





# LAWYERS WHO DEAL WITH COMPLEX SITUATIONS

The second meeting of the Special Focus Africa, an encounter between lawyers who have an in-depth knowledge of the situation in the continent and the general counsels of several companies which make business in Africa, organised by Iberian Lawyer, took place last October 21. After the first meeting from the previous month, this time the conversation turned around more precise topics, following the idea that been the more accurate as possible to deepen into this promising market.





On this occasion, the participants were three partners who have assisted in multiple transactions on the field: **Miranda & Associados Banking, Corporate, Energy, Mergers & Acquisitions, Mining and PPP & Project Finance** partner **Nuno Cabeçadas, VdA**

Partner Project Finance Infrastructure & Mobility **Teresa Empis Falcão** and **SRS Advogados** head of the Projects and Environment departments, Transport and Shipping partner **José Luis Moreira da Silva**. To join into their conversation we invited **Total International** legal negotiator **Daniele Novello** and **Elsewedy Electric** group legal director **Mahmoud Shaarawy**.

The topics followed the main concerns appeared in the first meeting: Energy, Infrastructures and the guarantees for investments. As some of the major projects developed in Africa in the last years are related to the Energy and Infrastructures area, we began with this topic.

**Nuno Cabeçadas** was the first one to participate, and he reminded us that he was his whole career a lawyer from **Miranda**, and since the first time in the firm he began to work in projects in **Africa**, which means more than 18 years devoted to transactions in the continent, and the challenges and the opportunities have been the same ones all over the time: "The majority of the people in Africa still does not have access to energy, and Africa still has a deficit of infrastructures that requires billions of investment to become real."

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**NUNO CABEÇADAS**



An input that was automatically confirmed by all the participants. He kept describing the current situation: the inequalities on the development of infrastructures in Africa, the need for investment, the presence of the investors, the existence of equity available for these projects, a will of the governments to develop this plans in their countries, etc. But, for several reasons, these projects do not seem to advance at the pace we want them to go forward, and the fact in the number of projects which reach the needed investment and are effectively implemented is not as high as we want them to be. The question is why, which ones are the reasons which explain this apparent paradox. And what can be done to minimise this contradiction. In the personal experience of **Cabeçadas**, there is a significant number of projects which do not find a financial agreement. And this is especially true in Energy and Infrastructure projects. And very often, the reasons can be found in the lack of preparation from the very initial phases of the projects. A classic problem is the timing of having the necessary licenses for the projects. "I lived in Mozambique for six years, working at our office in Maputo, and I confirmed on the ground how this





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hurts the initiatives. I think things are getting better, but still, on many occasions, the lapse of time need to obtain the authorisation kills the projects. Environmental licenses, building permits... Those can be great obstacles, and we have seen investors losing hope, losing faith and, eventually, losing patience, and deciding to abandon the projects." Also stressed the dogma assumed by a lot of governments and administrations that the high risk of investing in Africa is something that must be supported entirely by the investors. So the PPI (Public-Private Investments) usually do not end well. And, lastly, the guarantees which often doesn't cover the risk of the project. Governments sometimes they do not have the capacity to do it, or sometimes they are in default so they cannot, etc. "But don't get me wrong, I am an African optimist, I think we are in a better situation than we were twenty years ago, we got a lot of examples of projects who close their financial help. In Mozambique, the country I know best, we got several projects which confronted difficulties but eventually succeeded. And you can find similar success stories in other countries of Africa, so I think we shall be positive and optimistic on the continent. The key is that the challenges are well identified. There are proofed solutions for many of them. And, as lawyers, we are in a privileged position to make more projects more bankable, and that will make projects more bridgeable to minimise the infrastructure gaping in Africa."

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DANIELE NOVELLO



**Daniele Novello** provided some inputs after his experience working in Total on the North of Africa, especially Egypt. He talked about "a problem that Africa does not have: they have high-quality people, one of their main capital is the people. I am absolutely impressed by the people I am working with. Maybe I had some prejudices in the past, I don't know, but certainly, the people I work with are among the smartest and better-spirited people I have ever met." Total, as Novello reminded, is a merge of Total and Elf, and the last of the two companies had a significant presence in French Africa. And he predicts that big challenges are coming with the energy transition we are living nowadays. In these challenges, one of the determinant actors will be the same energy companies that are already established on the continent.

**Teresa Empis Falcão** remarked that the lack of infrastructures had been a hot topic when talking about Africa for the last twenty years. Besides one of the big threat to the development of Africa in the long term. But also she sees that "is one the most significant opportunity for us all: for investors, financers, for all players in Africa. There is a huge opportunity there. Sometimes it is frustrating because, we who live





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in Europe have the funding, but we don't have a pipeline, and in Africa, there is a pipeline, but the projects do not come out from paper. There is a project, the Vasco da Gama terminal in the port of Sines, that can be a sample of what happens in African projects. The reason why it does not come out from paper. I think project targeting, structuring, is absolutely crucial. Choosing the right project, at the right time to be delivered, using the proper structure, that's key to lead to the success of the project. Because otherwise, it won't happen. So I think the identification of the projects which are capable of being delivered, that is a pre-exercise that is necessary for any government. And that needs a long-term master plan more than a short term focus. That way, the different pieces might fit well together."

But, besides the idea of opportunity, Empis Falcão also stressed the lack of government capability. "It is essential to ensure that the officials involved in the projects from the government side have the right skills to understand the project, and to contribute to the project being implemented. Unfortunately, this does not happen always; sometimes, it is hard to find people with the capability to understand the project and ensure that it is correctly implemented to the interest of the government and the country. The bad reputation of many projects has to do with the lack of preparation of the government officials, which, in the end, they do not negotiate well for the government. And that is the origin of the reputation of lack of willingness from the governments to launch new projects."

**José Luis Moreira da Silva** emphasised the fact that there is liquidity in the market waiting to find the projects to fund. And also that is important to remember all the players who want to participate in investments in Africa shall be aware that the pace is not the same than in Europe and North America. Moreira da Silva used the idea of an African time, that seems very suggestive and productive as a tool to understand and talk on the topic. "You seem to have several years in expectation. I have outstanding experiences in recent years when the projects are not government-supported, for instance, in the case of ports. We are talking on governments with meagre qualification rates which prevent the funders from putting money into these projects, or if we are talking from other institutions who avoid putting their assets in those investments. So, unless the institutions that have the liquidity and could be eager for that long-term projects are involved there is little beside them. So, what we see now is that a long-term project without the support of international institutions does not go ahead. So unless you have a particular investor, one with the economic power to push it, these projects rarely go ahead. Lately, we are moving forward because we had them. Let's speak about some successes. It is important to stress the positive side."





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And that is another big issue for the developing of business in Africa. Very often, the projects demand a lapse of time longer than the during of one administration, and this weakens the feasibility of the investment. They move in different circles, except as Cabeçadas remarked, sometimes the politicians in power might be the same for more years than the cycle needed by a project. He pointed out that the number of prepared people is very few, and they are almost always related to the projects which go ahead, and there is a limit for their capability of being in charge of all of them. And Empis Falcão also accentuated the fact that those successes that Moreira da Silva pointed are good news not just for the companies related to them, but for the market in general as models that might boost the rest of the pending ones.

**Mahmoud Shaarawy** was a determinant member on the conversation, by his expertise on the financial issues and risk for investments that all the projects have to face in Africa. And for be able to summarise the two types of founding that you can find in the projects developed there. One type is with a loan granted by the government, so the only necessary thing is the arranging of the agreement with the lenders and the administration. The other option is to become the owner of the development and signs a public-private agreement to provide something, energy or whatever, to the government, and get paid for that. "The first issue as that you can work with local banks, but they do not have the capability of granting the loans for these larger projects." Empis Falcão stressed the importance of the local banks and the need of the governments in facilitating or giving the impulse the presence of these banks to be able to develop the projects, something that is not happening currently.

Shaarawy pointed out that the risk is also significantly related to the banks, the lack of compliance and the issues of currency. But, most determinant even is the problems on transferring money outside the African countries. "When you have some dividends from inside Africa, and you want to transfer them outside Africa is always a catastrophe. First, because of the currency. Let me give an example of what happens, for instance, in Algeria, where we have two factories. First, you have to prepare the money for the transfer. After that, you have a committee that must link this bank to the Central bank, and explaining why you want to transfer the money outside of Algeria. So you have to prove that you brought fresh money outside of the country, you invested it, and now you want to transfer it back to your shareholders. And they always want you to keep at least 50% of the dividends to be reinvested in Algeria for the next ten years. So, this is one of the main issues you have to face when





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you are going to invest in a country like Algeria. So you will think it a thousand of times before investing one dollar. You always have to take that into account before investing in Africa".

Cabeçadas insisted on calling the transferring of dividends back to the investor "the nightmare", and he considered that is one of the bottlenecks which prevent the investors from doing businesses in Africa. All of them agree that the first thing that must be done before investing in Africa is to prepare the last thing: How to create the necessary structure to take the money back to the investor. Hence, the first thing they will know when they are deciding to involve or not in the project is if they can take the money back to the source of it. Lawyers, as Empis Falcão remind us, are the best professionals to do that, so, as long as the situation in Africa is the one it is, they are an unavoidable part of every project. And, as Morais da Silva remarked, that is always good news.

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