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# Construction Practice in Africa

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## Overview of Construction Projects in Africa.

- **Construction industry in Africa has undergone significant development over the last decade, despite the challenging circumstances.**
- **There are significant growth opportunities for developers, builders, investors, and policy makers in the real estate and construction sector.**
- **We have witnessed many mega construction projects around Africa. For example:**

## Overview of Construction Projects in Africa continued.

### ➤ Nigeria:

- Eco Atlantic City.
- Abuja Millennium Tower.

### ➤ Kenya:

- Konza Technology City.
- Railway line from Mombasa to Nairobi.

### ➤ South Africa:

- Tambo International Airport.

## Overview of Construction Projects in Africa continued.

### ➤ Egypt:

- Suez Canal Corridor Area Development.
- New Administrative Capital City.
- Golden Triangle Project.

### ➤ Morocco:

- Rabat Tower.

### ➤ Tunisia:

- The Solar Park

# Construction as a legal practice

While Construction is a unique legal practice (as it requires strong understanding of the technical matters), this practice is related to a number of other legal and business areas such as:

- Project Financing
- Employment
- Corporate law
- Taxes
- Mergers and Acquisitions
- Joint Venture
- Contract drafting
- Applicable law and dispute settlement mechanism

# Construction Projects

Construction practice includes a wide range of public and private projects such as:

- Government buildings, including embassies, schools, courthouses, public hospitals, and prisons
- Power plants, including coal, gas, nuclear, solar, wind...
- Office buildings
- Residential developments
- Industrial and manufacturing plants
- Wastewater and surface water treatment plants and pipelines
- Roads, highways, tunnels, dams, and bridges
- Hospitals and Hotels
- Sports stadiums
- Airports
- Environmental projects, disaster recovery project, waste remediation sites

# Construction clients

Clients in Construction practice may be:

- General contractors
- Owners/Developers
- Subcontractors
- Suppliers
- Construction managers
- Architects/Engineers
- Insurers
- Lenders

# Finance players

## Financing of projects takes place through different channels:

- Governments
- Public and Private Partnerships (Concession, BOT and DBO)
- Local and multinational banks.
- International and regional lenders and institutions.



## Project Finance in Africa continued.

### ➤ **International and regional lenders and institutions such as:**

- World Bank Group.
- European Bank for Reconstruction and Development (EBRD).
- African Development Bank.
- East African Development Bank.
- Inter-American Development Bank.
- China Development Bank (CDB).
- Asian Development Bank.

# Construction Projects Phases.

Constructions projects mainly go through a number of phases, as follows:

- Pre-investment Phase.
- Incorporation Phase.
- Reviewing Contracts.
- Operation Phase.
- Completion and Delivery.
- Dispute Resolution.
- Exit Phase.

# Construction Projects Phases continued.

## Pre-investment Phase:

- It is an initial phase for an investor/contractor or lender to decide on whether to invest in a certain project or not.
- The investor/contractor or lender try to find answers to the questions related to the economic, financial, and legal aspects with respect to the host state of investment.

# Construction Projects Phases continued.

## Pre-investment Phase:

- There may be a number of different legal and regulatory issues such as:
  - The nature of the jurisdiction (common law or civil law)
  - Licenses (its conditions and terms)
  - Environmental impact.
  - Intellectual Property rights.
  - The regulatory framework of Construction in the host state such as the regulatory authorities and the applicable laws.
  - Whether the host state is a party to Bilateral Investment Treaties (BITs) or not.
  - The exit scenario

# Construction Projects Phases continued.

## Incorporation Phase:

The investor/contractor decides to invest, however he has to select the best legal form:

- A separate legal entity (such as Joint Stock or Limited Liability Company)
- A branch of the mother company

## Factors that affect such decision:

- The Jurisdiction and the investment/tax laws .
- Size and type of activities (purposes).
- Capital.

# Construction Projects Phases continued.

## Reviewing contracts:

- The contractor shall carefully review the following before signing a construction contract.
  - Bid negotiations.
  - Method of payment.
  - Plans.
  - Specifications.
  - Project documents.
  - Schedules.
  - Change in orders
  - Unfavorable terms and conditions of the contract.

# Construction Projects Phases continued.

## Operation challenges:

Challenges arising during the operation of a construction.

- Severe economic decisions.
- Delay in the completion of certain stages of the project.
- Cost increase.
- Default of suppliers/contractors
- Change in orders

# Construction Projects Phases continued.

## Completion and delivery:

- Completion phase raises the issues of releases, delivery, return of guarantees, and final payment.



# Construction Projects Phases continued.

## Exit phase

- The voluntarily liquidation of the company.
- Sale of the company's assets.
- Payment of the company's debts.
- Fulfilment of all the company's obligations.
- Obtaining release documents from the various regulatory authorities

# Construction Projects Phases continued.

## Dispute Resolution.

### Types of Dispute Resolution:

#### 1. Litigation.

In principle, litigation is the default method for solving a construction dispute.

#### ➤ Advantages of Litigation:

- Not costly.
- Enforceable inside the same jurisdiction.

#### ➤ Disadvantages of Litigation:

- Time consuming.
- Parties cannot select judges, substantive law, and procedural law.
- Judges may not be experienced in this particular field
- Not enforceable in other jurisdictions.

# Construction Projects Phases continued.

## 2. Arbitration:

Arbitration is a method of resolving disputes outside of court whereby the parties select an Arbitrator or an Arbitration Center; in order to listen to the arguments of the parties, review the evidence, and issue a final and binding decision.

### ➤ Advantages of Arbitration:

- Arbitration proceedings are held in private (confidential).
- Parties select arbitrators, substantive law, and procedural law.
- Arbitrators are extremely experienced.
- Not time consuming.
- Enforceable in other jurisdictions

### ➤ Disadvantages of Arbitration:

- Costly.
- Discretion of arbitrators.
- No appeal

# Construction specialization in Africa

- No language barrier and effective communication with the different stakeholders
- Local market insights
- Less costly than international firms.
- Ability to apply the international standards in the local setting.
- Aware of the legal and regulatory framework in relation to enforcement and implementation.



**Thank You**