



# AVCA Member Profile: STC Partners



**STC Partners is a Paris-based law firm with significant experience in assisting French and foreign investment funds in managing transactions, with or without leverage, in both listed and unlisted companies. STC Partners also helps private equity portfolio companies in their expansion phase, and provides private equity firms with end-to-end assistance on exit.**

We speak with Laurence Elong-Mbassi, Attorney at Law - Of Counsel, Head of the Africa Tax and Legal Practice, and Anne-Sophie Hébras, Attorney at Law - Of Counsel, about how reform initiatives in certain countries in West and Central Africa are helping to make investing notably more flexible and efficient for private equity investors.

## **Q: How has STC Partners helped private equity fund managers invest in French-speaking Africa?**

A: We have assisted private equity firms in many French-speaking countries in West and Central Africa, and in the Maghreb, notably Morocco and Tunisia, as well as in some English-speaking African countries, such as Nigeria.

We have helped teams throughout the deal life-cycle of the investment fund by advising on the legal and tax structuring of the fund itself, drafting and negotiating the fund documents, structuring transactions between the general partner and the advisory and other associated companies, and in performing legal and tax due diligence for investment and exit purposes.

Our affiliate, C2A, supports us through their presence in several countries of West and Central Africa, including Côte d'Ivoire, Guinea, Cameroon, Congo and Gabon.

## **Q: In your experience, how has the Organisation for the Harmonisation of Business Law in Africa (OHADA) benefitted private equity fund managers and investors operating in the OHADA region?**

Firstly, the OHADA Uniform Act relating to commercial companies and economic interest groups (the Uniform Act) benefits private equity investors focused on this region by introducing a common form of law for these groups across OHADA treaty signatories. This greatly enhances efficiency in structuring and administration, and reduces the relative risk when investing in the different countries of the OHADA area.

The Uniform Act has recently been amended (effective 5 May 2014) and introduced greater flexibility in the

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“With the legal and tax environments in certain African countries increasingly becoming more efficient for fund managers and investors, we are very optimistic on the outlook for private equity in Africa. In our experience, we are seeing greater global interest, and more and more foreign and local funds emerging in the region.”

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management of the legal structures available to investors and funds to help secure their operations in the OHADA area.

One of the main innovations was the introduction of the “Société par actions simplifiée”, or simplified joint stock company, which allows shareholders greater freedom in structuring their partnership and portfolio company investments.

Additionally, the revised Uniform Act brought major innovations relating to securities, which greatly benefit private equity funds. Some examples include the ability to: (i) create preferred shares which can be issued without voting rights, with double voting rights, with suspension of voting rights for a specified period of time, or with a preferred dividend and so forth; and (ii) provide access to capital through the creation of securities or entitling the allocation of debt instruments, which opens up greater funding opportunities, in addition to common equity, for firms incorporated in the OHADA area.

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**Q: With the increased global focus on Africa, what are some of the issues managers and investors should be aware of when looking to invest for the first time?**

A: One of the main issues faced by clients investing in Africa is the efficient transfer of the proceeds of their investments, in particular the proceeds of sales. There is typically no issue when transfers take place between the Euro zone and the CFA Franc zone. Moreover, as the latter is indexed to the Euro at a fixed rate, there is absolutely no exchange rate risk.

Things can prove to be more complicated in North African countries which have foreign exchange control regulations that are much more restrictive than those found in the CFA Franc zone.

For other types of transfers, such as dividends and management fees, one must comply with legislation in force (e.g. domiciling service contracts, holding shareholders meetings to approve annual accounts and allocating profits within the time limits prescribed by law).

From a tax perspective, capital gains tax arising from sales of interests in portfolio companies can be an issue, but we find in this respect that the strengthening of the double tax treaties network of African French-speaking countries has allowed a gradual improvement in the profitability of foreign investments by reducing cases of double taxation (wide double tax treaties network with France, and expanding with Mauritius and Morocco).

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**Q: How have you seen the tax environments in French-speaking Africa change, and are they becoming more efficient from a private sector**

## **investment perspective?**

In general, we have noticed that, although the tax rules are evolving towards a strengthening of anti-abuse and anti-tax avoidance systems, local tax authorities are becoming more and more aware of international practices. This helps enormously to facilitate effective discussions between the authorities and our clients.

In addition, several countries have formalised the possibility for taxpayers to request a tax ruling to validate the regime applicable to a given scheme. While in some cases it is too early to truly appreciate the positive impact this may have due to some practical implementation issues, it certainly contributes to helping secure transactions made by foreign and local investors.

In relation to private equity in particular, we are seeing tax rules introduced in support of private investment, notably under the lead of the West African Economic and Monetary Union (WAEMU), which has issued several directives which harmonise the taxation applicable to securities among WAEMU members and the taxation applicable to closed-end investment companies within the WAEMU.

These rules have been implemented in various countries, notably Senegal, Benin and Togo, and provide favourable tax regimes (e.g.: exemptions from corporate income tax, exemption from tax on capital gains derived from the sale of securities) for listed and unlisted investments to stimulate regional financial stock markets and offer alternative ways of financing the economy.

We believe that this type of legislation, combined with the recent Uniform Act developments, will encourage the emergence of additional local investment funds.

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**Q. Any final words?**

The continued development of Africa depends on the success of its SMEs, and we believe private equity is a critical solution to the lack of financing available to SMEs in Africa. We see organisations such as AVCA as being vital in building this awareness, by sharing the benefits of what private equity can bring to economies and communities.

## Contact AVCA

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