Goldsmith: the law needs substance

The rule of law extends beyond stability and requires the enforcement of objective standards of fairness and liberty, says Lord Peter Goldsmith.

In a shrinking world there is no such thing as “someone else’s problem” said Goldsmith, as disorder spreads across borders through unprecedented migration. The former Attorney General for the UK drew a distinction between the rule of, and by, law and said it is the responsibility of lawyers around the world to help ensure that their countries respect a concept of the rule of law that goes beyond the facilitation of business and certainty of judgments.

“The rule of law is not an add-on to economic development, it is a key part of having it,” said Goldsmith, who joined Debevoise & Plimpton in September. A system of government that relies on clear rules is part, not all, of the rule of law. The concept also means access to an independent judiciary who will enforce the law without fear or prejudice, and fight corruption. Earlier in the session delegates, gathered in the Suntec Theatre yesterday morning, heard from Vidhi Tambiah, associate director at the World Economic Forum, that studies have revealed a direct correlation between control of corruption and an index of countries’ competitiveness.

Tambiah took delegates through the detail of his work in using respect for property rights, undue influence and government inefficiency as well as surveying opinion from business leaders to demonstrate the link between competitiveness for investment and economic development. The World Economic Forum produces country rankings for both competitiveness and institutional strength. The rankings reveal Switzerland in top spot for competitiveness, with Singapore in fifth place and the US at number six.

Chao Hick Tin, Attorney General of Singapore, explained the success of Singapore in attractive foreign investment in terms of the rule of law. Hick Tin told delegates that the key to the rule of law is access to justice and a strong and independent judiciary. “The rule of law rings hollow without impartial enforcement of the law. A country without the rule of law will not succeed in attracting investment.”

Democracy, however, was not shown to be a necessary element in competitiveness in the World Economic Forum’s study, and an autocratic system did not guarantee less competitiveness.
Clients choose diverse law firms

“W
e now live in a very dangerous
age,” said Alistair McGregor at the end of his rapid description of the threat discrimination poses to the ever-expanding US/UK law firm partnership model. Indeed, yesterday morning’s session on Sex, Age and Race Discrimination in Law Firms proved that awareness needs to rise and changes need to be made.

Anne Birgitte Gammeljord of Gorrissen Federspiel Kierkegaard in Copenhagen primarily talked about sex discrimination in continental Europe. “From my perspective, sex discrimination is getting worse,” she said. “Why have so few women reached the top of law firms? Women are the majority of students in law schools all over the world. In Denmark the figure is around 70%.” Gammeljord then referred to a survey she conducted in advance of this conference. At larger Danish firms, none had more than 15% of female partners. In Sweden, the figure was as low as 2%. “What is the solution, if there is a solution? The structure of law firms is the problem,” she said. “We have disunified training methods, we have subjective promotion and remuneration systems in place for which there is no front or back. We need to get past the glass ceiling, you need a mentor. In addition, how much effort do we put in to get a decent human resource department?”

It was at this point that the session really kicked into life. Gammeljord asked the floor for questions and the scurrying techni- cian could barely keep up with the calls for his microphone. One astute comment noted that the war for talent and the dominance of female graduates means law firms will have to readdress their promotion systems and their work/life balance. Another pointed out that the simplest way to tackle the issue of discrimination is to ensure that the contribution of individuals is the only thing that is judged and that classifying by gender, race or anything else is recognized as pointless.

Later in the session, co-chair Scott Harrison of Schnader Harrison Segal & Lewis in New York replaced Paul Weiss Rifkind Wharton & Garrison’s Mark Alcott, who was unable to attend. He focused on mandatory retirement and how until recently prohibitive rules covered employees and not owners (or in the law profession, partners.) “Mandatory retirement needs to be revised as it is an important issue. If we had two equally qualified firms then we would opt for the diversified firm.”

He added: “If nothing else, your clients will convince you that this is an important issue." If we had two equally qualified firms then we would opt for the diversified firm.”

Managing partners of law firms should take note. If the biggest corporations in the world, and therefore biggest potential clients, are willing to refuse to give work to firms with poor diversity records, then changes are needed. Exactly, this practice will trickle down to smaller clients and therefore smaller firms. By acting now, a competitive advantage may arise.

“We want to ensure, not only that our law firms are diverse, but also that we see the benefits of this diversity” Ron Zink, Microsoft

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Legal networks are struggling to differentiate themselves from their competitors. But many have new products, seminars and geographical ambitions to solve that problem.

Shamin Hassomal reports

"You don't get competitors in legal networks, as far as I know no one has ever tried to poach one of our firms. Competition is not really a valid concept," says Peter Appleton Jones, chairman of Tag Law.

Legal networks continue to assume that the term competition doesn’t apply to their industry sector. Networks like Meritas and Tag Law operate under the impression that a one firm per jurisdiction strategy means that there are enough law firms to go around. While this may be true, what’s the quality like – are there enough top-tier law firms to go around?

In a quick survey by the IB Daily News of 10 legal networks, all of them claimed that their members were top-tier firms in the relevant jurisdictions. Those networks do have to compete for the best firms in key jurisdictions because not all law firms offer the same calibre of legal expertise. Those classified as the best are usually scarce. A network may be extensive and capable but that does not make it the best.

Most networks are looking to fill gaps in their membership in emerging economies such as North Africa, the Middle East and South America. These economies are characteristically weaker and harder to infiltrate. With this as a common goal, networks might find themselves struggling to attract a top-tier firm to their network if they do not have top-tier services to offer in return.

Legal networks have only had a role in the legal profession for 20 years. It is easy to rank the firms within them, to pit one organization against another within a sector and compare the reputations of the constituent law firms. The assumption that rivalry has no place in legal networks is not due to the need for greater legal expertise and skills, needed to work back and forth without having to take a risk that might ruin their reputation. With this in mind, there are firms that place more emphasis on relationships and firms that place more emphasis on referrals. Adam Cooke, head of business development for Multilaw comments: "Multilaw is a network based on friendship and personality, it's not for everyone. We are not prepared to grow at the expense of intimacy." Some networks, such as the World Law Group, refer to themselves as a "best friends network."

On the other hand, many networks are more referral oriented. Terralex appointed a director for referrals in March 2006 in order to increase the accuracy of its referral tracking system. When asked where the value of Terralex lies Charles McCallum says: “Referrals, referrals, referrals!” So it could be suggested that there are two separate kinds of legal networks, those who are not willing to sacrifice deep relationships for expansion, and those who will put business before pleasure. However, legal networks generally aim to provide a good balance of both these factors. Without relationships there wouldn’t be trust, and without referrals there wouldn’t be demand. So where’s the real difference?

The most established new service offered by networks is some form of educational service catering to young lawyers. These initiatives aim to remove the impression that legal networks are a club for senior partners. Young members are introduced to the network culture at an early stage, allowing them to cultivate relationships from the start. Among the most impressive is the Lex Mundi Institute. Lex Mundi runs a week-long intensive program three times a year involving senior associates and junior partners. In addition, Lex Mundi has created a pro-bono foundation which supports the efforts of social entrepreneurs worldwide. The foundation is sponsored by the Shell, Kellogg and Packard foundations.

ILI boasts another popular option, using webinars to enhance the business development abilities of its attorneys. The ILN coordinates and sponsors these webinars together with client webinars in an attempt to showcase the collaborative approach between members of ILN. Other networks that have participated in this educational initiative include Tag Law, with the Tag Academy, and Multilaw, with its academy for young lawyers. The other aspect to this educational approach is that of training attorneys in the practice of writing in business and legal English, an approach endorsed by Ius Laboris and World Link for Law.

Particularly innovative projects include Multilaw’s new data privacy solutions project. It is still under development and will be an electronically accessed product. Twenty-two countries have agreed to provide information on data privacy laws in their jurisdictions. In addition to this, copies of relevant laws, model policies, and EU directives will also be available on the system. In this way, Multilaw will be helping its member firms structure client operations in a way that is compliant with domestic laws. The system will be kept up to date and contact information for relevant government regulatory agencies as well as participating attorneys will be available. Information will be provided in two formats, in an overview, including advice on sharing personal data, security steps and breach information, and in a by-industry format, where clients can directly access their sector. Multilaw has created a specialized system to deal with a niche sector independent from the overall referral system. Because this project is on a smaller scale than the referral network, queries will be handled a lot quicker without clogging up the referral pathways. The project is due to be launched in spring of 2008 and will be available via subscription.

Another outstanding idea has been the inter-staff secondment programme offered by World Link for Law. The purpose of this exchange programme is to promote the knowledge of different legal systems and to enhance relationships between the members. The programme is voluntary and lasts approximately three months. The tasks
that are carried out during these secondments include research on practical cases, participation in court hearings, liaising with clients and local intermediaries, and attending the various social activities organized by the hosting firm. In 2007 the participating cities were Barcelona, Frankfurt, Paris and Warsaw. In addition to this, World Link of Law offers an EU-based IP and trademark search project known as Brandvue. This service is for EU countries only and carries out trademark searches in as little as 48 hours. A report is also issued covering national marks, international registration, and assessment ratings. The network offers its members a precedent document bank, harmonized IT systems and an established quality code that is a condition of membership. World Link for Law seems to have taken care of all the meticulous details that will result in a smoothly running network first, and can now focus on expansion.

The World Law Group is another network that offers its members the opportunity to go abroad and get hands on experience with new jurisdictions. It runs a 12-month internship programme for young lawyers. In addition to this, the World Law Group offers a global compliance service that provides advice to local counsel in order to make sure they are compliant with local law.

The other emerging services within the network market are mostly marketing initiatives. There are certain networks like EPN that retain a PR firm to handle their marketing needs of a network. These new initiatives usually involve travelling and meeting existing members in an attempt to further deepen the relationships within the network. Both Terralex and Tag Law make it a point to personally meet members in order maintain or establish relationships and also as a method of quality control.

The World Law Group operates a database of respected non-member firms for jurisdictions like South Africa and Central America, deemed not yet active enough to justify membership. Other marketing initiatives include publications, exhibitions, and sponsored conferences. Tag Law is one of the only networks to be run by a private company and not by lawyers, meaning it can dedicate time and attention to running the network and not treat it as a second priority.

Where do we go from here?
In all major jurisdiction independent players have been able to stand alone. They have a clear future in the market and according to Tanna Moore, president of Meritas: “There is a real opportunity for Meritas and other networks to take a significant leadership role in the market. The network business model is a new model in the global economy and fills a clear gap in the corporate agenda of many companies. The model is flourishing.”

The legal profession is now showing that the global firm route is not an exclusive one. If the current trend continues, global firms could reach a plateau, after which they will become less global as loss-making offices are cut to bolster profitability. Globalization and rapid technological change are bound to make all industry sectors more international in one way or another, for example due to outsourcing. This is where networks are key players because they boast a competitive international reach.

The future of networks is not just constrained to the legal profession. It could potentially be a feasible model within all industry sectors. Tag Law has an affiliate international network of accounting firms known as TIAG which takes care of the financial market. TIAG is made up of 220 firms in over 90 countries, quite a sizeable chunk of the market. In this way networks have found a new direction in which to expand. This linkage of legal firms with non-legal firms seems like the next logical step in the expansion strategy of network associations. Such a relationship would be feasible with marketing consultants, management consultants, engineering consultants, stock brokers, estate agents, investors, and clinical psychologists...the list is never ending. It is also a matter in which productive debate could be initiated with law societies.

Who, when and where?
Legal networks began to appear in the late eighties. At this time, competition mainly came from the other multi-jurisdictional law firms, today known as international law firms. Networks were not very well established and were barely known outside their own membership. Networks began competing with these global firms regionally and by niche sectors.

<table>
<thead>
<tr>
<th>Network</th>
<th>Founded</th>
<th>Head-quarters</th>
<th>Expansion in 2006</th>
<th>Where next?</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Lawyers</td>
<td>1988</td>
<td>New Jersey, US</td>
<td>Australia, Canada, China, Switzerland,</td>
<td>South America and Africa</td>
</tr>
<tr>
<td>Network</td>
<td></td>
<td></td>
<td>England and Germany</td>
<td></td>
</tr>
<tr>
<td>World Law Group</td>
<td>1988</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>World Link For Law</td>
<td>Late eighties</td>
<td>Zurich, Switzerland</td>
<td>US, France, Germany, UK, Spain and South America</td>
<td>Japan, Thailand and South America</td>
</tr>
<tr>
<td>Lex Mundi</td>
<td>1990</td>
<td>Houston, US</td>
<td>Spain, Netherlands, France, Germany, US</td>
<td>Slovenia and central Europe</td>
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<td></td>
<td></td>
<td></td>
<td>and Australia</td>
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<tr>
<td>Meritas</td>
<td>1990</td>
<td>Minneapolis, US</td>
<td>London, Germany, US, Australia and Canada</td>
<td>Atlanta, Canada and Romania</td>
</tr>
<tr>
<td>Multilaw</td>
<td>1990</td>
<td></td>
<td></td>
<td>Dubai and Middle East</td>
</tr>
<tr>
<td>Tag Law</td>
<td>1998</td>
<td></td>
<td></td>
<td>Ukraine, Montana and Africa</td>
</tr>
<tr>
<td>Ius Laboris</td>
<td>2001</td>
<td></td>
<td></td>
<td>Central Europe and Asia</td>
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“Global firms could reach a plateau, after which loss-making offices might be cut. This is where networks are key players”

“The network business model is new for the global economy and fills a clear gap for companies”
Tanna Moore, Meritas

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What are “Asian values”?  

Matthew Bridle provides background on the debate over a distinctive Asian approach to the rule of law, ahead of the special symposium on Friday

Recent controversy in Pakistan regarding the displacement of Chief Justice Chaudhry appears to have reinvigorated concern for the universality of the rule of law and human rights in Asian societies. A number of intellectuals, notably Singapore’s Kishore Mahbubani, and statesmen, including Singapore’s Lee Kuan Yew and Malaysia’s Mahathir Mohamad, have argued throughout the nineties that Asian civilizations based on Confucian ethics should not be required to subscribe to Western ideals that give primacy to the rule of law and universal human rights.

Collective interests, a concern for order and stability, frugality and hard work have all been identified as distinctive elements of the Confucian ethic. Asian values, according to Lee Kuan Yew, have produced the law and order prevalent in Singapore and enabled it to avoid the chaos, anarchy and violence associated with urban living in Western societies.

The view of Amartya Sen

Indian economist and philosopher Amartya Sen has pointed out, however, that the era of Asian nation-building and identity seeking began with the establishment of the United Nations and continued through the collapse of communism in eastern Europe and the Soviet Union. “This era saw the internationalization of politics and economics, the Americanization of culture, and the ideologization of the concept of the human being as the end and not the means of all social endeavours,” he says.

Allegations of arbitrary arrests and prolonged detentions and torture on religious, intellectual or political grounds have thus attracted criticism on the manner by which Asian values are capriciously interpreted and applied. Communitarian priorities have increasingly been absorbed into interests of the state, primarily authoritarian leadership. Individual rights become interpreted as something anti-communal, disruptive of social harmony and seditious against the sovereign state. The rule of law frequently becomes something interpreted and applicable only to those who do not yield the economic or political power to supersede it.

Beyond this apparent philosophical dichotomy is the issue of economic context. For most east Asian leaders the argument is as much about economic priorities as it is about treatment of subjects, people and peoples. Asian economies are juggling the stresses associated with rapid economic development and the subsequent political forces that those pressures create.

Growth above everything

“Most of the East Asian governments are in what you might call the cult of growth,” said Alex Magno, a political scientist at the University of the Philippines. “Economic growth has become the single most important source of political legitimacy. So it is not some exotic Asian-ness that is in question here. It is a thoroughly modern obsession with growth, which you might call the east Asian culture of the nineties.”

Economic development produces improved standards of living, which can be used to justify a temporary suspension of civil and political rights. Some relatively authoritarian states (such as South Korea, Lee’s own Singapore, and post-reform China) have indeed had faster rates than many less authoritarian ones (including India).

“Every country has got to make its own decision in seeking a balance between human rights and the rule of law,” notes Dr Phillip Tahmindjis of the IBA. “It is a mistake however, to see economic development and human rights in a simple dichotomy. Both may flourish; any country that wants to improve its status in the world economy can not see it as such.”

The international paradigm

Today there is a fairly agreed-upon list of helpful policies, including openness to competition, the use of international markets, a high level of literacy and education, successful land reforms, and public provision of incentives for investment, exporting, and industrialization.

There is little to indicate that these ideals are inconsistent with these policies.
noted the importance of the IBA in providing moral support for human rights in civil society. Tahmindjis has also been influential in strengthening the rule of law. These efforts help to foster the rule of law and recognizing, in legal analysis and in formal training in human rights, an independent legal profession through capacity building.

The recent Indian experience shows that what is needed is a more inclusive role in the establishment of the rule of law rather than a harsh political system. What has emerged as a priority is the equality of investment requires adjudication that is both objective and accountable to the rule of law in contract enforcement, as well as in arbitration. The role of business is to contribute more to building the rule of law if:

- individual lawyers;
- corporations;
- law firms;
- bar associations and law societies;
- the IBA.

The symposium will endeavour to ensure that every participant leaves the conference:

- more commited to building the rule of law than he/she was at the outset;
- with a concrete plan as to how he/she can fulfill that commitment; and
- with a clear understanding of the Asian perspective on the rule of law.

Issues to be addressed include:

- the meaning and importance of the rule of law;
- social and economic development and the rule of law;
- the post-colonial experience in Asia; and
- what can/should be the contribution to building the rule of law of:

The role of business

There is little doubt that the business community is playing a more influential role in the establishment of the rule of law and human rights. Governments are increasingly held accountable to the rule of law in contract enforcement, as investment requires adjudication that is both objective and efficient. What has emerged as a priority is the equality of application of these standards regardless of political or economic weight.

The intended themes for the breakout sessions are:

- access to justice in developing jurisdictions;
- corruption;
- corporate responsibility;
- cross-border pro bono legal assistance;
- freedom of expression;
- extreme situations; and
- independence of the judiciary and the legal profession.

Building the rule of law across the world is an important and vital commitment for the international community in maintaining a presence that is sympathetic and accommodating to the needs of human rights campaigners.

The symposium will be interactive and in the afternoon will include breakout sessions allowing every participant to contribute to the discussions.

The Rule of Law Symposium

Building the rule of law across the world is an important and vital commitment for the worldwide legal profession. The IBA's mission is to strengthen this commitment and lead the way forward in helping our members to formulate concrete plans for action in their respective countries as well as internationally. To reinforce this commitment, for the first time in the IBA's history, the IBA’s management board has decided that at the end of the IBA’s 2007 conference in Singapore an entire day will be devoted to discussing the essential nature of the rule of law.

This unique day represents a natural progression from the IBA's outreach programme, focusing on the rule of law and human rights, and from the Rule of Law Resolution passed by the IBA Council on September 26 2005. These efforts led to a global campaign to increase momentum for the worldwide recognition and acceptance of the rule of law, and highlighted the continuous work of the IBA in fostering a more just world. Further details on the Outreach Programme and the full text of the Resolution can be found at www.ibanet.org.

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There is however, an inevitability to the universality of human rights and rule of law in the region. As Sen argued in the Journal of Philosophy of International Law and Global Politics: “The uniqueness of Asian values, if it ever existed, is fast being eroded by technology and science, the very tools of its economic success, by communication and, by social sciences and social scientific conceptualization and analysis, by an increasing acceptance of the commonality of the human race and peoples, by aspirations and beliefs, senses and sensibilities.”

See how the debate is played out this week at the IBA’s Rule of Law Symposium, held this Friday October 19 in the Suntec centre. Building on the success of the first such symposium in Chicago last year, this year’s event will last all day and is being operated as a separate event.

Speakers include: professor S Jayakumar, ex-UN ambassador, twice president of the UN security council and now the Deputy Prime Minister of Singapore; professor Tommy Koh, also an ex-UN ambassador, ex-ambassador to the US and now Dean of the Faculty of Law at the University of Singapore; judge Hisashi Owada, ex-Japanese Ambassador to the OECD and to the UN, now professor of International Law and Organization at Waseda University; and justice Albie Sachs, the renowned human rights and anti-apartheid campaigner who lost an arm and an eye to a bomb placed by South African security agents.
The rise of foreign investment in sub-Saharan Africa is among the worst kept secrets in the financial markets. International companies, from the west and increasingly the east, have been falling over themselves to get involved in one of the world’s most under-developed markets.

Strong interest remains from European investors, but there has been an surge in Chinese, Indian and Middle Eastern involvement over the past 10 years, particularly in the mining and resources sector.

To the foreign investor, sub-Saharan Africa is an attractive alternative – a combination of abundant natural resources and a huge demand for infrastructure investment. Nigeria, Kenya and Tanzania, in particular, have reaped the rewards of stable political systems and governments open to foreign investment, attracting companies that appreciate the confidence their projects will not be disrupted by political upheaval.

This stability has allowed the countries to develop and reform their financial systems to make them more transparent, leading in turn to the introduction of tax incentives and so-called one-stop-shop business centres. However, while the reforms have gone a long way to attract new business, there is still plenty of work that needs to be done.

**Nigeria**

Nigeria is an example of how important political development is to economic advancement. The development of the country’s financial system began in 1999 when its military junta was ousted in favour of a democratic regime. The new government under President Olusegun Obasanjo inherited a country with a corruption problem and corporate governance issues – a hangover from its military dictatorship past. Obasanjo’s government launched a free market economic reform programme in 2003, which has ushered in a number of new initiatives designed to update and improve Nigeria’s financial system.

“…you can forget about the politics.”

They will take a $90 million grant for a road project, build it for $80 million and keep the rest. At least we’re getting the road now.”

Karim Anjarwalla, Anjarwalla & Khanna Advocates

Investors, foreign and domestic, have begun to realise that politics is no longer that important to the economy,” says Anjarwalla. “The economic fundamentals are there, so you can forget about the politics.”

Unlike Nigeria and Tanzania, Kenya does not have an abundance of natural resources to rely on to carry the economy, but the bulk of foreign investment centred on the agriculture and coffee sectors. The manufacturing and service sectors have been on the rise recently, which Anjarwalla says is the result of Kenya’s position as “one of the most literate and skilled workforces in Africa”. These credentials were boosted with the advent of free primary school education in 2003.

The proposed laying of an underwater fibre optic cable along the east African coast has market commentators tipping telecommunications as the next big investment sector. Kenya is ideally positioned to act as an outsourcing hub, due to its convenient time zone and use of English as a first language.

In a sign of things to come, Russian investment bank Renaissance Capital set up its east African base in Nairobi earlier this year with a view to providing debt and equity financing for foreign investors intent on infrastructure investment. Despite the increased foreign interest, the Kenyan government has not been particularly active in developing in financial policies. The government’s most important initiative was the introduction of the Kenyan Investment Authority in 2004. The authority set up a one-stop shop for companies wanting to gain their Kenyan business licences, and has signed agreements with organizations such as the Multilateral Investment Guarantee Agency which acts as guarantor for foreign investments.

Elsewhere, the government is discussing potential changes to the capital markets law to introduce regulations concerning securitization and venture capital activities, and the government is also discussing potential international bond issues.

But discussing is the operative word. While there are numerous debates about new laws and regulations, getting bills tabled and approved is another matter – especially in an election year with more pressing concerns for the government. Despite the recent developments, Anjarwalla believes more reform is needed to make Kenya attractive for foreign investment. “I would like to see a revision of the company laws to modern standards … we are still using the 1948 English Companies Act,” he says, adding: “The insolvency and receivership laws also need fundamental change.”

Corruption is another issue in need of attention. The government introduced the Kenyan Anti-Corruption Commission in 2004 to combat the problem, but critics say it is ineffective and a waste of money. “They’ve spent $80 million and done nothing – they’re absolutely hopeless,” says Anjarwalla.

Despite the Commission’s reticence, Anjarwalla says the corruption issue is slowly improving and is nowhere near as blatant as it used to be. “They will take a $90 million grant for a road project, build it for $80 million and keep the rest,” he says. “At least we’re getting the road now.”

Tanzania

Like Kenya, Tanzania boasts a stable political system and an investment-friendly government. The country has moved...
on from its socialist past, with the government now encouraging foreign investment and privatization. Resources are the main driver of foreign investment in Tanzania. While the economy is still primarily agriculturally-focused, the country boasts large gold and diamond reserves that have caught the eye of companies such as Canada-based Barrick Gold. Krista Bates from FK Law Chambers in Dar es Salaam says she has been swamped by foreign companies looking to invest in the country. Formerly of Linklaters’ London office, Bates says the work is every bit as challenging and intricate as it was back in the UK.

“Foreign direct investment is exploding here; it’s crazy how much is coming in,” Bates says. “In terms of complexity and interest, it is the same as I dealt with at Linklaters.”

Telecommunications is another sector which is tipped to attract a lot of foreign investment. Peter Chitamu, senior lecturer at the School of Electrical & Information Engineering in South Africa, says the liberalization of the country’s telecommunications laws earlier this decade created an ideal platform for foreign investment from countries such as South Africa and the UK.

“It’s a very attractive place to invest in terms of growth and inflation rates,” he says. “There are a lot of well educated local people, which has benefits in any sector.”

While there have been recent legislative updates in the banking and tax sectors, the development of the Tanzanian Investment Act 1997 has had the biggest influence on the investment system. The Act gave foreign companies the ability to own Tanzanian entities outright without a local shareholder (provided they had a minimum investment of $300,000), and also provided foreign investors with a swag of tax-reducing incentives.

The Act also allowed the set-up of the Tanzania Investment Centre (TIC), which streamlined the permit application process for foreign investors. The TIC is well regarded by investors and was even named the world’s best Investment Promotion Agency by the World Association of Investment Promotion Agencies in March.

The award came as a surprise to some. Mustafa Tharoo, from Tanzanian law firm Ringo & Associates, says the TIC is still crippled with a slow bureaucracy that is not conducive to setting up a business effectively.

“The TIC was voted the best investment centre in the world, but someone sitting in Tanzania would find that pretty hard to believe,” says Tharoo. He points out that a recent report by the World Bank ranked Tanzania as the 48th most difficult country in the world in which to do business. One reason, he says, is the ever-present spectre of corruption in the tender process, which has driven away a lot of foreign interest.

The government is making all the right noises in its fight against corruption, says Tharoo, but he questions the effectiveness of its work. “They have the policies, but unless they address the underlying causes it will be a difficult issue to tackle,” he says.

There is still plenty of room for development. Education is one of the key areas, with a more educated public service leading to quicker and more efficient decisions. The tax authorities also need a shake-up says Tharoo, with “less power and more regulation”. However, much like many sub-Saharan African countries, the challenge is not in the development of policies, it’s in the enforcement. “No jurisdiction is perfect and you have to take the good with the bad,” says Tharoo. “If we’re going to attract foreign investment we need policies, but they also need to be followed and practised.”

“Foreign direct investment is exploding here; it’s crazy how much is coming in,” Bates says. “In terms of complexity and interest, it is the same as I dealt with at Linklaters.”

### Ease of doing business in sub-Saharan Africa

<table>
<thead>
<tr>
<th>Country</th>
<th>Ease of doing business</th>
<th>Dealing with licences</th>
<th>Registering property</th>
<th>Protecting investors</th>
<th>Trading across borders</th>
<th>Enforcing contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mauritius</td>
<td>4</td>
<td>33</td>
<td>2</td>
<td>18</td>
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<tr>
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<tr>
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<td>42</td>
<td>37</td>
<td>17</td>
<td>32</td>
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</tbody>
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Economies are ranked on their ease of doing business, from 1 – 178, with first place being the best. A high ranking on the ease of doing business index means the regulatory environment is conducive to the operation of business. This index averages the country’s percentile rankings on 10 topics, made up of a variety of indicators, giving equal weight to each topic. Source: The World Bank: Doing Business 2008

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0830 – 1600
IBA golf day
Current developments

0800 – 0930
Academics’ breakfast
Managing partners’ breakfast

0930 – 1730
The Olympic Games – a legal guide to all things Olympic
A successful lawyer is an ethical lawyer – true or false?

0930 – 1200
Current barriers to defend lawyers’ access to potential and confirmed witnesses for the prosecution
Arbitration in the energy and natural resources industries
‘Young Litigators’ Forum: case management in the electronic age – are young lawyers prepared to lead the way?’
Deal mediation – the use of mediation in the course of M&A transactions
Partners in crime? The risks facing lawyers in today’s world
Exclusion and limitation of liability in construction contracts
Effective regulation in an increasingly globalised marketplace
New multimedia platforms: who is riding the wave? HDTV, broadband, wireless, fixed line – issues arising from the convergence of media
Measures for combating counterfeiting and piracy
Immigration issues for franchisors that expand internationally and news from around the world
Alternative methods of payment
My partner or my spouse?
Iraqi Higher Tribunal – the delivery of procedural fairness?
Privacy and crimes at sea including pollution liability
Do you speak ‘trust’? Holding, managing and transferring family assets around the world through the use of trusts, foundations, nominees and other techniques
Global anti-corruption survey
BIC open forum and open policy committee meeting
The UN Norms on the responsibility of transnational corporations and other enterprises with regard to human rights
When disaster strikes – how lawyers can mobilise to restore order and preserve access to justice
Guidelines for setting up a national young lawyers’ association

1030 – 1230
African Regional Forum in front of Open forum business meeting

Anti-Corruption in front of Open committee business meeting
Human Rights Law Committee lunch
Public and Professional Interest Division Lunch

1245
Mediation Committee lunch
Le Papillon

1300
Litigation Committee lunch
Cheng Ho III

1430 – 1730
International comity in dominance cases: shall global convergence or global confusion reign?
Venture capital and the growing company
Organised crime, corruption and terrorism: all about money
Diversity of cultural perspectives on mediation: face saving, attitudes, relationships to courts and other considerations
Latest developments in international construction
Manipulation of electricity markets
Religious symbols in the workplace and in public places
Real IP in a virtual world: IP issues arising out of virtual characters and scenes in online video games
Franchising in the Pacific Rim
Sex, lies and the CISG
The international family – mobility and diversity
Theocracy, democracy and secularisation – is there any room for compromise?
Estate planning for the Asian family
European Forum in front of Open forum business meeting
Free trade in the Pacific Rim and its impact in Latin America
The internationalisation of legal education
How adults suffer from sexual abuse as children and how drug treatment and mental health courts can help
Making a new start after retiring from your firm
Strategy for a successful legal career plan – becoming a partner, going in-house, pro bono, going solo

1630 – 1730
Professional Ethics in front of Open committee business meeting

1700
IBA football match

1745
Young Lawyers’ reception

1930
Criminal Law Section dinner
Immigration and Nationality Law Committee dinner
Insurance Committee dinner

2230
Young lawyers’ night out

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IBA Daily News – Thursday, October 18 2007
You’ll never clean your windows again

Lawyers must open their eyes to a new risk. Tiny technology is revolutionising real estate, for better or worse. Nanoparticles are transforming construction materials, yet scientists know very little about the effects of these molecules on people or the environment. At a session organised by the environment, health and safety committee, a diverse audience of real estate lawyers heard that they must become aware of this technology’s potential benefits and dangers, and fast.

“Any construction lawyer should know about nanotechnology and ask the right questions. It should be part of the due diligence,” said Tzvi Levinson of The Levinson Environmental Law Firm in Israel.

Nanoparticles are smaller than the eye can see. With a diameter less than an eighthundredth of a piece of human hair, nanoparticles are normal chemicals reduced to a microscopic scale. Scientists, construction companies and investors are interested in the potential these chemical forms have for everyday materials.

When used on the outside of walls, nanotechnology can absorb airborne pollution and make it less harmful; when put in a window, certain particles can break down the dirt which collects so that when it rains the glass is cleaned perfectly without the need for detergent; and when placed in solar panels, nanoparticles absorb more light and make the conversion of light to useable energy more efficient. The Dives in Misericordia church in Rome, for example, was built using concrete strengthened and made lighter using nanotechnology.

But although the economic potential of these miniature miracles is huge, their environmental impact on humans, animals and plants is unknown. Nanotechnology is a major breakthrough because chemicals, when reduced to this size, have different properties and behaviour. But scientists do not fully understand how they work. These nanoparticles can pass through the skin into the body and no one knows their impact.

This poses new challenges for lawyers evaluating the risks of real estate projects, many of which are already taking advantage of this technology. Levinson believes that lawyers not only have a responsibility to consider nanoparticles in due diligence proceedings, but that regulators have a role to play in monitoring this technology. “You quite often find a big gap between technology and the legal regime. The fact that we don’t yet know that it does harm doesn’t mean we don’t have to regulate it,” he said.

Levinson envisages an international regulatory system, under the control of a body like the UN. “What we suggest is not to go for state legislation, because then you might have discrepancies between rich and developing countries, but that we need a global harmonized system.”

Other panellists at yesterday’s session provided a snapshot of more mainstream regulation and legislation regarding real estate and the environment in their home countries. Ravi Nath of New Delhi’s Rajinder Narain & Co praised Israel’s environmental law before describing the situation in India. Enforcement, not regulation at the planning stage, is the chief problem. But awareness is growing and Nath warned “approvals are not to be taken lightly”.

Ho Kin San of Allen & Gledhill detailed the situation in Singapore. Crucially buyers must be aware that, without warranties, they are liable for any historic contamination found on the site they have purchased if they cannot prove it was polluted in the past. The audience also enjoyed Nicola Piaggio’s presentation on obtaining planning permission in Uruguay. A large South American contingent particularly appreciated Piaggio’s insights into his country’s dispute with Argentina over a pulp mill on the River Uruguay.
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