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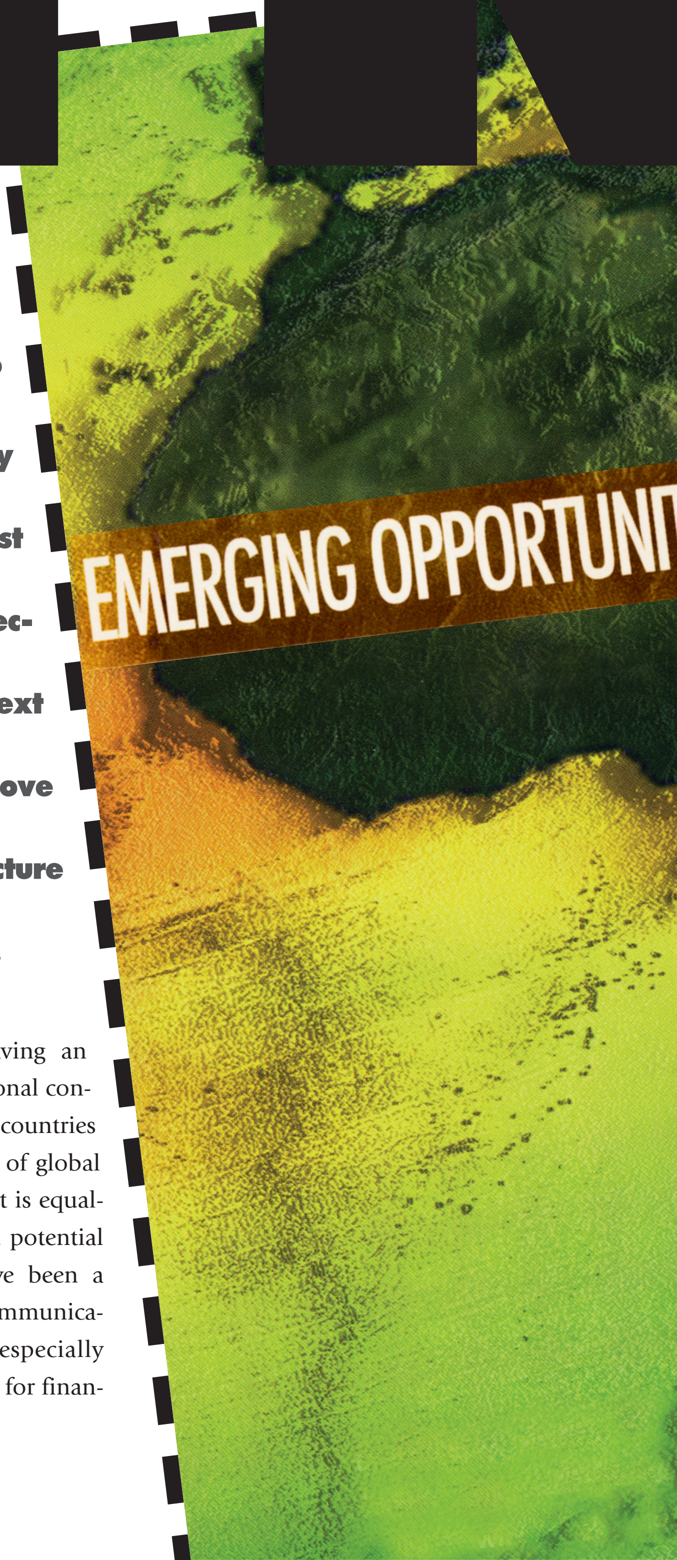
# AFR

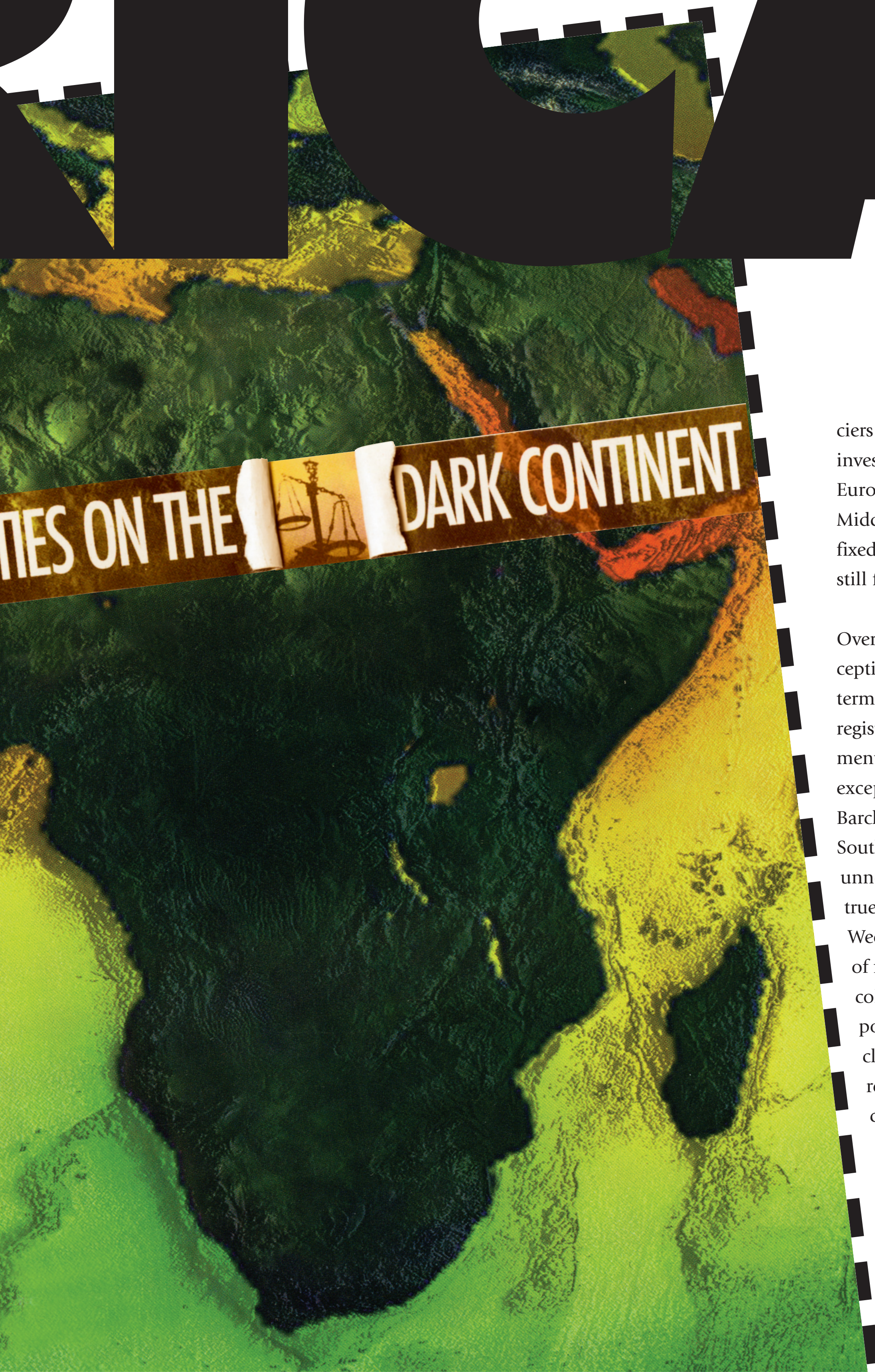



**What will Africa be like in the twenty-first century? Less than a decade into the new century, it is silly to try to predict too much. Who could have predicted the rest of the twentieth century accurately, in 1906? Given vectors at play, though, there is little doubt that the next decade (never mind the next century) is going to move Africa to a very different place than the dismal picture associated with the continent in the twentieth century.**

With this move will come increased opportunities for selling sophisticated legal services.

It is more than a decade since the end of apartheid and Africa's most brutal civil wars. Governance structures like the Pan-African Parliament, the New Partnership for African Development (NEPAD) and the African Peer Review Mechanism (APRM) are in place and having an impact. It is true that some regional conflicts persist and certain African countries continue to occupy the bottom of global corruption perception surveys. It is equally true, though, that significant potential exists. The past five years have been a bonanza for suppliers of telecommunications equipment in Africa (especially mobile phone technology), and for finan-

# RICA




ciers and service providers. Most of the investment in this area has not come from Europe and America, though, but the Middle East. There are more mobile than fixed line phones in Africa, with growth still far exceeding developed markets.

Overly pessimistic European and US perceptions may be costing them dearly in terms of lost opportunities. Africa hardly registers in terms of foreign direct investment (FDI) from the western hemisphere, except in petrochemicals, although Barclays' recent purchase of ABSA, a major South African bank, certainly did not go unnoticed in global markets. The same is true of legal services. In a recent Legal Week survey of London firms, only 5% of firms rated the Middle East and Africa collectively as an area that had high potential for growth (with the bias clearly in favor of the former). Firms reported that only 4% of referred work came from those regions.

China, on the other hand, is becoming a very serious player in Africa. It has diplomatic relations with 47 of

Africa's 53 nations and, in 2000, established the Forum on China-Africa Cooperation (FOCAC) to expand Sino-African economic, trade and political links. Much to the annoyance of the United States, it is a major investor in the oil industry in Sudan, Nigeria, Algeria, Angola and Gabon. Being the second largest importer of oil in the world after the United States (its energy demand grew 12% last year), it is driven more by energy security than bottom-line profit. So, it can and does sometimes pay higher prices than what western petrochemical corporations can afford.

*There is little doubt that the next decade (never mind the next century) is going to move Africa to a very different place than the dismal picture associated with the continent in the 20th century.*

In 2003, Sino-African trade stood at $19 billion. In 2004, it was at $30 billion and by the end of the decade it is expected to reach $100 billion. This where the entire continent's GDP last year was only $700 billion on a straight exchange rate basis (somewhat more if one incorporated purchasing power parity adjustments). By comparison, Australia's was $612 billion. The Brenthurst Foundation, a strategy and policy development think tank founded by the Oppenheimer family (of the De Beers diamond empire) recently published a discussion paper on Chinese economic interests in Africa that is worth reading. It can be downloaded from www.thebrenthurstfoundation.org.

What is the up side? If one tallies up the collective oil reserves of the west coast oil fields, at $65 a barrel, it is not difficult to reach a figure between $4 - 5 trillion. Estimates for investment in development of the petrochemical infrastructure over the next decade range from $30 – 40 billion and this may be end up far higher. Furthermore, African governments are increasingly insisting that as much as possible of that be spent locally.

It is easy to get dreamy eyed, thinking about what a couple of trillion dollars could fund. Improved infrastructure, for a start, and Africa is developing a healthy appetite for public private partnerships (PPPs). Financial reform is critical to manage the increased revenue flows and along with that, telecommunication and IT infrastructures need to be expanded - and quickly. Social programs to alleviate poverty and education would feature highly. Increased stability will encourage investment in other sectors, too; for instance, agriculture, mining, tourism and certain aspects of manufacturing.

It is not sensible to talk of Africa as a single market, though. There are huge differences in risk profile, levels of governance, economic potential and investor-friendliness between countries. Oil, in particular, is not evenly distributed with the west coast, the Mediterranean states and Sudan being the richest endowed in this area.

Most countries with any potential are working to modernize their economies and boost appeal for foreign investors. Currently, the continent enjoys preferential trading status with the United States under the African Growth and Opportunity Act (AGOA), but it is unlikely that this will persist under the positive scenario sketched above. Also, competition with the eastern giants will certainly prove difficult in many areas of manufacturing.

Who will reap the harvest in terms of future legal fees? This is a very interesting question indeed. Certainly, the larger South African firms are beginning to make inroads into the pan-African market. Their local knowledge and presence is an advantage, as might be the number of black lawyers in those firms. (Africans can be xenophobic, too). On the other hand, their lack of access to the world's major capital markets, lack of presence in China and predation of their top young talent by the global players are major challenges. Also, there is so much work in South Africa at present, given black economic empowered (BEE) -driven deals and the country's buoyant economy generally, that most good firms are fully extended and have little capacity to devote to developing a pan-African practice.

The London firms have traditionally taken the bulk of the top-tier pie in Africa, and most of the Magic Circle and the layer below boast impressive Africa portfolios. Clifford Chance, Linklaters, Lovells and several others crop up regularly to skim the cream off the very top of the legal services associated with the best African deals. This is likely to remain so for some time, given the sheer depth of their deal sheets. There is some US /Global firm involvement as well, primarily in the petrochemical industry but also more broadly. Hunton and Williams have been advising the World Bank on its African projects for decades. Hogan and Hartson, Sullivan and Cromwell, Shearman and Sterling and Baker & MacKenzie are a few of the names that crop up fairly regularly. White and Case, Le Boeuf, Lamb, Greene and MacRae, and Canadian mining boutique Fasken Martineau Du Moulin all have offices in Johannesburg.

*Firms that invest in establishing a presence and understanding the continent's idiosyncrasies now will be well placed later, when the real revenue generation opportunities arise.*

DLA Piper Rudnick, through its presence in Cairo (through Matouk Bassioung), South Africa (through Cliffe Dekker), and seven Lusophone jurisdictions (through Miranda Correia Amendoeira & Associados) has perhaps the most substantial truly pan-African practice. This is no coincidence. They are about half-way through a boldly stated three year strategy to bulk up their pan-African offerings in banking, technology and infrastructure.

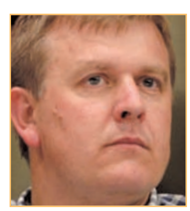
Denton Wilde Sapte's association spans Egypt, Ghana, Uganda, Tanzania and Botswana and has done well over the years. In North Africa, Paris-based Gide Loyette Nouel has fifty lawyers spread across Tunis, Algiers and Casablanca, with plans to double that and add an office in Cairo. Werksmans and Deneys Reitz have established Lex Africa and Africa Legal respectively, specifically to grow their African practices. Given the strong links that some Australian firms have into China, some may have opportunities that, while not front and center on their radars, are worth investigating anyway.

Firms looking to develop African practices need to come well-equipped to operate with little or no sophisticated local assistance. Except in South Africa, and with a few notable exceptions elsewhere, there is very little legal capacity in Africa. Expect, therefore, to be able to rely on local firms for little more than checking that advice conforms to local law, and to provide detailed instructions, checklists and other quality control tools. The good news is that English law is the norm in both Anglophone and Lusophone Africa. And, while it is easy to get good transactional advice up to a certain level in many jurisdictions, the sheer lack of depth of firms in those jurisdictions means that conflicts are commonplace. This obviously makes it easier for foreign firms to sustain local practices. Bar admission requirements are also quite difficult in many parts of Africa.

Another obvious challenge is administration and enforcement of the law. The poor record of countries like Zimbabwe has done nothing to allay fears that Africa remains a continent where the rule of law is absent.

Africa will remain a complex and challenging environment for at least a few more years, but it is worth taking a longer term view. Firms that invest in establishing a presence and understanding the continent's idiosyncrasies now will be well placed later, when the real revenue generation opportunities arise.

*This article is adapted from the original appearing in the Australian Law Journal in April 2006.*



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