploration and development company CIC Energy Corp. on a \$5 billion deal in which a small Canadian company built a coal-fueled plant in southern Botswana to supply power to both Botswana and neighboring South Africa. Clifford Chance has also worked on the restructuring of two power plants in Cameroon that had previously been state-run.

Meanwhile, more clients are flocking to Africa from the Far East. Five years ago there were few Chinese investors in Africa, says Gide's Leïla Hubeaut, but China's hunger for natural resources has changed that. Last year, trade between China and Africa topped \$100 billion, making China Africa's leading trade partner. Clifford Chance's Giustini, for instance, is currently representing a \$710 million joint venture between CIC Energy and a Chinese company to develop a power plant and coal mine in Botswana. Herbert Smith recently advised a Chinese company on buying oil assets in west Africa. Last year it advised another Chinese client on the acquisition of mining interests in Zambia.

Another Asian giant, India, has been slower to venture into Africa. Some law firms, like Gide and Clifford Chance, say that while they've fielded calls from Indian clients and have made pitches, the deals have been slow to materialize. But A&O banking partner Sanjeev Dhuna—who represented lead arranger and lead adviser Standard Chartered Bank in the \$10.7 billion Bharti-Zain deal this year—predicts there will be more India-Africa deals. "India needs resources," says Dhuna. There's also potential for future India-Africa telecom deals given India's penchant for inexpensive mobile networks and Africa's huge demand for mobile services. Mobile phone use has ballooned in Africa—nearly 550 percent from 2003 to 2008, according to the United Nations Conference on Trade and Development—making it a ripe target for foreign investment.

"Indian companies are more comfortable with the risks of doing work in Africa than other developed countries," says Nandan Nelivigi, a White & Case project finance lawyer in New York. "India is used to dealing with delays caused by regulatory and political changes." In the past two years, White & Case has closed two financings in Egypt for petrochemical projects with Indian sponsors. Herbert Smith, which advised Bharti in the Zain acquisition, has counseled units of Oil and Natural Gas Corporation Limited (ONGC), an Indian public sector energy company, on the acquisition of interests in offshore Egypt and Nigeria.

Will African dealmaking follow the same evolutionary model seen in other emerging markets, where project finance gradually gives ground to M&A? Fasken Martineau's Petilon sees that change happening slowly. "Africa's old companies had too many ghosts in their closets, you never know what you're getting into," he says, citing some companies' lack of transparency and poor corporate governance. Investors have preferred to create their own companies through financed projects and joint ventures, but as those companies mature, they could become targets for acquisition.

Surging Western interest in Africa's energy assets could also fuel an emerging M&A market, says Giustini. He expects African companies to take on larger roles in the continent's M&A market, too. "African companies could emerge as champions in the telecom, mining, transportation, and banking markets through pan-African deals," he says.

As the scope of project finance and corporate work in Africa grows, so does the number of lawyers attracted to the market. Africa veterans find they're facing more competition from firms such as DLA Piper; Milbank, Tweed, Hadley & McCloy; and Sullivan & Cromwell. Grant Henderson, head of DLA's Africa group, says the firm has established "best friend" relationships with local law firms in six African countries. "It's an area where we'll dedicate more resources in the future," he says. And while Paris is still a hub of Africa work—especially for the Francophone regions of the continent—some firms are now doing this work out of New York, London, the Middle East, or Brussels. "Nowadays, where you're based is becoming less relevant because work in Africa has become so global," asserts London-based Dhuna. African dealmaking remains complex and unpredictable—but it's no longer uncharted territory.

"Now we're at a point," says Herbert Smith's de Balanda, "where there's always someone else who's done the same project before." •