LEGAL ASPECTS OF DOING BUSINESS IN AFRICA

INTERNATIONAL BUSINESS SERIES

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Supplement 2

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Introduction

RONALD BEDRICK

This publication will be useful to businessmen and their professional advisors who are interested in transacting business with the following African countries, each of which is the subject of an individual chapter: Bophuthatswana, Cameroon, Ethiopia, Ghana, Ivory Coast, Kenya, Liberia, Mauritania, Nigeria, Senegal, South Africa, Tanzania, Zaire, and Zimbabwe. It is designed to serve as a quick and up-to-date reference to the laws and regulations that are applicable to a variety of business transactions - from occasional sales to investment in manufacturing facilities - in which a foreign enterprise can engage. Each chapter includes (i) an introduction to the country's legal system; (ii) the appropriate form that the foreign business interest should assume - joint venture, local incorporation, agent or representative, partnership with a local business entity; (iii) business registration procedures, work and residence permits; (iv) regulations governing the hiring of local nationals; (v) regulations governing the import of foreign goods for sale or foreign raw materials for local production or assembly; (vi) regulations concerning repatriation of profits and (vii) the tax status of the foreign business and foreign employees.

This introduction should be considered an integral part of the book since it provides relevant background information to the individual country chapters. Whereas each country chapter focuses essentially upon the legal aspects of doing business, the introduction highlights the broader context within which business opportunities are generated. It concentrates primarily upon the opportunities that result from the economic development activities undertaken by these countries in conjunction with international and national organizations. More specifically, it presents comparative data about the countries, information about the recent economic and financial situation in sub-Saharan Africa, aspects of trade relationships between these countries and industrialized countries, the activities of international organizations such as the World Bank, International Monetary Fund (IMF) and the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD) in promoting and supporting economic reform and development in Africa.

Some of the relevant sources of information about actual business opportunities will be mentioned in the introduction. Since the sources are numerous and the diversity of interest among the readers is great, the addresses of various organizations whose activities might prove useful to the businessman are listed in annexes. The reader who wishes to concentrate only upon the sources of business opportunities and programs of commercial interest is advised to begin the introduction at the rubric *Development Activities and Business Opportunities* and to consult the Annexes.

Statistical Data

The data in Table 1, Basic Indicators, do not present any surprising results. As expected, the life span is longer and the infant mortality rate is lower in the four industrial countries than in the African countries. Among the seven African countries, South Africa has the largest population (31.5-million) and the longest average life expectancy (sixty-four years) while Senegal has the smallest population (6.2-million) and the shortest life expectancy (forty-six years). The lowest infant mortality rate is in Kenya (eighty-one per 1,000) while the highest is in Senegal 140 per 1,000).

TABLE 1: *Basic Indicators*

	Population (millions mid-1983)	Area (thousands of square kilometers)	Life expectancy at birth (years) 1983	Infant mortality per 1000 aged under 1 1983
Ghana	12.8	239	59	97
Ivory Coast	9.5	322	52	121
Kenya	18.9	583	57	81
Senegal	6.2	196	46	140
South Africa	31.5	1,221	64	91
Tanzania	20.8	945	51	97
Zimbabwe	7.9	391	56	69
United States	234.5	9,363	75	11
Japan	119.3	372	77	7
Sweden	8.3	450	78	8
Fed. Rep. Germany	61.4	249	75	11

Source: *World Development Report 1985,* World Bank.

Table 2, Gross National Product (GNP) and Structure of Production, shows the range of *per capita* GNP among the African countries. Tanzania ($240), Ghana ($310) and Kenya ($340) are classified by the World Bank as low-income developing countries since their *per capita* incomes are less than $400. Zimbabwe ($740), Ivory Coast ($710) and Senegal ($440) are classified as middle-income developing countries since their *per capita* incomes are greater than $400. South Africa is classified in a different category; it is not a developing country but rather an upper middle-income country like Yugoslavia and Algeria.

TABLE 2: *GNP and Structure of Production*

	GNP per capita [1] (Dollars)	GDP [2] (million dollars)	Distribution of GDP (per cent)				
			Agricul-ture	Industry	Manu-factur-ing [3]	Services
	1983	1983	1983	1983	1983	1983
Ghana	310	3,720	53	7	4	40
Ivory Coast	710	7,090	27	24	13	50
Kenya	340	4,940	33	20	12	46
Senegal	440	2,570	21	26	17	54
South Africa	2,490	80,850	..	..	..	..
Tanzania*	240	4,550	52	15	9	33
Zimbabwe	740	4,730	11	32	21	57
United States	14,110	3,275,701	2	42	14	66
Japan	10,120	1,062,870	4	42	30	55
Sweden	12,470	91,880	3	31	22	66
Fed. Rep. Germany	11,430	653,080	2	46	36	52

* Figures are for 1982.
.. Not Available.
1. Calculated according to the newly revised *World Bank Atlas* method.
2. Gross domestic product measures the total final output of goods and services produced by an economy regardless of the allocation to domestic and foreign claims.
3. Manufacturing is part of the industrial sector but its share of GDP is shown separately because it typically is the most dynamic part of the industrial sector.

Agricultural sector comprises agriculture, forestry, hunting and fishing.
Industrial sector comprises mining, manufacturing, construction, electricity, water and gas.
All other branches of economic activity are categorized as services.

Source: *World Development Report* 1985, World Bank.

The data show that the agricultural sector is much more important as a source of GDP in the African countries than in the four industrial countries. For Ghana and Tanzania this sector is particularly important as it accounts for more than fifty per cent of the GDP. In contrast, only four per cent or less of the GDP of the industrial countries is generated in the agricultural sector. For the United States, Japan, Sweden and the Federal Republic of Germany, the services sector generates the largest percentage of GDP. For both groups of countries, the services sector generates more GDP than the industrial sector.

For the African countries, agriculture is also important as the sector in which a substantial percentage of the labor force is concentrated. As Table 3, Labor Force, indicates, the percentage of the labor force in the agricultural sector is eighty-three per cent in Tanzania, seventy-nine per cent in the Ivory Coast, seventy-eight per cent in Kenya, seventy-seven per cent in Senegal, sixty per cent in Zimbabwe, and fifty-three per cent in Ghana. It is least important in South Africa where only thirty per cent of the labor force is engaged. For the industrial countries, Japan has the highest percentage, twelve per cent, in agriculture and the United States has the lowest, only two per cent.

The industrial and service sectors are the greatest sources of jobs in the industrial countries, accounting for eighty to ninety-eight percent of the labor force.

TABLE 3: *Labor Force*

	Percentage of Labor Force in Different Sectors					
	Agiculture		Industry		Services	
	1965	1981	1965	1981	1965	1981
Ghana	61	53	16	20	23	27
Ivory Coast	87	79	3	4	10	17
Kenya	84	78	6	10	10	12
Senegal	82	77	6	10	12	13
South Africa	32	30	30	29	38	41
Tanzania	88	83	4	6	8	11
Zimbabwe	67	60	12	15	21	25
United States	5	2	36	32	59	66
Japan	26	12	32	39	42	49
Sweden	11	5	43	34	46	61
Fed. Rep. Germany	10	4	48	46	42	50

Agriculture, industry and services have the same definitions as in Table 2.

Source: *World Development Report 1985*, World Bank.

Commodities and raw materials are important for all seven African countries as major sources of export earnings.[1] In Ghana, cocoa, gold and wood products accounted for fifty-eight per cent of export earnings in 1982. During the same year in Tanzania, coffee, cotton and cashews accounted for fifty-one per cent of export earnings. Exports of coffee, cocoa and wood provided fifty-four per cent of the Ivory Coast's export earnings in 1983. In Senegal, approximately fifty per cent of export earnings originate in the agricultural sector, with groundnuts and groundnut oil providing approximately thirty-three per cent of earnings. Zimbabwe's tobacco crop, ninety-six per cent of which is exported, accounted for more than twenty per cent of its foreign exchange earnings. In Kenya, agricultural products account for approximately sixty-five per cent of foreign exchange earnings, with coffee and tea accounting for approximately forty-one per cent. In South Africa, mining is an extremely important source of export revenue. In 1984, it was expected that the value of mineral exports would account for more than seventy per cent of total export revenue.

Economic and Financial Deterioration in sub-Saharan Africa

A sharp deterioration[2] in the financial and economic situation of many African countries began in the mid-1970s. The weighted average annual rate of economic growth

1. Statistics on commodities and raw materials are from *Europa Yearbook* 1985.
2. The discussion of the financial and economic deterioration is drawn from an article entitled 'Adjustment Efforts in sub-Saharan Africa, 1980-84', by Rattan J. Bhatia in the September 1985 issue of *Finance and Development*.

of non-oil exporting countries in sub-Saharan Africa, excluding South Africa, fell from 4 per cent in 1974-1976 to only one per cent in 1981-1983. The combined current account deficit sharply increased from $4.5-billion in 1973 to $12.2 billion in 1981 before declining to $8.9-billion in 1983.

To finance their large and increasing deficits, a number of countries borrowed without difficulty on the international capital markets. The result was that the combined external debt of sub-Saharan countries grew from less than $10-billion in 1973 to about $56-billion in 1984. In the same period the debt service ratio almost tripled to about twenty per cent of the exports of goods and services.

The reasons for these adverse developments have been extensively analyzed.[1] An interplay of several factors in particular appears to have been involved: (i) the oil price increase in 1973-1974 and the second increase in 1979-1980 that necessitated greater expenditure from current accounts; (ii) increased prices on the international commodity markets for minerals and primary products in the late 1960s and early 1970s; (iii) the sharp increase in the international prices of African export products in 1973; (iv) the expansionary fiscal policies after 1973 due to governmental reliance upon increased export revenues, frequently coupled with a system of subsidies to protect consumers from the price increases in oil and other essential commodities.

Unfortunately, the domestic policies continued even when the export prices of the major African commodities collapsed, resulting in foreign borrowing to finance the external deficits. The borrowing was encouraged by relatively easy access to the capital markets at least until the late 1970s. Since most of the borrowing was denominated in dollars, which substantially depreciated in the mid-1970s, the adverse impact of their international borrowing did not become immediately evident. Countries were induced to postpone adjustment and to continue financing their deficits with additional external borrowing.

The economic prospects of the African countries became worse as the effects of the world-wide recession emerged in 1979. The difficulties for the African countries were exacerbated by the second oil price shock of 1979-1980. The resulting fall in the export price of commodities further aggravated the problems of African exporters. Additionally, higher interest rates and a subsequent appreciation of the dollar added to the burden of servicing external debt. Due to increasing debt, financing from commercial sources became increasingly difficult to find. Since official development assistance, i.e. loans and grants made on concessional financial terms from official sources, proved insufficient to cover the balance of payments deficit, twenty-one sub-Saharan countries established financial programs with the International Monetary Fund (IMF).

Consider briefly the case of the Ivory Coast. It received windfall gains from the boom in coffee and cocoa prices of 1976-1977. Between 1976 and 1978, public investment increased from fifteen per cent of GDP to twenty-five per cent. Foreign borrowing financed a substantial amount of this public investment, much of which was concentrated in large high cost projects with low returns. Coffee prices fell by thirty-one per cent and cocoa prices by ten per cent in 1977-1978, while import prices rose. The terms of trade, that is, the relative level of export prices compared with import prices, fell by twenty-nine per cent between 1977 and 1980 and over forty per cent by 1983. As a consequence, the Ivory Coast renegotiated an estimated $153-million of its public debt in 1984.

1. *See*, for example, 'Adjustment programs in Africa', by Justin B. Zulu and Saleh M. Nsouli, *Finance and Development*, March 1984.

Structural Adjustment Programs

From 1980-1984, Ghana, Ivory Coast, Kenya, Senegal, South Africa, Tanzania and Zimbabwe negotiated IMF-supported standy-arrangements or extended fund facilities in order to receive short-term or medium-term credit on the condition that they implement national economic programs promoting structural adjustments.

Kenya, Tanzania and Senegal have announced their intention to reform[1] inefficient parastatal and ministerial services and have indicated their intention to transfer certain responsibilities to village associations or other associations controlled by farmers. Subsidies to parastatal institutions are being reduced.

Ghana, in 1983, decided to modify its activities in several export sectors: cocoa, wood for construction and mineral products. It has begun a process of denationalization and is allowing a gradual return to market forces for determining the price of cocoa. It has hired private firms to manage the state-owned mines. It has also decided to extend non-discriminatory access to credit to privately-owned timber enterprises. It has devalued its currency and has taken other measures to restore confidence and to increase production and exports.

Kenya also has undertaken an extensive adjustment program to increase growth in the agricultural and industrial sectors. It has expanded the availability of credit to producers and has strengthened production incentives.

DEVELOPMENT ACTIVITIES AND BUSINESS OPPORTUNITIES

The large number of sources of finance in the economic development field and their programs and activities are too numerous to be described. Consequently, only some of the more important will be discussed here.

World Bank

One of the principal organizations in the international community that has responded to the difficulties of the sub-Saharan African countries is the World Bank. Its activities in the development field generate business opportunities in developing countries in a direct and indirect fashion. Directly, it supplies capital to the developing countries for a variety of projects that are open to international bidding. Indirectly, it creates opportunities by providing, in conjunction with the IMF and international aid organizations, advice on economic and legal reforms needed to stimulate economic growth and create a more attractive investment climate.

The World Bank is composed of three distinct institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA) and the International Finance Corporation (IFC).

1. The reforms mentioned below are described in *Development Cooperation Review*, OECD 1984, pp. 30-33 and in the *World Bank Annual Report* 1985, pp. 92-106.

An IBRD loan must either be made to a government or be guaranteed by a government. The decision to lend must be based upon economic considerations. The use of the loan monies can not be restricted to purchases in any particular member country but must be subject to international competitive bidding. Recipients of IBRD loans are developing countries at more advanced stages of economic and social growth. The IDA was established to provide assistance primarily to poorer developing countries on concessional credit terms. The terms of the credits, which are granted only to governments, are a ten-year grace period, fifty-year maturities and no interest. The purpose of the IFC is to mobilize domestic and foreign capital in order to encourage growth in the private sector of the economies of the developing countries. It has authority to make equity investments and to provide loans without government guarantees. Its role is that of a catalyst since it brings together entrepreneurship, investment, capital and production. It seeks to raise financing by syndicating its own loans or by attracting parallel financing from the capital markets. A characteristic that distinguishes the IFC from other financial institutions is its commitment to provide project sponsors with the necessary technical assistance that will help ensure that their ventures are potentially productive and financially sound. In fiscal year 1985, eighteen projects worth $107-million were approved in sub-Saharan Africa.

The projects approved for IBRD and IDA assistance fall into several categories: agriculture and rural development; education; funds for development; finance companies; energy; industry; population, health and nutrition; small-scale enterprises; technical assistance; telecommunications; transportation; urban development; and water supply and sewage. Table 4 presents the cumulative totals of IBRD loans and IDA credits extended through 30 June 1985.

TABLE 4:
Cumulative Totals of IBRD Loans since 1945 and IDA Credits since 1960 until 30 June 1985 in Millions of Dollars

	IBRD	IDA	TOTAL
Ghana	207.0	528.3	735.3
Ivory Coast	1480.3	7.5	1487.8
Kenya	1200.0	702.8	1902.8
Senegal	164.9	372.6	537.5
South Africa	241.8	0	241.8
Tanzania	318.2	833.3	1151.5
Zimbabwe	487.1	53.9	541.0
Totals	4099.3	2498.4	6597.7

Source: *World Bank Annual Report 1985*, Table 5-6, pp. 182-185.

Let us consider fiscal year 1985 to see what types of loans and credits were extended. Ghana received IDA credits for three projects worth a total of $122-million. The first credit, for $22-million, was for an urban development project intended to eliminate transportation bottlenecks in Accra and to rehabilitate a district in Accra. The second credit, for $60-million, was characterized as a non-project in which the funds will be used to finance imports for key sectors of the economy - agriculture, mining, manufactured goods and transport - to support the government's economic recovery program. The third credit for $40-million was granted for road and bridge repair and maintenance.

The Ivory Coast received IBRD loans for two projects totalling $141- million. The agricultural and rural development project for $31.3-million was to manage a hardwood plantation, to improve the institutional performance and to suppport efforts to establish a sectoral policy. The transport project for $110-million was to finance civil engineering works, road maintenance, purchase of materials and parts, consultants services and technical assistance.

Kenya received an IBRD loan worth $32.6-million and an IDA credit for $6-million. The loan was for the expansion, modernization and improvement of the telecommunication infrastructure as well as an institutional strengthening of the post and telecommunications office. The IDA credit was for a water works project in Nairobi.

Senegal received an IDA credit for $24-million to reorganize the institutions in the water supply sector and to increase the financial and managerial autonomy of the public service enterprises. In addition, water distribution installations were to be built or rehabilitated in eleven secondary centers.

Tanzania received three IDA credits worth a total of $45-million. The $10-million technical assistance credit was to aid the government to examine and revise its strategy and institutional structure in the agricultural sector and to supervise the performance of parastatal enterprises. The second credit, for $27-million was to help finance the rebuilding and modernization of the port Dar es Salaam as well as to provide technical assistance and training for the Port Authority of Tanzania. The energy project for $8-million was a technical assistance project in the petroleum sector that provided supplies for the distribution system for petroleum products and funded a study to recommend improvements in the system.

Zimbabwe received one IBRD loan for $10-million that provides a line of credit and technical assistance to help the government establish a financial aid program, a training program and a management program for small businesses. The project was designed to create up to 4,000 jobs.

Cofinancing will play an even more important role in projects funded by the World Bank than it has in the past. In 1983, the Bank introduced new cofinancing instruments that permit it to participate directly in commercial loans. These instruments, designed to increase participation of commercial banks in World Bank-assisted development projects, are intended to supplement the Bank's present methods of cofinancing with the private sector and to provide a wider range of options for structuring cofinanced operations.

The Bank's major cofinancing partners fall into three categories: (a) official sources which include governments, their agencies and other multilateral financial institutions; (b) export credit agencies which are directly associated with financing the procurement of certain goods and services from a particular country; and (c) private financial institutions, primarily commercial banks. Cofinancing with official lenders tends to be the most frequent form in numbers of projects cofinanced and the most important in amount cofinanced.

A cofinanced project is the IBRD loan to Kenya of $32.6- million for improvements in telecommunications infrastructure. This project will receive cofinanced export credit funds of $16.7-million and funds from the European Investment Bank of $14.6-million. It is expected that the IBRD loan of $110-million to the Ivory Coast for civil engineering and road maintenance will receive a cofinanced loan of $50-million from the African Development Bank. Additional cofinancing of $33.4-million is sought from commercial banks.

A Special Facility for sub-Saharan Africa of over $1.2-billion became operational on 1 July 1985. The funds from the Facility, which has a three-year lifetime, will be available to sub-Saharan countries that are entitled to IDA financing and that have already initiated or committed themselves to undertake economic policy reforms. The Facility, which will be administered by the IDA, will have the same terms and conditions as those of the IDA credits. As of October 1985, Ghana has received two credits from the Special Facility. A credit of $10-million will supplement the foreign exchange financing for a $121.8-million road rehabilitation and maintenance project. It will finance equipment, material and spare parts for the Ghana Highway Authority and private contractors. A second credit of $27-million will support the government's import program of materials, spare parts and equipment needed to rehabilitate the infrastructure in the agricultural, mining, manufacturing and transport sectors.

African Development Bank

The African Development Fund and the Nigeria Trust fund are the sources of concessionary loans in the African Development Bank. Together they comprise the ADB Group of development financing institutions. During 1983, loans of the ADB Group amounted to $930.4-million for over seventy projects. This amount included contributions of $287.7-million for twenty-two projects cofinanced with other institutions. Approximately thirty per cent of the Group's lending was for public utilities, twenty-eight per cent for agriculture and twenty-five per cent for transport. The Bank also provides technical assistance in the form of expert services, pre-investment studies and staff training.

United Nations Development Program

The United Nations Development Program (UNDP) works with over 150 governments and thirty-five international agencies. Its projects are in the fields of agriculture, industry, education, power production, transport, communications, health, public administration, housing and trade. Approximately eighty per cent of UNDP's assistance goes to countries where the per capita income is less than $500. In 1981, the African region received $224.6-million, approximately thirty per cent of the UNDP's total expenditure.

United Nations Industrial Development Organization (UNIDO) supports the industrialization of the developing countries through assistance and mobilization of national and international resources. It is an executing agency of UNDP. Its activities are wide-ranging including industrial development policies, planning, programming, surveys, infrastructure and structure, institutional services to industry, pre-feasibility and feasibility studies, investment and financing, product development and design techniques, management, marketing, quality and research.

UNIDO has investment promotion offices in Cologne, New York, Paris, Tokyo, Vienna, Warsaw and Zurich to provide information to investors and to publicize investment opportunities. An office in Milan is due to open in January 1986 UNIDO's Investment Promotion Information System (INPRIS) in Vienna is a data bank of investment possibilities in developing countries.

The Development of Assistance Committee of OECD

The Development Assistance Committee (DAC) of the OECD is a specialized committee whose members include Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, the United States and the Commission of the European Community. The members have agreed to secure an expansion of the total volume of resources made available to developing countries and to improve the efficacity of their development assistance. They meet periodically to review the amount and nature of their contributions to aid programs and consult with each other on all other relevant aspects of their development assistance policies.

The members of the DAC provide official development assistance, i.e. loans and grants made on concessional financial terms to promote economic development and welfare. Official development assistance includes the value of technical assistance and cooperation. The total DAC official development assistance in 1983 was $58-million for Ghana, $141-million for the Ivory Coast, $335-million for Kenya, $204-million for Senegal, $409-million for Tanzania and $182-million for Zimbabwe.[1]

Information about Business Opportunities

Where can the businessman obtain information about projects funded with development money? A good source is the United Nations publication entitled *Development Business*. This fortnightly newspaper is published by the United Nations Department of Public Information. Each issue lists (i) procurement notices and bid invitations from the World Bank, the African Development Bank and African Development Fund, (ii) United Nations Development Program funded business opportunities and (iii) projects funded by the Commission of the European Communities. *Development Business* features a supplement entitled Monthly Operational Summary which contains information about projects contemplated for financing by the World Bank. This information appears as much as twenty-four months before the loan or credit is ready for presentation or approval. The information is updated each month as the stage of processing advances from preparation by the borrowing country and appraisal by the Bank through loan negotiations to final approval. Projects are removed from the Summary when the loan or credit has been signed or when a decision is made not to proceed with it. The reason for removal from the Summary is announced.

Goods and works to be procured through international competitive bidding for projects financed by the World Bank are advertised as Procurement Notices in *Development Business*. The notices list the project agency which can be contacted for additional information. The World Bank can finance goods and services originating only from its member countries[2] and Switzerland; only manufacturers and contractors from these countries are eligible to participate in the bidding. Suppliers and contractors in Taiwan are eligible to compete in providing goods and services financed by the World Bank.

1. *Development Cooperation Review*, OECD 1984, p. 36.
2. In 1985, the World Bank counted 148 member countries.