

Market
Intelligence

PROJECT FINANCE 2022

Global interview panel led by Milbank

LEXOLOGY

Getting the Deal Through



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Africa Overview

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1 | What have been the trends over the past year or so in terms of deal activity in the project finance sector in your jurisdiction?

YB: Notwithstanding the covid-19 pandemic, we note since 2019 vigorous activity in the African infrastructure sector in Francophone Africa, in particular in the transport sector, with progress in projects for the construction or rehabilitation of ports, airports and, to a lesser extent, railway infrastructure and also an increase in investments in the power sector (eg, the 44MW Singrobo hydropower plant in Ivory Coast, the Ouagadougou New International Airport PPP, the Tanger Med II Port Container Terminal 3). However, 2021 has also been a challenging year, and major delays have been recorded in the implementation of some projects, such as the deepwater port of Banana in Democratic Republic of Congo (DRC). A material, continuous change we have also noticed is the growing activity of infrastructure funds, with very substantial funds leverages and the creation of at least 10 new funds dedicated to infrastructure in Africa announced during the year.

The pace of development of renewable projects seems to have again further accelerated with the launch of new tender processes in the solar and wind sectors in a number of countries including Algeria (for the realisation of the project Solar 1,000MW), Tunisia (sixth call for tenders for the installation of solar power plants for a combined capacity of 70MW divided between 16 plants) and Burkina Faso (for four solar photovoltaic plants with a total capacity of 9MWp). Along these new tenders, we also note that a lot of off-grid projects have been implemented throughout the continent since 2019 and that 2021 was a significant year for these projects. Reputable actors in this field include NCoT Offgrid Africa, Meridiam, Greenlight Planet, Winch Energy Limited, Engie and EDF. The year 2021 has also been successful for the launch of various renewable energy projects such as:

- the concession agreement with China Gezhouba Group Company signed by Congo and Cameroon for the construction of a US\$700 million hydroelectric station on the Dja River with an estimated production capacity of 600MW;
- SNEL, the DRC's state-owned power utility, has signed power purchase agreements (PPAs) for two solar plants in the copperbelt region; and
- Brazzaville and Kinshasa signed an agreement on 6 December 2021 to carry out a major energy project between the two countries (the Energy Friendship Loop) with a first phase consisting in the reinforcement of the transmission capacity of the lines between the Congo Power Station in Pointe-Noire and the Inga hydroelectric power station in the DRC via Brazzaville.

On the other side, major projects such as Noor PV projects in Morocco have slowed down due to in-country issues with the national power company's management.



Yves Baratte

Tina Blazquez-Lopez

Mathilde de
Brugerolles

Marc Fèvre

Additionally, the Moroccan sustainable energy agency Masen refused to extend the call for applications for the Noor PV II programme, which provides for the construction of six photovoltaic parks totalling 400MW, as only nine candidates, including three foreign majors, came forward.

TBL: South Africa has also showed a renewed commitment to renewables as it recently selected 25 bidders in the fifth bid window under the Renewable Energy Independent Power Producer Procurement Programme. The projects consists of 25 projects – 12 solar and 13 wind – totalling close to 2,600MW of capacity. Financial close on the projects is expected over the next six months and commercial close within the next three years.

In terms of oil and gas, the sector has faced a rebound in the oil prices, which has contributed to rising inflation in a number of countries on the continent, notably Nigeria, Angola and Ethiopia. Governments on the continent have been struggling to ease the pain for citizens as resources have been stretched in light of the healthcare emergency caused by covid-19. We may see tax increases in some economies in 2022 to raise government revenue, which may fuel greater unrest. In Nigeria, the planned removal of fuel subsidies may cause some agitation. In Kenya, while inflation fell to a one-year low in December 2021, the upcoming elections will be closely contested. Fears of severe drought on the continent are growing, and disruptions in the supply are also causing great concern with respect to food insecurity in 2022.

In the oil and gas sector, we have seen a vast range of divestment deals from well-established oil companies wishing to sell their assets in Africa whether for opportunistic reasons, in particular as some of these companies decided to move their investments and business models to the benefit of energy transition (eg, TotalEnergies in Angola and Gabon), or due to some of their wells approaching the end of their economic life or being considered as less strategic (eg, ExxonMobil and Petronas in Chad and Cameroon or Eni in Congo-B). Therefore, contrary to the previous couple of years, we have seen an increase in activity in the oil and gas industry, and we anticipate that this should still be the case at least in 2022. In addition, a number of oil and gas projects in Africa are expected to start operations from 2021 to 2025 or in some cases restart such as Total's Mozambiquan LNG project in respect of which they announced a force majeure in Q4 of last year related to local insurgency issues.

Some of the key upcoming and ongoing projects include the Ghana Petroleum Hub, comprising four refineries, five petrochemical plants, industrial infrastructure and 10 million cubic metres of storage capacity. The US\$30 billion Tanzania LNG Liquefaction Plant, which is led by Shell, will also begin construction in 2023, and the Richards Bay Refinery, a joint investment between South Africa and Saudi

“2021 has been a busy year on the mining side despite the various coups that have been occurring on the continent over the past years.”

Arabia, is expected to be operational by 2028. The Nigerian-Morocco gas pipeline will also be a game changer. It will be approximately 5,600 kilometres long and an extension to the existing West African Gas Pipeline. It will be key to strengthening relationships between neighbouring countries as it will extend to Abidjan in Ivory Coast, Monrovia in Liberia, Freetown in Sierra Leone, Conakry in Guinea, Bissau in Guinea-Bissau, Banjul in The Gambia, Dakar in Senegal, Nouakchott in Mauritania, Tangiers in Morocco and Cádiz in Spain.

MB: As has been the case in the previous five years, 2021 has been a busy year on the mining side despite the various coups that have been occurring on the continent (eg, Mali, Chad, Guinea and Sudan). Although there has been a temporary fluctuation in prices of certain natural resources due to investors' concerns and low company quotations, there have been a lot of transactions in relation to nickel, copper, gold and rare earths. The year 2021 saw the launch of major mines and of great achievements (eg, Ivanhoe Mines and Zijin Mining launched the development of what is expected to become the world's second largest copper mine called Kamoa-Kakula in the DRC). AVZ Minerals has also signed a deal worth at least US\$240 million to



build the Manono lithium project also in the DRC, and Endeavour, a company active in gold mining in West Africa, has entered the top 10 global gold producers with the acquisition of Teranga Gold. Renewables co-located with mines have also proved to be popular.

MF: Notwithstanding the fact that 2021 has been a great year for the mining sector, it is undeniable that the combination of political challenges in some countries combined with the covid-19 pandemic has had an adverse impact on the sector, including delays in the implementation of some projects. This is due to various reasons such as logistical challenges due to the suspension of air and marine transport links or administrative difficulties due to the focus on covid-19. Similarly, large-scale power projects have not progressed significantly, though that trend predates the covid-19 pandemic.

By contrast, we have seen a real focus of investors on off-grid energy solutions, notably mini-grids, across all regions of sub-Saharan Africa, as discussed further in the next section. Solar has also been particularly active and we have started to see solar plus battery storage projects in sub-Saharan Africa as well. One other

trend to note is increased focus on commercial and industrial energy projects and corporate PPAs (as opposed to utility connected projects), with a major change in the past year being the liberalisation of wheeling rules in South Africa. All of these trends illustrate a move away from large-scale projects that take years to scaleable projects and businesses using technologies that can be implemented at a local level but also easily built out regionally.

2 | In terms of project finance transactions, which industry sectors have been the most active and what have been the most significant deals to close in your jurisdiction?

YB: The value of closed M&A deals reached US\$7.35 billion in North Africa and US\$50.8 billion in sub-Saharan Africa according to Ecofin Agency. However, this record performance hides some weaknesses. So far, 176 transactions have been concluded this year, against 322 for the whole of 2020. This may suggest that the deals in 2021 were bid deals and have driven up values rather than an overall dynamic. Also, most of the transactions were done in the third quarter for sub-Saharan Africa and both the third and the fourth quarters for North Africa. Another aspect is that some of the deals were deal cancellations. The value of M&A in Africa is expected to continue to grow. A total of 332 deals have been announced so far, with a record value of US\$72.55 billion, according to information provided by Capital IQ.

We understand that the sectors in which there has been the largest volume of deals have been the materials, financial, energy and power, high-technology and telecommunications sectors.

In terms of what's going on in the mining sector, although the Republic of Guinea and the DRC seem to have continued to be busy, there has been an increase in transactions in Mali, Gabon and Ivory Coast. Gabon was a country really active in the oil and mining sectors, but over the past five years we noticed a decline in the interest of foreign investors notably due to unprecedented taxation issues. The year 2021 has definitely shown a rebound interest for Gabon notably in the mining sector, which should still be the case in 2022. We have also noted a wide range of transactions in Mali in the gold sector. In recent years, Ivory Coast has built a reputation as one of the major players in the African mining industry, particularly in the gold sector where its national production has increased sixfold in less than 10 years.

TBL: In the energy sector, the increase in the financing of energy has been confirmed in 2021 with, for example, the 35MW Kinguele Aval Hydro Power Plant Independent power project (IPP), the 82MW Ngoulmendjim Hydro Power Plant IPP in Gabon, the Guinea-Mali Interconnector (225kV) and the Djermaya Solar PV Plant Phase I.

“We have seen an increase in the development of mini-grid projects on the continent.”

More importantly we note that in 2021 various countries in particular set up ambitious investment programmes for their renewable energy sector (eg, Cameroon, Guinea, Kenya, Mozambique and Tunisia) to attract foreign investors and to handle their future in relation to power sufficiency. During the fifth edition of the African Power Market Place organised by the African Development Bank, several countries presented their priorities.

For example, Cameroon has created an agency for the management of the public electricity transmission system, the National Electricity Transport Company. It aims to support its energy policy and attract investments of approximately US\$10.6 billion to achieve its energy goals. Guinea aims to use hydropower and solar energy exclusively and wants to become a hub for electricity trade in West Africa, thanks to the various interconnection projects under way. Guinea’s objective is to export electricity to the subregion, in accordance with the plan launched by the West African Power Pool to make the national company, Electricité de Guinée, the transmission system operator for Zone 5 in the West Africa region, which includes Sierra Leone and Liberia. Kenya highlighted the urgency of rebalancing the risks associated with power purchase agreements that have resulted in tariff hikes for

consumers. The country should accelerate reforms and develop models to expand access to electricity.

According to the government of Mozambique, sectoral reforms and major regional infrastructure (transport interconnections between Tanzania and Zambia, Angola and Namibia, and Mozambique and Malawi) are essential. In the north of the continent, the Tunisian Solar Plan has become a key element of the country's revival. Thus, the government launched this plan in 2017, with a target of 3.8 gigawatts of installed renewable energy capacity by 2030. This would increase the country's energy capacity tenfold at an estimated annual cost of around US\$400 million.

MB: We have also seen an increase in the development of mini-grid projects on the continent. These projects allow for greater rural connectivity and, as larger IPPs can take time to get off the ground, small developers are showing an increased interest in decentralised generation and distribution through mini-grids. InfraCo Africa, for example, is working with a number of renewable energy developers to provide sustainable local solutions. Mid 2021, InfraCo Africa signed a joint shareholders' agreement and committed US\$8 million to scale up the Rural Village Energy Solutions, multi-sector Kudura mini-grid project in Kenya. The project benefits from grant funding from Agence Française de Développement's Green Mini Grid facility Kenya, UKAid and EU Africa's Infrastructure Trust Fund, and also secured US\$235,000 of grant funding from PIDG Technical Assistance to facilitate capacity building initiatives. It is expected that the mini grids will be installed by Q1 2022 and fully commissioned by Q3 2022. InfraCo Africa and PowerGen are also developing a mini-grid project in Sierra Leone. Lion's Head Global Partners Facility for Energy Inclusion (FEI) also received a further US\$24 million subscription by KFW in 2021. The FEI is intended to support mini-grids and captive power projects and small-scale IPPs delivering power to the grid. Priority is given to projects in sub-Saharan Africa with low access to electricity.

3 | Which project sponsors have been most active in driving activity? Which banks have been most active in providing debt finance?

YB: There have not been major changes in this respect in 2021 and, as in 2020 and 2019, this really depends on the industry sectors. In the power sector, the continuous growth of renewable projects has maintained opportunities for a much larger spectrum of project sizes, allowing the coexistence of small developers and larger developers. In most of the sectors (eg, power, renewables, mining, oil and gas) we observe the increase intervention of junior companies and start-ups alongside major companies.



Development financial institutions (DFIs) alone cannot fill in the gap and therefore private equity and non-bank investors will surely extend their contributions into the region.

TBL: As lenders, in addition to the infrastructure funds that act on the equity and debt sides, development finance institutions still play a fundamental role, which should not reduce in 2022. The African Development Bank (AfDB) and the Trade Development Bank continued to play a significant role in debt provision for infrastructure projects. The Sustainable Energy Fund for Africa, which is managed by the AfDB, approved a US\$1 million grant to facilitate Botswana’s transition to clean energy. In November 2021, the AfDB also approved a new five-year strategy, Water Strategy for 2021–2025: Towards a Water-Secure Africa, which aims to increase water security in Africa, and to foster its sustainable, green and inclusive socio-economic growth and development. Of great significance last year was also the extension by the AfDB of the mandate of the African Legal Support Facility (ALSF) from 2022 to 2036. The ALSF, hosted by the AfDB, supports African governments with legal advice and technical assistance in their dealings with international investors.

African Export-Import Bank (Afreximbank) has been very visible in the market. In January 2022 it announced the closing of a landmark 10-year, dual-tranche facility of €200 million and US\$166 million for the government of Uganda, structured using its innovative specialised finance solution, introduced to facilitate access to long-term finance by African sovereigns and other eligible entities. The deal was first of its kind to be implemented by an African Multilateral Financial Institution. Afrximbank also signed a number of key agreements at the Intra-African Trade Fair 2021. Afrximbank signed a US\$50 million term loan facility with Geometric Power Limited in relation to the Aba Integrated Power Project in Nigeria. It also agreed to a US\$10 million facility to Fidelity Bank to enable it to finance trade and trade-related transactions across the continent and to issue a line of credit to Senegal's Banque National de Developpement Economique as part of efforts to promote factoring across Africa. Afrximbank also signed a memorandum of understanding with Bestaf Exploration and Production Ltd, for US\$1 billion to be used for the development of assets including the gas in oil mining leases 86 and 88 through a financial and technical service agreement with the Nigerian National Petroleum Corporation.

MF: The growth in solar and mini-grids has seen a mix of large-scale project sponsors that have the scale to implement regional platforms, such as Engie, as well as more specialised developers such as Crossboundary Energy and new platforms such as Milile Energy. DFI-backed investors such as InfraCo Africa have also been very active across a range of sectors from energy to accommodation and transport. In terms of lenders, Africa Finance Corporation (AFC) has also been extremely active in the market. The AFC raised US\$400 million in a new syndicated loan to support the post pandemic recovery through critical infrastructure. The AFC also established an independent asset management division, AFC Capital Partners, which launched the Infrastructure Climate Resilient Fund. The aim is to raise US\$500 million in the next 12 months and US\$2 billion over the next three years to fund infrastructure projects across the continent and that will make the continent more resilient to the impact of climate change. The AFC also announced the sale of a 44 per cent stake in Cape Verde's largest IPP and renewable energy producer, Cabeolica, SA to AP Moller Capital. We have also seen increasing activity by the European Investment Bank, which has continued to invest indirectly through funds such as Meridiam but also is increasing its direct lending to projects in the region.

MB: In the mining and infrastructure sectors, the two most active categories of players remain, in addition to traditional mining and infrastructure companies, whether major or junior, Chinese investors, particularly in the DRC and in Djibouti.

Direct investment in Africa from China amounted to US\$2.07 billion in the first seven months of the year. We also note that Africa becomes a market focus for other countries such as the United Kingdom, Germany, Turkey and Israel. Turkey is more and more present in Africa (both eastern and western) in various sectors: cultural, construction and infrastructures, defence, shipping, etc. We saw, however, in 2021 clear signals of a slowdown of Chinese appetite for African projects, with a more careful approach taken.

4 | What are the biggest challenges that your clients face when implementing projects in your jurisdiction?

YB: The most common and well-known challenges for the implementation of projects in Africa have always been the political risks, the lack of sophisticated legislation in certain areas (eg, in the real estate sectors and the energy sector), issues in obtaining ownership over land and the frequent lengthiness of negotiations. This remained generally true in 2021.

Considering the increased political instability in the Francophone Africa region combined with the increased appetite for minerals in particular due to the worldwide need of minerals for energy transition purposes, we would also tend to consider that the following risks may increase in 2022:

- In western African countries, it is usual that mining conventions provide for legal stability during the lifetime of the mining conventions. This legal stability, in particular in relation to taxation of the mining projects, is granted to secure the investors and protect them against unpredictable changes of the legislation during the implementation of their projects, which may significantly increase their costs and their returns on investments. It is not impossible that the stability, particularly fiscal, granted to operators in conventions negotiated under the rule of deposed presidents will be called into question. More generally, we anticipate that stabilisation clauses will have reduced scope and duration in the future irrespective of the political stability.
- A related consequence will also be the potential risk of subsequent governments questioning the various approvals, mining titles and mining conventions that may have been granted and executed by these transitional governments with operators, and therefore there will be a risk of increased arbitration procedures due to withdrawal of titles or requests for renegotiations of mining conventions.
- Risk of expropriation seems very low and in any case not higher than usual.
- Risk of withdrawal of mining titles previously granted seems also very low.

“A significant challenge on the continent is the issue of a credible offtake.”

- Another potential trend is the reinforcement of local content measures imposed on companies to satisfy local populations and a higher importance placed on environmental, social and governance issue (ESG)-related matters.

TBL: Another significant challenge on the continent is the issue of a credible offtake. Sub-Saharan Africa has a small share of global investment in infrastructure due to the low creditworthiness of some countries, their institutions and weak financial markets. This often means that investors seek credit support from the relevant government in the form of sovereign guarantees or put and call options, which many African governments are now pushing back against due to concerns about their balance sheet and accountancy treatment. Stable and secure offtake arrangements are key to a project’s revenue stream and go to the heart of bankability. Designing and implementing an objective and transparent procurement process is also crucial to the success of a project. Particular attention should also be given to ESG considerations and to ensure that these meet international standards.

MF: Most countries are trying to diversify their economies and renewables and mini-grids are now a key economic sector. Although many countries have historically developed legislative and regulatory regimes for oil and gas and mining, this is not always the case for smaller-scale renewables projects or in relation to the renewables and mini-grids sectors. Sponsors and international organisations may face a lack of sophistication of the administration and public companies they are negotiating with or difficulties in the tendering processes. The regime for developing off-grid power networks in a vertically integrated power market where the state-owned utility has a monopoly can be unclear, as are the rules for off-site corporate power purchase agreements.

MB: In the oil and gas sector one major challenge could be the slowdown of financing for the exploitation of fossil fuels at a time when several African countries are preparing to exploit their significant gas resources. Indeed, the major trend being the energy transition, it is possible that the raising of funds for fossil fuels are more complicated and/or more expensive.

Finally, the dependence of African countries on China's lending and Chinese banks over the past 20 years, which has made China the largest source of finance on the continent, could show in the coming years. There are various reasons for this: some jurisdictions have or will soon reach the limit of their borrowing capacities and there is a higher risk of default for some countries. As a consequence, it is very likely that the most present Chinese banks will strengthen their lending terms, which will add additional burden to the relevant countries.

5 | Are there any proposed legal or regulatory changes that may give rise to new opportunities in project development and finance? Do you believe these changes will open the market up to a broader range of participants?

YB: The Central African Economic and Monetary Community (CEMAC) was established to create an economic and monetary union among its member states (ie, Cameroon, Chad, Equatorial Guinea, Gabon, the Central African Republic and the DRC) and as a result Regulation No. 02/18/CEMAC/UMAC/CM on exchange control (the CEMAC Regulation) was adopted. In June 2019, a number of directives (instructions) were issued by the Bank of Central African States (BEAC) whose directives have in particular increased the role of the BEAC in the declaration and authorisation of financial transactions, the control of the compliance with foreign exchange regulations and the interpretation of the CEMAC Regulation.

Representatives of mining and oil operators from Gabon, Congo-Brazzaville and Cameroon have expressed their concerns to the Governor of the BEAC in particular



regarding the BEAC's new rules that oblige miners and oil companies operating in a CEMAC state to repatriate funds. After several years of negotiations, it was decided in late 2021 that the new foreign exchange regulations, which came into force on 1 March 2019 in the CEMAC zone, will finally be applicable to mining and oil companies from 2022. As of 1 January 2022, oil and mining companies operating in the CEMAC countries are finally subject to the requirements of the foreign exchange regulations. However, the Central Bank of West African States has authorised mining companies to transfer only 35 per cent of the foreign currency in their possession to it, compared with 70 per cent for other economic sectors in the CEMAC zone. Unlike other economic actors such as banks, from now on mining and oil operators will have the right to hold foreign currency accounts both in the CEMAC zone and abroad. In addition, we understand that a regulation on the unseizability of these accounts is being examined.

TBL: Similarly, although oil and mining companies are also subject to the obligation to repatriate foreign currency generated by their activities into accounts opened in the CEMAC zone, companies in the exploration phase and those benefiting from

“In most of the sectors, we observe the increased intervention of junior companies and start-ups alongside major companies.”

reserve base lending financing are exempt from this measure. In addition, they will benefit from a 'lighter system' of declaration and domiciliation of imports and exports of goods and services, as well as a period of up to three years to repatriate to the escrow account opened at the central bank all funds dedicated to the rehabilitation of exploited extractive sites.

Among the concessions made by the central bank to oil and mining companies in connection with the application of the new exchange regulations, there is also the possibility of transferring the income of expatriate workers abroad from onshore accounts (opened in the CEMAC zone) in foreign currency, on the one hand, and on the other hand, the possibility of paying subcontractors operating in the CEMAC zone in foreign currency.

MB: According to the International Monetary Fund, tax exemptions are too high in Gabon. They constitute a major problem for the mobilisation of non-oil revenues, governance and transparency. Consequently, we understand that Gabon has established a list of tax measures to be taken to reduce exemptions by 2023. In addition, the country has decided to put an end to VAT exemptions for the construction sector,

to gradually increase the VAT rate on certain sectors (eg, cement), the abolition of VAT exemptions outside the legal framework and the establishment of the rates provided for by the CEMAC. Last but not the least, Gabon has also taken the decision to revise the list of duty-free imported products (eg, agriculture, wood industry, cement): the progressive application of a reduced rate instead of a total exemption on basic necessities, the abolition of the tax exemption regime for state public contracts and the gradual increase in the single reduced customs rate (18 per cent in 2023). We are of the view that this shift in the Gabonese taxation system may be mirrored by other African countries willing to increase their revenues and to reduce revenue losses.

MF: Local content requirements continue to be emphasised by government tendering projects. If done well, this can help build out a local supply chain and lead to wider economic growth. These requirements need to be well thought out and tied into other national economic development initiatives. On the DFI side, ESG are playing ever more important roles, especially where DFIs are financing projects. Again, if this is more than a compliance exercise and leads to best practice being implemented, it should be very positive. Of course, there remains a debate in the energy sector between those arguing for African countries to develop the cheapest sources of energy irrespective of carbon content and those seeing an opportunity to 'leapfrog' past fossil fuel technologies and develop a clean sector early on.

6 | What trends have you been seeing in terms of range of project participants? What factors have influenced negotiations on commercial terms and risk allocation? Are there any particularly innovative features?

YB: In most of the sectors (eg, power, renewables, mining, oil and gas), we observe the increased intervention of junior companies and start-ups alongside major companies. According to the Ecofin database, hundreds of exploration licences are held by junior companies in most mining jurisdictions on the continent. They are mostly listed on the ASX or alternative markets (TSX-V in Toronto or the AIM market of the London Stock Exchange).

In the mining sector, we observe that several countries have changed their strategy in relation to the negotiations of mining conventions. While over the past 20 years the project companies holding mining titles were leading the negotiations and were able to include a vast range of exemptions and guarantees, the states are now providing for template mining conventions whose content is getting harder and harder to modify. Additionally, while issuing revised mining legislation, the states have included provisions indicating that mining conventions cannot derogate from

the mining codes. Stabilisation clauses remain a key clause under each mining convention but their scope and duration have been limited.

The major goal of the mining conventions being to establish a clear allocation of profits between the project companies and the states, another trend in the coming years could be the introduction of production-sharing agreements in the mining sector. Since the reform of its mining legislation in 2019 Gabon has introduced production sharing contracts in the mining sector to both increase the revenue of the state and to reduce other taxes previously imposed on companies. In early 2020, the SOGUIPAMI in Guinea indicated that it was willing to favour the entering into these contracts for the mining sector.

TBL: For Africa-based projects, there continues to be a real focus on innovative development finance structures involving true blending of commercial and concessional finance. Instruments can include debt, equity, guarantee and insurance products, risk-sharing facilities or a performance-based incentive structure. This also allows for better coordination of development finance institutions and the entry of new project participants including insurance companies, pension funds, mezzanine lenders and private equity as project sponsors try to bridge the financing gap. Hybrid debt structures and models using multiple debt tranches, some of which are only available in the future and subject to certain conditions, are also being used. Recently, APG, the largest pension fund in the Netherlands, announced that it would try a new co-investment structure. APG announced that it plans to invest US\$750 million in a new private credit fund focused on emerging markets, which is being organised by the Amsterdam-based fund management group ILX. The aim is to use the funds collected from pension funds to co-invest alongside multilateral development banks and other development finance institutions in projects linked to the sustainable development goals. If successful, the structure will catalyse more funds into emerging markets more efficiently.

MB: Tax and exchange control matters have been a bigger focus for investors than before. We can note that now the investors and in particular investments funds that are providing debt or equity finance for the purpose of the implementation of projects in Africa have a small- or medium-term vision of their return on investment and that as a result the difficulties that can arise in relation to both taxation and funds flows abroad are much more anticipated and are the subject of in-depth analysis when building their financial model. This is clearly one of the factors that has pushed the oil and mining companies to negotiate particular conditions applicable to these sectors with the CEMAC in the frame of the amended exchange control regulations.



7 | What are the major changes in activity levels or new trends you anticipate over the next year or so?

YB: What we anticipate the most is that 2022 and the years to come will still be full of opportunities in the mining sector in the region and that it will be the booster of significant opportunities for the infrastructure and energy sectors.

The mining sector is vital for lots of African economies and is a key partner to fill the gap in the infrastructures of most African countries. Additionally, Africa's development will be achieved in particular through electrification and the improvement of its road, port and rail infrastructures. The lack of infrastructures can partly be filled thanks to the presence of mining projects and to the financial resources generated. Moreover, the development of infrastructures is more and more achieved hand in hand with the mining companies in particular, as those companies often meet difficulties in the implementation of their projects due to the absence of infrastructures, and such companies often fill the need on their own by constructing roads, port and rail infrastructures, for example.

“There is an increasing demand for rare earth metals that are used in high-tech manufacturing, in electric and hybrid cars.”

Energy transition is a windfall for the mining sector and Africa. Several minerals are necessary to meet the energy transition goals. Most of them are present in the African subsoil. If the trend having begun in recent years continues, Africa, one of the main sources of strategic raw materials for the manufacture of electric vehicles batteries (graphite, lithium, cobalt, etc), will once again be at the forefront. As regards lithium, Africa's 'known' reserves are concentrated in four countries: the DRC, Mali, Zimbabwe and Namibia. To date the continent has been underexplored but we understand that in terms of the diversity of projects, quality and size of resources, the DRC and Mali are the largest potential African lithium producers.

The DRC, one of the world's least developed countries, holds almost half of the world's cobalt resources and accounts for 60 per cent of global production. South Africa and Zambia have also some deposits. To date most of the cobalt production from DRC is going to China. In 2020, 70 per cent of the country's cobalt production was provided by five companies: KCC (Glencore), Tenke Fungurume Mining (TFM, owned by CMOC), Metalkol (ERG), Somidez (CNMC) and STL (Gécamines). Given the resources of the DRC it is very likely that there is room for competitors to find new deposits in the country.

Copper prices are also increasing as according to numerous analysts and in particular Goldman Sachs there cannot be an energy transition without copper. According to specialists, the African Copperbelt, straddling the DRC and Zambia, is likely to be the main region in the world – along with South America – to benefit from renewed investor interest.

Nickel is subject to a strong increase in demand in the context of the energy transition. Electric vehicle batteries still account for only 5 per cent of the world's nickel consumption but have a 'growing' impact on demand for the metal notably as a replacement for cobalt, which is more expensive. If this metal is not massively present in Africa and dominated by a South East Asia production, it should be noted that South Africa and Madagascar are producers of nickel.

There is an increasing demand for rare earth metals that are used in high-tech manufacturing, in electric and hybrid cars (to make batteries and engine components lighter), photovoltaic panels and wind turbines, smartphone chips, laptop screens, stadium scoreboards, robotics, aeronautics and medical lasers. While China is responsible for most of the world's rare earth production, Africa also has huge reserves of these strategic metals, which until recently have been little exploited. Burundi, via Rainbow Rare Earth company, is the leading producer of rare earths in Africa and other countries have significant resources such as Malawi, Gabon, Mali, Mauritania, Madagascar and South Africa.

However, the race for the supply of those metals to meet the demand and reach the energy transition target may also have flaws and may create tensions



at the international level if the producing countries cannot meet the requirements of the buyers in due course. In addition, this race may create environmental and social disasters if the appropriate measures from the local governments and the companies are not implemented and complied with. Additionally, resources-based conflicts already occurred in the past, and the rare earth metal race could crystallise local frustrations in the region. Finally, there is a risk that African countries decide to include the rare earth metals into a list of strategic substances and therefore to impose a significant tax on such metals.

MB: After years impacted by the curse of blood diamonds and the recent flow in demand due to the covid-19 pandemic, the diamond sector seems to be getting better, with both Chinese and American consumer demand picking up. This boom should be confirmed especially in historically producing countries such as Angola, South Africa, Botswana and the Central African Republic. However, other countries may be appealing for players such as Alrosa, which acquired projects in Zimbabwe and the DRC.

West Africa is now the third-richest area for gold on the planet, after Australia and Canada. Three countries are now among the top 20 global gold producers. Ghana has become the continent's leading producer, with 147 tonnes extracted in 2019, ahead of Mali (73 tonnes) and Burkina Faso (64 tonnes). According to the Fraser Institute, Mali is the second best African destination for mining investment (or was before the recent political instability), just ahead of Ghana. However, the continent remains underexplored, which explains why many players are becoming more inclined to explore the subsoil such as Barrick Gold, lamgold and Endeavour Mining.

In Nigeria, oil accounts for the majority of government revenue and the mining sector is still underrepresented, despite the country's huge mineral reserves, notably iron and coal. The country has also some gold and, with the rush to the West African gold sector in recent years, several junior mining companies are active in exploration (eg, Thor Explorations).

MF: In the power sector we anticipate continued activity in particular as countries are now taking their power future seriously and trying to join forces within the region. As an example, Ivory Coast will sell electricity to Guinea and Sierra Leone from 2022 and called for the development of a regional electricity market in West Africa. The purchase contract concluded between the Ivorian Minister of Energy and the Director General of Energy of Guinea provides for 'the delivery by Ivory Coast of 21 megawatts (MW) in 2022 to Guinea and 31MW in 2023 to Sierra Leone, over a period of three years'. Ivory Coast, which has been experiencing strong economic growth for the past eight years, exported 11 per cent of its electricity production in 2020 via its network of 5,000 kilometres of high-voltage lines to six neighbouring countries: Ghana, Togo, Benin, Burkina Faso, Mali and Liberia. Sierra Leone and Guinea have been added to the list following the commissioning of an electricity interconnection line between Ivory Coast and these two countries.

TBL: The African Continental Free Trade Area (AfCFTA), officially commenced in January 2021 and has huge potential to spur economic growth and development on the continent and to mitigate some of the covid-19-induced growth contractions, poverty and inequality trends. The AfCFTA aims to create a single market for goods and services on the continent and to foster greater economic integration of Africa. Intra-African trade is currently low at approximately 14.4 per cent of total African exports and according to the UNCTAD's Economic Development in Africa Report 2021 published on 8 December, the continent's current untapped export potential amounts to approximately US\$21.9 billion and an additional US\$9.2 billion of export potential can be realised through partial tariff liberalisation under the AfCFTA over the next five years. To unlock this potential and to achieve this, a number of barriers

including intra-African non-tariff barriers, infrastructure and technology gaps need to be addressed. The AfCFTA also provides an opportunity to address extreme poverty, gender imbalance and to effectively mobilise a growing young population and so it is important that key ongoing negotiations under the agreement succeed.

2022 will also see Africa host the COP27 climate change summit in Egypt. This is likely to see African countries further push their agenda around energy transition, adaptation, climate finance deforestation and desertification. Different countries will clearly pursue different paths to net zero and we are likely to see the development of more small-scale projects such as mini-grids and energy storage solutions. Given the significant resources on the continent, gas is likely to remain a transition fuel in 2022 and beyond, and countries such as South Africa and Namibia may receive the required financing to develop their green hydrogen potential.

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The Inside Track

What three things should a client consider when choosing counsel for a complex project financing?

Developing a project in Africa remains quite specific. You certainly need a counsel with the right sector and project financing expertise but you also need a counsel with genuine African experience. The specific challenges of developing an African infrastructure project are likely to include dealing with counterparties who are not always familiar with the requirements of international project financing (local partners, local counsel, local offtakers, local governments) even if the level of sophistication is progressing rapidly, or facing unexpected legal changes, such as a last-minute new electricity law that was passed in Cameroon a few years ago just some days before the financial close of the first two IPPs in the country.

What are the most important factors for a client to consider and address to successfully implement a project in your country?

The choice of co-investors, lenders and advisers is critical to a successful project in Africa as well as the understanding of the environment and the ability to focus on what really matters. More than anywhere else, it is possible to spend months or years focusing on details and losing sight of what really matters for you as an investor, while closing the transaction within a reasonable timetable is generally something that matters much more to you than marginal improvements of the project that can be only achieved at great time expense. The increased involvement of infrastructure funds in African projects as well as certain developers who have realised that the ability to close projects quickly is a key differentiating factor is helping to move away from the thinking that closing a project in Africa has to take years.

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