Team work

Economic harmonisation between African jurisdictions is paving the way for a more unified market. And, as South Africa prepares to host the Fifa World Cup, *LB* analyses the region's strengthening investor profile

ANASTASIA HANCOCK and MARIA JACKSON

The past year has been a uniquely tough time for the world's financial markets but, as in all recessions, there are opportunities for the more nimble players to create a new world order. Among the emerging markets, African countries have been too often overlooked in favour of the more stable political economies in South America, Asia and eastern Europe, but that may be about to change.

In September 2009 The World Bank published its annual 'Doing Business' report, a guide that tracks government legislation to identify the world's most business-friendly countries. There was a major surprise. Rwanda was named as top reformer, following a year of business-friendly policies concentrating on tax, employment and start-ups that saw it jump a mammoth 76 places to 67 in the overall rankings. This was the first time a sub-Saharan African nation was named the leading reformer since The World Bank established the report in 2003.

It's no coincidence that Rwanda has been heavily involved in the development of two geographical communities, the Economic Community of Central African States (ECCAS) and the East African Community (EAC) (see boxes, 'Power bloc', page 76 and page 82), which aim to

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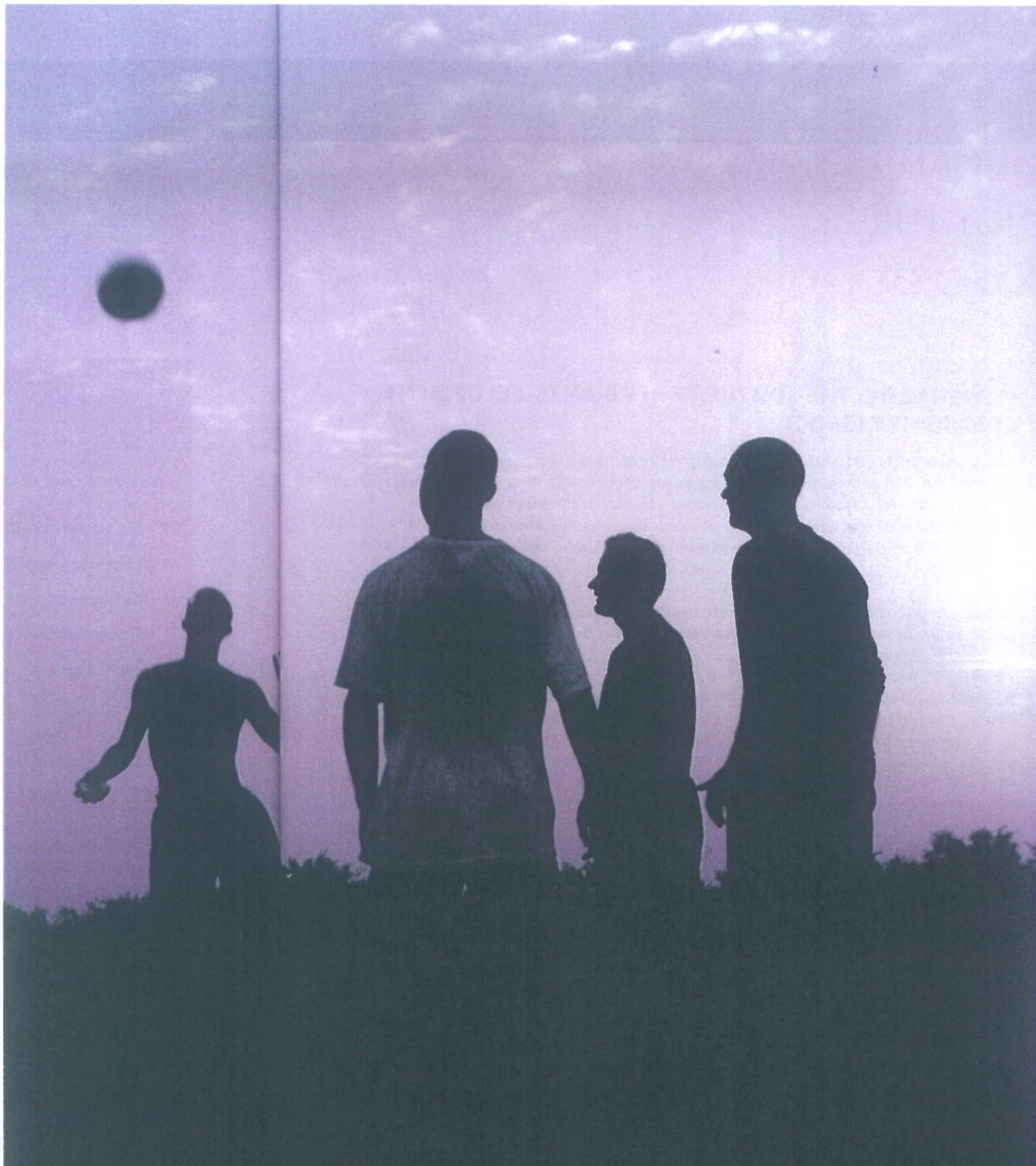

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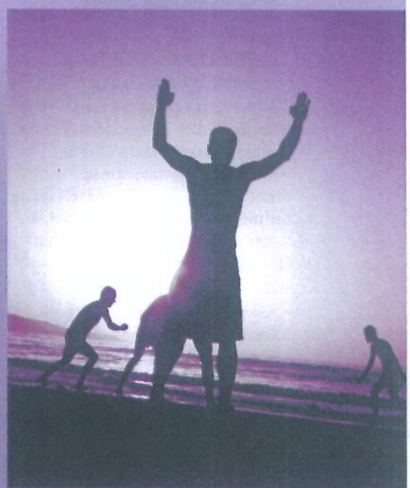

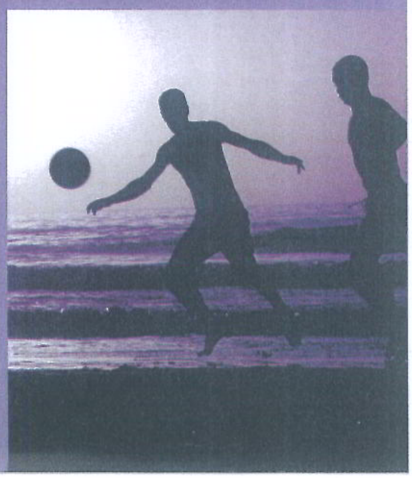

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promote economic co-operation. The growing emphasis on economic harmonisation between African countries and the profile given to Africa in the lead up to the 2010 Fifa World Cup has seen its attractiveness to investors skyrocket. Herbert Igbanugo, founding shareholder of Igbanugo Partners Int'l Law Firm, a Minnesota-based firm that specialises in international trade law in sub-Saharan Africa, suggests

that the current performance of Africa's economy equals a 30% to 50% return on investment. It's an astonishing figure in the current financial climate, and a statistic that should have firms flocking to the region. Once markets become more mature, harmonisation will make investment returns ▶

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more consistent. Encouraging the harmonisation process is the fact that many areas of Africa share languages. Francophone Africa is perhaps the most immediately obvious, but the Portuguese also have strong links to the continent.

POWER BLOC: THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

Background: Originally launched as the Southern African Development Co-ordination Conference in 1980, with the mandate to reduce dependence on apartheid in South Africa. The organisation was renamed the SADC in August 1992, to underline its transformation into a development community to promote economic co-ordination between the 15 member states. The official languages of the organisation are Afrikaans, English, French and Portuguese.

Members: Angola, Botswana, the Democratic Republic of the Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Economic facts: According to the SADC, the combined income of the 15 member states is $431bn. This figure is dominated by the South African economy, which stands at $277bn - over half the combined total. The country with the highest GDP per capita is Botswana with $14,882 per year in 2008, according to International Monetary Fund statistics. At the other end of the scale, the GDP per capita for the DRC is an estimated $328. Angola is the fastest-growing economy, with an IMF-estimated growth rate of 14.8% in 2008.

Leading regional firms: In line with its economic dominance, South Africa is by far the largest legal market. In terms of firm size and corporate finance prowess, the leading names are Bowman Gilfillan, DLA Cliffe Dekker Hofmeyr, Deneys Reitz, Edward Nathan Sonnenbergs, Webber Wentzel and Werksmans.

Market news: At the end of 2008, the SADC joined with the Common Market for Eastern and Southern Africa (see page 80) and the East African Community (see page 82) to form the Africa Free Trade Zone. A huge leap forward in terms of regional trade co-operation, the zone aims to remove impediments arising from the tendencies of some countries to have multiple regional bloc memberships.

PORT OF CALL

With the same official language, very similar cultures and a virtually identical legal system, it is little surprise that Portuguese law firms have infiltrated certain African markets. The relationship is a long-standing one – Angolan colonisation by the Portuguese, for example, happened more than 500 years ago.

Today there are a number of Portuguese firms that have a presence in Africa. Abreu Advogados; Barrocas Sarmento Neves; F. Castelo Branco & Associados (FCB); Miranda Correia Amendoeira & Associados; PLMJ – A.M. Pereira, Sáragga Leal, Oliveira Martins, Júdice e Associados (PLMJ); Raposo Bernardo; and Vieira de Almeida & Associates are just some of the major Portuguese players doing business across the African markets.

Historically, it makes sense. But the modern day rewards for these names are pretty significant too.

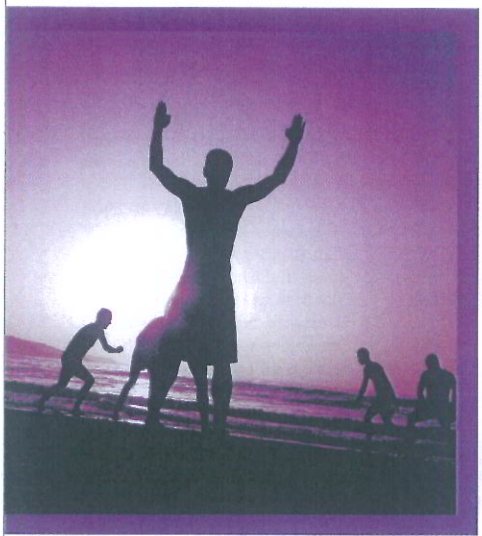
Swathes of Portuguese investors have made an impact on the markets, and, unsurprisingly, their legal advisers are not far behind them. A good job too, as Portuguese investment in Angola has tripled in the past year. As João de Freitas e Costa, partner at Abreu Advogados, notes: 'The political stability and economic growth operated in Angola in the last few years are the main factors behind the interest in investing in the country.'

As FCB partner Vitor Félix points out: 'Portuguese companies still have great significance in former colonies, and specifically in the Angolan market; they control a major part of the financial and building construction business.' No doubt the tax benefits are an enviable draw for these businesses: Angola does not have any double taxation agreements, and, in turn, Portugal has taken internal steps to avoid this kind of tax obligation on investments into the country. This in itself is indicative of Portugal's national strategy of maintaining historic links with Portuguese-speaking countries, and its location at the tip of Europe presumably facilitates movement into Africa.

The input of the local government cannot be underestimated either. The assistance it is prepared to offer can make or break certain industries. The Angolan government, for example, is actively seeking to diversify its economy and, as such, has approved an amendment to the public budget for 2009. It has put into place restrictive monetary and financial policies, raising the legal reserve of financial institutions by 10%, and dictated that local currency must be used. 'There is more control of the straight sale and purchase of foreign currency, and on bank accounts with foreign currency,' de Freitas e Costa adds.

This issue is undoubtedly something that investors will be bearing in mind, for the

Faye: African economies felt the crunch



implications could be considerable. 'These economies are subject to strict political guidelines, so the impact of any political measure is strong, for better and for worse,' says Nelson Raposo Bernardo, managing partner of Raposo Bernardo.

While the law, language and cultural affinity may well be weighty plus points for these Portuguese firms, moving into an African jurisdiction can be expensive. As Miranda Correia Amendoeira's managing partner Rui Amendoeira points out, it involves a lengthy recruiting process, sending out ex-pat lawyers, and a significant initial outlay for office space. 'It's a huge cost. You've got to have deep pockets and be prepared to spend money before you see any return,' he says. 'This is more of an issue than political or security risk.'

Angola and Mozambique, particularly, have seen an influx of Portuguese players into their markets over the past five years, thanks in part to an increasing level of political, and consequently economic, stability. 'The markets have been progressively gaining autonomy from internal politics, and the economy is growing,' Félix says.

This is certainly true. In the past five years alone, Angola has grown at a faster rate than the Chinese economy. 'But the Angolan market is still under the influence of the government, especially in the building construction and infrastructure areas, which are highly related to the budget plan,' Félix adds.

Any Portuguese firms keeping an eye on these markets should take note. While the return can potentially be extremely lucrative, and the common denominators of law and language are compelling advantages, it cannot be forgotten that international names from all over the world are increasingly recognising these jurisdictions as a good place to do business.

As Raposo Bernardo points out, these countries have so much going for them. 'Their own resources, which were in the past a source of serious administration issues, are today, with a more matured management, allowing them a level of autonomy that, to a certain level, shields these markets from disastrous fluctuations,' he says. The potential is for the Portuguese influence in areas such as Angola and Mozambique to wane as foreign firms come jostling in, eager to grab a piece of the action.

STATE OF PLAY

In emerging markets, real estate is often the area that benefits the most from eager investors. Africa is certainly a case in point. But the difference with these markets is that the continent is seeing a heightened level of harmonisation across its disparate jurisdictions, and most African countries now welcome investment from foreign companies.

POWER BLOC: ECONOMIC COMMUNITY OF CENTRAL AFRICAN STATES (ECCAS)

Background: The Customs and Economic Union of Central Africa (UDEAC, from its name in French) was established by the Brazzaville Treaty in 1966 to encourage free trade between members. In December 1981, UDEAC moved to form a wider bloc of Central Africa states. ECCAS was eventually established in 1983 by some UDEAC members and the members of the Economic Community of the Great Lakes Countries (CEPGL). UDEAC signed a treaty in 1994 to establish the Economic and Monetary Community of Central Africa (CEMAC) in 1994, which promoted economic integration through a monetary union using the Central Africa CFA franc as currency.

Members: Angola, Burundi, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo (DRC), Equatorial Guinea, Gabon, Rebublic of the Congo, Rwanda, São Tomé and Principe.

Economic facts: According to The World Bank's 2008 figures, the combined GDP of all member countries is \$174bn. Oil-rich Angola is the wealthiest nation, with a GDP of \$83bn in 2008. However, compared to the rest of the regional groupings, the economies of ECCAS are more evenly matched. The second-richest country is Cameroon with a GDP of \$23bn, while Equatorial Guinea is third with \$19bn. GDP per capita puts Equatorial Guinea at the top of the list with \$18,058 per head, whereas the DRC, the fourth most populated nation in Africa, has the smallest GDP per capita with a figure of \$330.

Leading regional firms: None of the countries in this bloc have a legal market in the sense of South Africa or Nigeria, instead fielding one or two strong firms that dominate the market. In Angola, Fátima Freitas Advogados is the leading name, with MG Advogados – the country's TerraLex member – also highly respected. Cameroon's Ndikum Law Group is worthy of note and boasts strong links with Europe.

Market news: In 2003, the EU signed a provisional financial agreement with ECCAS and CEMAC on the condition that ECCAS and CEMAC should merge.

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This continent-wide trend means good news for the property market – an area that has recently been the focus of both government initiatives and private investors alike. Take Morocco, for instance. Like many North African countries, investors once shunned it. Seen as a notoriously tricky place to do business, and party to certain sanctions, it is now being considered anew.

Markets such as Algeria, Libya and Morocco are being seen in a fresh light, as demonstrated by well-known and cash-rich investors like Dubai property developer Deyaar, which is now considering them as viable options. Earlier this year, luxury property developer Mediterranean Investment Holdings completed its first development in Libya. This was no doubt thanks in part to the Libyan government's initiatives to open up the market.

Law firms in Morocco that possess the relevant expertise stand to benefit significantly from these moves. However, the main players face a period of adjustment, as the new wave of activity rolls in. The real estate market in Morocco is a fairly new creature, one that has developed radically only in recent years. Products are increasingly diversified, and with this shift comes the inevitable reform. 'The housing market has become a lot more regulated,' says Bennani & Associés managing partner Mehdi Bennani. 'In fact, a number of moves have been made to make the industry more organised. We're still at the beginning of the journey here. The more we progress, the more specialised we become. This in turn gives the investor a sense of protection and security, the feeling that doing a transaction in Morocco is just like doing one anywhere else in the world.'

One of the most pressing factors behind a swift strengthening of the real estate market is tourism, an area that is virtually propelling heightened levels of activity. Companies and governments keen to attract as many cash-rich foreign tourists as they can are aware that to do so, the appropriate infrastructure needs ▶

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▶ to be in place. This means pumping funds into hotels, resorts and transport. 'There has been an educated decision to invest in tourism. It's been given the priority,' Bennani says. Middle Eastern developers have already got their foot in the door – Abu Dhabi-based Al Maabar International Investments is behind a $750m development in Rabat, while Kuwaiti North Africa Holding Company is involved in a luxury golf resort in Marrakech. It is worth bearing in mind that in certain jurisdictions across Africa, a stronger dollar can have an impact on inflation, as import prices for European goods are lower in local currency.

Mozambique is a good example of the effort governments across Africa have been making to encourage foreign investment. The country recently put in place a number of macroeconomic reforms that would both steady and strengthen its economy. They were introduced just as political stability was becoming more apparent, and consequently the country has seen significant economic growth. PLMJ partner Tiago Mendonça de Castro points out that fiscal reforms in Mozambique, including the introduction of value-added tax and reform of the customs service, have improved the government's revenue collection abilities. 'The government has taken steps to make Mozambique as attractive as possible to foreign direct investment, upon which it is heavily dependent,' he says.

Countries profoundly affected by war and political instability are not traditionally investor favourites. But many of the jurisdictions across Africa that suffered a turbulent past are now seeing the positive effect of a newly stabilised environment. Angola, for instance, has been long burdened with the rocky reputation that comes with a tumultuous history. After almost 30 years of civil war when it became independent from Portugal, the country was left facing a difficult road to recovery.

However, it was here that investors saw promise, particularly in property. 'The real estate and infrastructure sectors have been particularly busy due to the fact that Angola is undergoing significant reconstruction following the end of the civil war. It is now a country under construction, embarking on major infrastructure and housing schemes, and looking outside for the skills to build them,' PLMJ partner Sofia Gomes da Costa notes.

As director of Denton Wilde Sapte's Africa group Paul Bugingo points out, many of the markets in Africa saw economic trouble as a result of the global credit crisis. 'I wouldn't say they have been protected at all. Who would protect them? Commodity-driven economies, such as in Zambia and Botswana, have been affected by reduced demand in the same way as any others in the world,' he says. However, some areas are keeping the markets afloat.

BUILDING BLOCKS

While infrastructure to exploit Africa's abundance of natural resources has been in place for a while, social infrastructure has been much neglected. However, this is starting to be redressed. Most notably, the Fifa World Cup has been a real boost to the construction industry in South Africa. 'The World Cup provides South Africa with the chance to show it is a modern

POWER BLOC: ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

Background: ECOWAS was founded in 1975 to promote economic integration. Originally devised to achieve 'collective self-sufficiency' via an economic and monetary union, with the eventual aim of creating a single trading bloc. The founding principles were revised in 1993 to create a looser co-operation, as it became clear that such cohesion was unlikely.

Members: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo.

Economic facts: The combined GDP of all member states is $305bn, with Nigeria contributing $214bn to that figure, a mammoth 70% of the overall total. Guinea-Bissau's GDP stands at $461m, less than 1% of the collective ECOWAS total.

Leading regional firms: Nigeria is the largest economy and therefore boasts the most mature legal market, but even the largest firm, Aluko & Oyebode, only fields nine partners. This firm joins with Olaniwun Ajayi and Udo Udoma & Belo-Osagie to make up the country's 'Golden Triangle' of law firms. Ghana's legal market is becoming increasingly sophisticated in line with its recent economic success; in 2008 Ghana was the world's best-performing stock market, increasing value by 59%. Bentsi-Enchill, Letsa & Ankomah is currently the country's leading corporate firm, with Oxford & Beaumont Solicitors making a real play for the spot.

Market news: ECOWAS is closer to economic harmonisation than any other regional bloc. The West African Economic and Monetary Union (UEMOA) is a group established by eight of the smaller West African states (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo) to encourage economic integration, and all share the CFA franc currency. In 2002 International Monetary Fund research stated that UEMOA was 'the furthest along the path toward integration' of all the regional communities in Africa. ECOWAS also houses the West African Monetary Zone, a group of five more states (Gambia, Ghana, Guinea, Nigeria and Sierra Leone) that plan to introduce a common currency (the Eco) by 2015.

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economy with modern infrastructure,' says Pieter Steyn, corporate and competition specialist at Werksmans. 'Our airports have been hugely upgraded and we have the opportunity to position South Africa as a gateway into Africa.' But it's not just international visitors that South Africa is hoping to impress.

'Statistics were recently published that show 75% of visitors to South Africa come from other African countries; only 25% are international,' Steyn explains. 'There is a burgeoning African middle class that is yet to be properly tapped; across Africa you are looking at a potential 900 million consumers.' To encourage that tourism, more transport infrastructure is desperately needed.

Eversheds is active in Africa through its offices in Johannesburg and Mauritius and its cross-office Africa group, co-led by project finance partner Boris Martor, who thinks that public-private partnerships (PPP) are the obvious way to fund these projects. 'Africa is the only place where there is predicted to be economic growth this year, so it's not just oil and gas and mineral projects that are getting interest,' he says. 'Single economies in the region do not have a critical market, so Africa needs much bigger regional policies – some countries already have PPP frameworks, but if that is harmonised on a pan-African level, it will attract more and more international investment.'

To respond to that need, the African Development Bank has organised the first African PPP conference. It will be held in South Africa later this year, and aims to establish a network so that projects undertaken in individual countries can be linked to similar projects in the region. There have already been a number of PPP projects across the continent, but the most high profile was undoubtedly the $4bn Gautrain ▶

Martor: bigger regional policies needed

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project in South Africa, which was the world's second-largest train PPP after the London Underground. Pinsent Masons, alongside local counsel Ledwaba & Mazwai, advised the government of Gauteng, while Bowman Gilfillan and Freshfields Bruckhaus Deringer acted for the lead arrangers.

Attracting investment for more projects should not be a problem now that competition from Chinese investors is raising the stakes, making the US and Europe take a second look at the region. Importantly, the demand for infrastructure is essential, as this will ensure that the money for projects is found. But it's not just social infrastructure that needs to be developed, some parts of Africa are also finding that their energy infrastructure also needs to be updated.

'The political stability and economic growth operated in Angola in the last few years are the main factors behind the interest in investing in the country.'
João de Freitas e Costa, Abreu Advogados

ENERGISING THE MARKET

In terms of natural resources, mining has always provided a steady flow of work for South African lawyers; nearly 90% of the world's platinum, 80% of manganese, 73% of chromium and 41% of gold originate from the country. Although, metals are a rich resource, it's the country's energy needs that are currently top of the agenda, following a lack of capacity in the electrical generating and reticulation infrastructure.

Gregory Antony Nott is managing partner of Dewey & LeBoeuf's Johannesburg's office. He hit the headlines recently when he was recommended by the Minster of Sports and Recreation in South Africa to give pro bono advice to South African 800m world champion Caster Mokgadi Semenya on legal matters relating to her human rights and her rights as an athlete. The office has a strong record on energy matters, advising Eskom, which generates 95% of the country's electricity, on a $500m loan from the African Development Bank. 'Recent financial uncertainty was not just driven by the downturn,' Nott says. 'For two months last year there was a blackout; we need energy. Energy work is sexy and challenging and it is good for Africa.'

At the beginning of 2008, power cuts literally put the lights out in South Africa. Mineral producers such as Anglo Platinum, Gold Fields and AngloGold Ashanti ceased production on safety grounds after Eskom admitted that it could not guarantee power supplies, which sent platinum prices soaring. 'The development of renewable energy is now an important trend,' Nott adds. 'We are involved in wind projects in Namibia and South Africa, and other renewable projects as well.'

Renewable energy is certainly becoming a hot topic throughout Africa, as it is in the rest of the world, but Morocco is taking it particularly seriously. The country's geographical advantages, particularly its sunny climate, the strong winds coming off the Atlantic and its 3,500km of coastline, make it a prime candidate for alternative energy generation, and it is pursuing a concentrated renewable energy policy. Most recently, the country announced a $1bn fund to support renewable energy, and

POWER BLOC: COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

Background: Formed in 1994, COMESA replaced a preferential trade area that had been in existence since 1981. Its 19 member states cover an area of 12 million sq km, it has a population of over 400 million and its official languages are English, French and Portuguese.

Members: Burundi, Comoros, Democratic Republic of the Congo (DRC), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

Economic facts: COMESA countries boast a combined GDP of $360bn, according to International Monetary Fund figures for 2008. Egypt's economy looms over the rest with a GDP of $162bn, while Comoros has the smallest economy with a GDP of $532m. In terms of GDP at purchasing power parity per capita, the Seychelles sits comfortably at the top of the members' list with $21,910, while the DRC is bottom.

Leading regional firms: Egypt's legal market is becoming increasingly dynamic, fielding a number of international firms, namely DLA Matouk Bassiouny, Denton Wilde Sapte, Helmy, Hamza & Partners (Baker & McKenzie) and Trowers & Hamlins in association with Nour Law Office. Of the domestic firms, Shalakany Law Office stands out; it is the biggest law firm in the market and shines in corporate finance and disputes. In Kenya, Anjarwalla & Khanna Advocates and Hamilton Harrison & Mathews are the leading names, while in Libya, oil and gas specialist Mukhtar-Kelbash and Elgharabli Attorneys and corporate and commercial heavyweight Tumi Law Firm are the stand-out performers.

Market news: In 2000 nine member states formed a free trade area (FTA): Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe. 2004 saw Rwanda and Burundi join the FTA, followed by Comoros and Libya in 2006.

in September passed legislation to create a new investor-friendly framework. French firm Gide Loyrette Nouel is one of the largest firms in North Africa, boasting 50 lawyers between its Algeria, Morocco and Tunisia offices. 'The new law should give rise to a number of projects,' says Hicham Naciri, managing partner of the firm's Casablanca office. 'We have a strong record in this field, acting for energy companies and public sector bodies, and Morocco has an excellent chance to position itself as a leader in this area.'

But, of course, oil and gas remains the key energy industry for Africa in terms of production and generation. And strong global demand for resources has reacted with other investment trends to generate huge interest in the sector. 'The race for African energy and natural resource assets has intensified with the entrance of China and India into what has hitherto been a market dominated by Western multinationals,' Laura O'Neill, co-head of SJ Berwin's Africa practice, says. 'The pursuit of energy security by the West and the East, and the indigenisation of the energy sector in Africa, has been transformational.'

Importantly, the continent has also welcomed some new players to the oil and gas market in recent years, widening its pool of attractiveness to energy companies and enabling those countries to become more sophisticated investment centres. For example, in June 2007 Ghana found significant oil and gas reserves in offshore waters.

'The legal market in Ghana is not mature,' says Elikem Nutifafa Kuenyehia, founding partner of Accra-based Oxford & Beaumont Solicitors. 'Since the beginning of this year, everyone has been repositioning themselves as oil and gas lawyers.' Kuenyehia established the firm in 2006 following stints at Travers Smith and Linklaters. He realised that Ghana needed more transactional firms with experience to handle chunky M&A deals. The firm regularly works with international firms such as Norton Rose, and Kuenyehia anticipates more international interest in the country. 'Ghana has proved to be a good democratic model,' he says. 'It's an oasis in this region, and as more money is invested, infrastructure will develop.'

TECHNOPHONE

Kuenyehia points to the telecoms sector as a key industry area for both Ghana and Africa as whole. According to statistics researched by the International Telecommunication Union and Ghana's National Communication Authority, mobile phone subscriptions across Africa jumped from 296 million users in 2007 to 364 million in 2008. A substantial increase, but ▶