African Private Equity and Venture Capital Association

DEBEVOISE & PLIMPTON

MEMBER PROFILE

Geoffrey Burgess
Partner and
Chair, AVCA Legal & Regulatory Committee

Debevoise & Plimpton is a leading international law firm, with nine offices around the world. The firm has been a pioneer in private equity for over 35 years and is recognised as a leader in both fund formation and private equity transactional work.

With over 200 lawyers serving private equity around the world, Debevoise is among a handful of firms with a truly global private equity practice. Debevoise's highly regarded Africa practice advises both local and international organisations on a wide range of matters. The firm has been particularly active on the continent in private equity, advising on numerous headline acquisitions as well as on the formation of Africa-focused funds.

AVCA speaks with Geoffrey Burgess about the major regulatory developments affecting private investment in Africa, and the unique climate risks facing the continent.

Debevoise & Plimpton

NAME OF FIRM
Debevoise & Plimpton

FIRM TYPE
Law Firm

Q: Tell us about the history of Debevoise & Plimpton, and how the firm came to set up its Africa practice.

Debevoise started as a law firm in New York in 1931 and has since grown to a global firm with around 800 lawyers in eight offices across three continents.

As that growth took shape, the firm developed its international capabilities, with a handful of industries at the bedrock of our expansion. Private funds have long been a key anchor for the firm, and so we've worked to ensure we're able to meet the needs of our funds clients as they've entered new jurisdictions and pursued new strategies.

When funds started looking more seriously at emerging markets, including jurisdictions across Africa, we were right there with them, advising as they developed strategies to enter these new markets, raised money from a wide base of investors, and navigated new regulatory environments.

Our strength in related practice areas has helped as private equity and venture capital activity has grown on the continent. The firm has deep experience in areas such as insurance, healthcare, and TMT, which all proved invaluable as the market developed.

Our wider work in compliance and enforcement has also made our approach to dealmaking particularly robust.

We've continued to work alongside our clients as they have committed further capital to Africa. We have acted as counsel for sponsors of, or investors in, over 200 emerging markets funds since 1993, including funds investing across Africa.

Q: What differentiates Debevoise & Plimpton from other law firms?

Our focus on private funds globally is a key driver for our success in this space.

We've got such a deep history in the sector, and we originated many of the market norms that we now see in terms of documentation.

There's a real hunger in the team to be at the forefront of emerging trends, strategies and deal technologies. Whether that's in a fundraising or transactional setting, or in areas like tax, finance, regulatory compliance, employment, and competition, our teams have a real focus on the sector and an appetite to lead innovation. Such an approach helps with things like the problems we're seeing in Mauritius, and with advising on new transactions or structures like secondaries, strategic partnerships and GP staking deals.

Our proprietary database – which includes economic and legal terms for over 2,800 private funds, including over 500 venture capital funds – also allows us to draw on best practices from other developed and developing markets.

None of the above works without a collaborative culture underpinning it, though, which is of course something to which a lot of law firms attest. For our part, the structure of Debevoise as one of the few remaining pure lockstep law firms really does help drive it. It removes many of the internal hurdles to collaboration. It's second nature to everyone in the firm to ensure we're bringing in the best teams and the best people we have for any specific piece of work. That's especially important when supporting clients into new areas and in developing new strategies.

Q: What are some of the most significant legal and regulatory developments affecting private investment in Africa?

One key regulatory development has been the addition of Mauritius to the Financial Action Task Force's (FATF) "grey list" of countries with deficiencies in their anti-money laundering framework. This was subsequently followed by the European Commission identifying Mauritius as a "high-risk" third country for the purposes of anti-money laundering. This has meant more hesitancy regarding structuring transactions through Mauritius for foreign investors, but it by no means caused a complete cessation of usage of Mauritian entities. Mauritius has been taking steps to address the deficiencies identified and the country has been commended by FATF. FATF has highlighted a follow up report from December 2020 showcasing the progress Mauritius has made to rectify the issues thus far, indicating movement in the right direction. Hopefully, Mauritius can clear these issues before fund structures decide to move permanently to other domiciles.

Another key development is the African Continental Free Trade Area (AfCFTA), which came into force on 1 January 2021 and is potentially the single most impactful legal development affecting private investment. The ratification of AfCFTA brings with it the world's largest single market with lessened barriers for goods, services, and labour.

The removal of these trade barriers should boost intra-regional trade and both consumer and business spending. The Economic Commission for Africa (UNECA) believes AfCFTA has the potential to increase intra-African trade by up to 50%. This in turn could have substantial effects on private investment, boosting both African investment and foreign investment. If AfCFTA is able to deliver the expected economic growth, private investment across Africa will continue to increase.

Q: How has the COVID-19 pandemic affected Africa's private equity industry, and what trends do you expect to see in deal making and exits going forward?

The COVID-19 pandemic has had a significant effect on Africa's private equity industry, as it has done with industries globally. In particular, funds have focused on helping portfolio companies operationally, including by raising new capital.

Dealmaking and acquisitions have kept to the continued trend of investment into e-commerce, catering to Africa's growing middle classes, and fintech investments into mobile money, but there has also been an increase in investments into healthcare related services and technology, an area that has predictably seen increased activity since the start of the COVID-19 pandemic.

The pandemic has caused a stalling effect on exits, as many firms have delayed exit until asset valuations recover. Businesses are instead focusing on protecting employees and mitigating the effects of the pandemic on supply chains and revenue streams. The depression in values has, however, led to an uptick in distressed investments.

Q: Climate change is an increasingly important issue globally. What are the unique challenges for Africa, and what role can the private sector play in mitigating climate risks?

The continent as a whole is environmentally and economically vulnerable to climate related risks. From an environmental perspective, climate change will impact different regions in different ways. The sub-Saharan region has already experienced, and will continue to experience, more frequent and intense climate extremes; the areas exposed to the south-western Indian Ocean are particularly at risk to flooding, while West and Central Africa are notably exposed to climate-related crop yield reductions.

All these eventualities will have a knock-on effect on the region from an economic perspective, and the estimates relating to climate adaptation costs are set to skyrocket in the next few decades. Investors will consequently have to take a nuanced regional approach towards their investment strategies to maximise both returns and impact.

Encouraging steps have already been taken by the private sector in implementing such strategies. We see private equity investors in Africa as being particularly attuned to the risks associated with climate change, be they desertification, water shortages, or rising temperatures, and the steps that need to be taken to mitigate these.

While risk mitigation is of course a motivator in investment, there's also an acknowledgement of the climate-associated opportunities on the continent, particularly in increased investment in solar, wind and other renewables, which are reliably increasing year by year.

> It's second nature to everyone in the firm to ensure we're bringing in the best teams and the best people for any project. That's especially important when supporting clients into new areas and in developing new strategies.

Q: What do you find most rewarding about operating in Africa?

Professionally, the legal work is as challenging as it gets. Some deals, even smaller ones, present a vast range of issues that require collaborative problem solving with lots of people in lots of places. I also really enjoy learning about new industries, companies, and deal cultures.

Personally, almost every deal involves bringing together parties to create something that will have an immediate, tangible, positive impact on people's lives and communities. That's satisfying all by itself. And maybe most importantly, I have had the good fortune to make a lot of new friends on deals, with clients, co-counsel and counterparties. Working together with them and the amazing team at Debevoise is so much fun.

Q: How has the AVCA membership been of value to Debevoise & Plimpton?

AVCA is such a vital organisation. In the wider context of the global private equity and venture capital sector, Africa remains a relatively young region. Being able to effectively bring together viewpoints of all the major players in that market, and providing a platform to exchange perspectives and insights, is crucial if private equity and venture capital is to continue to grow on the continent.

That's exactly what AVCA does. We've found it a great organisation when it comes to joining up the various dots of the industry and creating links that benefit everyone.

On a perhaps more practical level, our involvement in the Legal & Regulatory Committee has proven incredibly rewarding. It's an excellent forum in which to advance greater understanding in this area, as well as highlighting legal and regulatory issues that need wider consideration and debate.

Visit the website to learn more about Debevoise & Plimpton:

www.debevoise.com

CONTACT AVCA

37 North Row
3rd Floor
London W1K 6DH

E avca@avca-africa.org
W www.avca-africa.org
T +44 (0)20 3874 7008

African Private Equity and Venture Capital Association