

**GLOBALISING YOUR PRACTICE
OPPORTUNITIES AND CHALLENGES**

INTERNATIONAL SUB- CONTRACTING FOR LAWYERS

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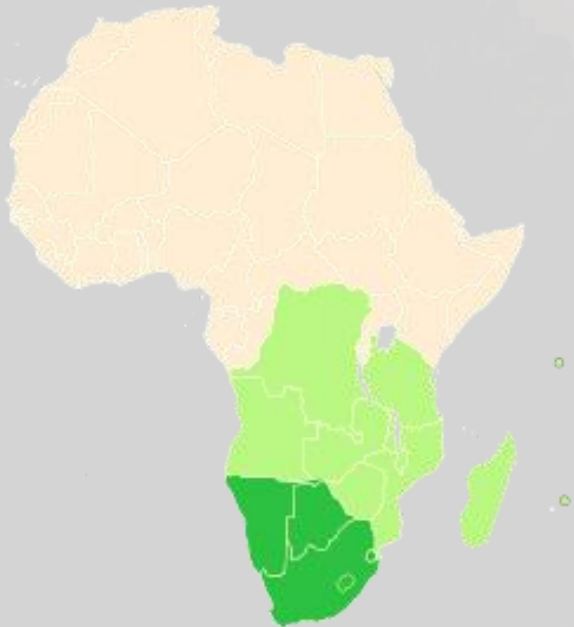
GLOBALISING YOUR PRACTICE OPPORTUNITIES AND CHALLENGES

Presentation Outline

1. What sort of work might be available to a lawyer/law firm from the SADC region?
2. Where might it come from and how can you get this work?
3. What international law firms/general counsel look for in a local partner and rules of engagement
4. What to do next.
5. Doing a deal – a practical case study

What sort of international work is potentially available to SADC Lawyers?

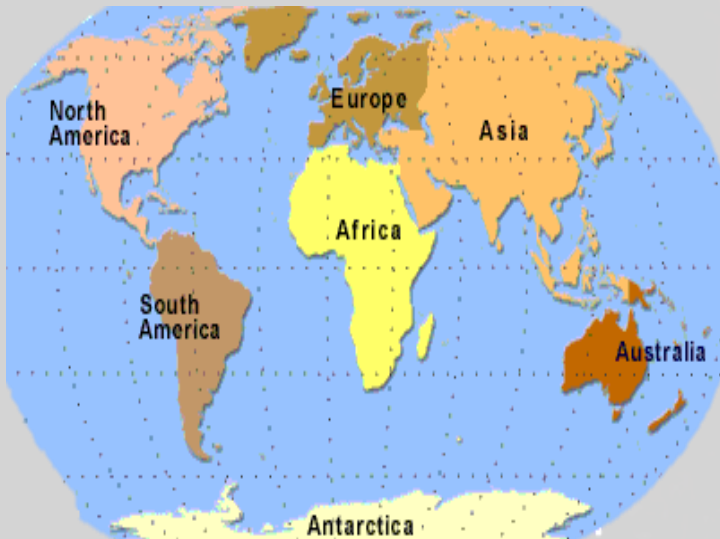
First look around you... (*international does not just mean from US & Europe!*)



1. Businesses are expanding across the region. E.g Tsogo Sun has hotels in Zambia, Tanzania and Mozambique. Sun International operates in six countries outside South Africa
2. Infrastructure is following business e.g. South African rail operator Sheltam Group has created a rail track infrastructure funding vehicle with a dedicated African mandate.
3. Services integration now on the SADC agenda where it is needed to support key sector growth.

Only then, look to others....

1. 8 of Africa's top 25 FDI destinations in SADC region.
International businesses from South Africa, Europe, Asia and the US entering the market
2. Venture capital investments – Africa tech startups raised \$195mn in 2017 – South Africa and Zambia the biggest regional hubs
3. Asia – Chinese FDI > \$10bn invested 2004-14 in South Africa, Zambia, Tanzania and Angola





What sort of International Work? – The Key Parameters

1. Who from?:

Think about the nature of the client – will make a difference to how the work is tackled

- Intermediaries (referral law firms)
- direct from clients African funds/investors/brands/entrepreneurs; Foreign VCFs;
- foreign businesses.

2. On what?:

Growing diversity of topics – an opportunity to develop unique knowledge base

- African sectors attracting most increased investment in 2017 were education and training, electricity, manufacturing and business services, alongside continued investment in extractive industries and renewables
- Providers of anything a growing affluent African middle class desires - malls, retail chains.



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3. How to approach it

Get out of the local litigation mindset.

- The questions which are very country specific and difficult for someone abroad to do an online desktop review, replicate or standardise.
- Local compliance, due diligence, land use/land title issues, employment, risk assessment and mitigation, country of origin compliance checks (e.g. UK Bribery Act, US FCPA etc).
- For litigants, think more of dispute resolution options through Mediation and Arbitration rather than local courts.

4. Focus on the relationship as well

The “third transaction rule”. After the 3rd transaction,

- you should be able to handle the transaction from thought to finish; and
- the client should be comfortable dealing with you/your firm directly.
- Trust will lead to a growth in the amount of work that will be passed down to a local firm.



Who could international work come from?

- 1. International law firms** – think beyond the obvious (nb. who are potential relationship law firms from investing countries?)
 - Europe - London and Paris. Most Africa practices HQs there
 - Africa – Egypt, Kenya, Nigeria, Morocco
 - Far East – China, India
 - Middle East – Dubai
 - USA – New York and regional sectoral hubs (e.g.
- 2. Create the work yourself** and do the referrals to the international law firms e.g. aviation example
- 3. Other professions** (e.g. engineering consultancies, Big 4 audit firms)





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4. **Tenders:** Tender websites e.g. National governments, SADC
5. **Government initiatives:** e.g. South Africa's Renewable Energy Independent Power Producer Procurement programme has helped trigger FDI of around \$16bn in renewable energy
5. **Venture capital:** Not just foreign VCFs, African players increasingly evident (e.g. SAVCA). \$3.8bn in PE investment in SADC 2012-2017.
6. **Business directly** (e.g. in house counsel in foreign businesses but nb. also local business investing and exporting elsewhere in the region(e.g. The Lounge Factory, furniture manufacturers from Botswana)





How do SADC Lawyers participate in Mega-Projects?

What are ‘mega-projects’?: Large scale, complex, many stakeholders, >\$1 billion

- 90% of pre-deal (“bid-win” stage) legal work on mega-projects is about the international structuring of the deal/financing. Local content limited to around 10% of the work.
- But 50% of the value of the legal work in the deal comes post-execution and this is then all local work.

What legal knowledge/skills do they need?:

- Full knowledge and understanding of local legal and regulatory requirements (e.g. local content)
- Land issues/site accommodation
- Service and employment contracts and contract management
- Political/regulatory risk/local environmental knowledge – assistance with compliance locally and internationally
- Dispute resolution if required
- Tax advisory

What do clients expect?

- Availability and ability
- Accuracy and clarity
- Good service (plenty of information and updates, prompt action, follow through)
- Transparent billing (not necessarily cheapest)
- Local (and regional) insight
- Recommendations/endorsements from previous clients



**GIVE ME
WHAT
I WANT!**



Overcoming preconceptions - Some international perceptions of African lawyers

PRACTICE AREA ISSUES

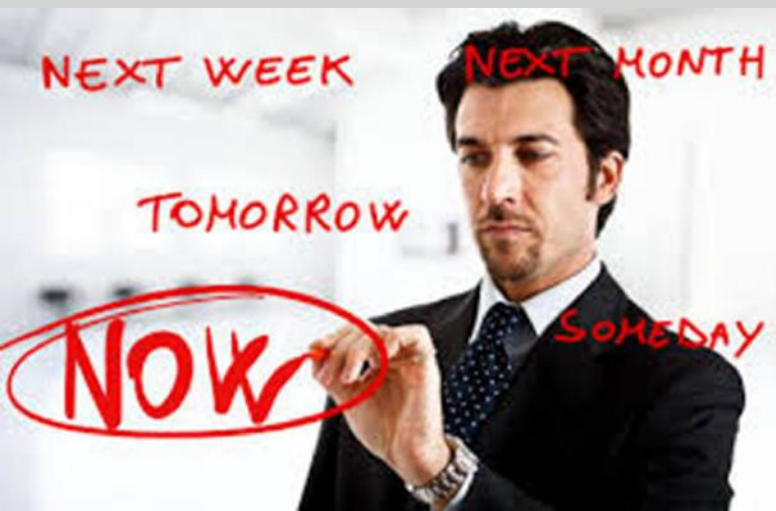
- Litigation focused, lack of corporate and commercial experience
- Provide only legal not commercial problem solving advice
- No sector focus with limited understanding of client's industries and trends affecting client's businesses
- Focus solely on their local jurisdictions. Limited ability to work seamlessly across borders

SERVICE ISSUES

- ALFs too small to handle complex work – mostly individual practitioners
- Opaque billing strategies
- Firms are not run as proper businesses.
- Old fashioned and opaque drafting style
- Not responsive
- Little attention to quality. Poor client care and inconsistent service
- Poorly trained. Little interest in continuing legal education and widening knowledge

What makes them choose you?

- Evidence of experience or involvement in similar previous projects.
- Sectoral knowledge and contacts.
- Thoughtful value added (thinking round the problem at hand not just answering the questions).
- Internationally recognised credentials and qualifications.
- Consistency and Continuity
- Capacity – how many lawyers do you have who could work on this transaction?





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Part 2 – What to do next?

What to do next?...Internally

1. **Prepare your firm to work with international partners**– think about how you can improve service delivery, confidentiality etc.
2. **Develop your expertise** – Get to know the law, issues, people and businesses in key economic areas (e.g. become known for a particular sector).
3. **Scale up and build the capacity of your teams** to handle multiple assignments, back office work, business development etc.
4. **Develop your messages** – the services you are selling to potential foreign clients are different to your domestic services





What to do next? – Externally?

1. **Develop your networks within and beyond the region** and in business more generally (e.g. 75% FDI in SADC comes via S.Africa). Don't just talk to other lawyers!
2. **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).
3. **Are you a visible expert?** Success for a law firm today requires internal management, sales and marketing not only expertise in the law.

**IN GOLF AS IN
LIFE IT IS THE
FOLLOW
THROUGH THAT
MAKES THE
DIFFERENCE.**

Rules of Engagement – the approach (the traps)

- **Divide & Rule** – International law firms (ILFs) have an upper hand in the bargaining process as African Law Firms (ALFs) are not organized to avoid a race to the bottom in out-competing 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 usually have not set themselves any practice standards apart from the minimum that is usually in the law

Rules of Engagement – the contract (the traps)

- **No transparency** - collective fee payable to both ILFs and ALFs usually not visible, no direct contact with client, no visibility on payment process, no visibility of main contract
- **One sided obligations** - typically no obligations on ILFs but heavily titled 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 usually in favour of ILFs
- **No right to profits** – if subcontract terminates prematurely ALFs right to recover lost margins usually excluded
- **Foreign governing law & jurisdiction** – although work carried out in jurisdiction some ILFs would impose their standard terms of engagement including a foreign governing law and jurisdiction for dispute resolution

Rules of Engagement – regulation (way out?)

- **Rules of engagement?** – should the IBA further develop its resolutions on working in foreign jurisdictions in order to level the playing field?
- **Local content law?** – should some form of local content in legal services be required e.g. promotion of project/instruction specific JVs or alliances, skills transfer, etc?
- **Quota system?** – would it assist if there is allocation of amount of work that could be undertaken annually by IFLs without involving ALFs (e.g. 50% of legal spend payable by investor client)?
- **Equalization schemes?** – would schemes such as restriction of practice areas for foreign lawyers, taxation locally of work done in local jurisdictions by ILFs, etc, help?

Applicable domestic regulation (way out?)

- **Remove obstacles to law firm development** – many SADC jurisdictions limit domestic firms ability to compete with outdated and uncompetitive codes of conduct (e.g. prohibitions on naming conventions, ownership and legal form)
- **Improve practice** – what could national law societies/bars and SADC LA do to help raise standards in practice and training?
- **Work across borders** – *how* can cooperation through organisations like SADC-LA be used to strengthen the hand of local lawyers?



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Part 3 – A Case Study Exercise



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Poptastic Sodas Ltd (POP!) and the Great Big Bottling Company Inc. (GBB)

- GBB is a US manufacturer and distributor of beers and soft drinks with offices in 50 countries around the world
- POP! is the leading producer of soft drinks in the fictional Southern African country of the Republic of Wakanda
- GBB wants to buy POP! And a preliminary valuation has been agreed. We are now entering a due diligence phase.



Your Role

- You are divided into separate transaction groups
- Each group has two teams of correspondent law firms: A local law firm team (**Wakanda Law**) and an international law firm (**Creepy, Crawley and Bug LLP (CCB LLP)**) which has offices in the US and UK.
- The correspondent law firms teams must sit separately and communicate only through the permitted channels.
- Each team will be allocated **two tasks** during this exercise
- Your response to the first task will be given to your correspondent firm and will provide them with the information they need to carry out the second exercise



Outline of the Case Study

- In your teams:
 - You have 10 minutes to read the initial information given to you and decide how you wish to organise yourselves
 - You have 30 minutes to complete the first template as a team. This will then be given to your correspondent law firm
 - You then have a further 30 minutes to complete the second task based on the information you have been given by your correspondent law firm as well as what you have already been told.
- We will conclude with a round up of the relevant issues and feedback



Hints and Tips

- You are not expected to have any knowledge of the law of Wakanda!
- Don't assume everyone has the same information
- There is a lot to cover in the time available and you may find it easier to allocate different responsibilities within your teams.
- You can at any time ask questions of your correspondent team – you must do this by using our manual “email” system – write your question on the index card provided and hand deliver it to your counterparts. You cannot speak to them or wait for a response.
- If you receive an “email”, you can decide how to prioritise this alongside the task you have in hand



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TASK 1



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TASK 2



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FEEDBACK

Part 2

Wakanda Law

- What other stakeholders did you identify?
- What other risks or issues did you suggest?

CCB LLP

- What issues did you identify for your client from the additional information you were given in round 2?
- Where would you use Wakanda Law to answer those queries?



Issue checklist

- Core due diligence: Asset ownership and registration. Any charges (nb. New fleet of trucks – how financed? Land title issues? Employee contracts? Supply and distribution contracts?
- Laws: Foreign investment, employment, tax, environmental and resource use, consumer, advertising etc.
- Government policies: tax, trade, environment, social, transport, macroeconomic
- Stakeholders: Government, WCC bank, trade unions/employees, local villagers, WFF
- Risks: Project risk – e.g. access road, water and input supplies; Reputational risk? Political risk? Economic policy risk? Compliance risk?



Bonus points

If between your teams, you:

1. Identified that POP! director and owner, Beloved Marvellous might become a Politically Exposed Person
2. Identified that the IFC roadbuilding programme might be able to go ahead if they funded a chimp sanctuary elsewhere in the country
3. Identified the potential opportunity for GBB's investment in Wakanda to allow POP! to expand into the beer market, given the sale of Dik-Dik beer and membership of SADC

NB – All of these could only have been identified if there was extra communication between the teams



Questions to all

- What did you find out about this deal from your counterparts by asking supplementary questions? If so, did you, did you get quick replies?
- 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?