# Exclusive Interview

# Managing critical relationships with regulators to get the deal done

**Africa is in the midst of a geopolitical transition. Brunswick caught up with Boye Gbadebo, Managing Director at African advisory firm Aké Partners, to discuss how organisations can use relationships to navigate regulatory and policy hurdles in this current environment.**

### What is the current state of regulators across Africa?

There have been great improvements in professionalism amongst regulators. I still remember a time when the head of a power regulator in a small West African nation would fall asleep during meetings. Those days are thankfully over.

This in part has been brought about by the return of the many highly skilled professionals from the diaspora who not only understand the private sector but are often more experienced than the individuals representing the companies they regulate.

The challenge that still exists is how to obtain expertise at all levels of an organisation. Our regulators are handicapped by a lack of funding. Governments do not have enough resources to compete with expertise in the private sector.

The health sector is an example. In some jurisdictions, it takes too long for drugs to be approved whereas in others they are approved too quickly. Consequently, regulatory compliance can be seen as a tick box exercise.

The other challenge in certain industries is a high degree of mutual mistrust. For instance, sometimes when “Big Pharma” convey a message to governments, it is met with scepticism and suspicion. I guess that is why companies like ours are in business.

### How have you navigated regulatory relationships?

Our preference is a proactive approach whereby constructive relationships are formed before problems arise. Linked to this is having mature local expertise with the right networks. There is no substitute for experience.

Our teams seek to identify policy and regulatory issues early, thus helping the client and governments to put into place interventions. It is important to have people who are commercially astute but also understand the issues as the government sees them. They are therefore able to work out how the interests of both the client and the government can be aligned.

### Some believe that the key to regulatory approvals is “brown paper envelopes.” What’s your view?

Ethical government relationships should be at the cornerstone of any engagement. It is important to note the positive changes happening within the regulatory environment in the region. Unethical practices are becoming part of

Africa's past, not its future. Consequently, as a starting point a company should operate in a manner that does not give rise to any issues arising from anti-corruption legislation such as the US Foreign Corrupt Practices Act.

Hence the importance of strong relationships where the official understands the fact that a client does not tolerate corruption.

Our experience has been that companies offering some form of pecuniary benefit to officials to circumvent regulatory requirements is becoming an outdated notion that does more long term harm to companies than good.

### What do we need to change for this perception to move on?

President Buhari of Nigeria at the recent meeting of Africa Union (AU) leaders highlighted the need for anti-corruption to be placed high on the agenda. He emphasised the need for institutions to be strengthened, advocated for an African youth conference against corruption, and called for the implementation of the AU's Prevention and Combat of Corruption recommendations and strengthening of the criminal justice systems on the continent.

These are all good points and a change in the continental mood around corruption is required. Nevertheless, this requires more people at the top to take a lead.

***Leaders must have a zero tolerance towards corruption. They should appoint regulatory heads based on ability not patronage.***

This is happening in several countries, for example Rwanda, Tanzania and Nigeria. If more and more companies take a stand against corruption this too could force a change.

Also, as elections have become more transparent and democracy more embedded in the consciousness of the electorate in sub-Saharan Africa, candidates have had to become more responsive to the socio-economic zeitgeist. People in the region are fed up with the socio-economic cost of corruption and the unaccountability of those involved in it.

What we are seeing is a trend towards leaders coming to power on a platform of good governance and pro poor policies. Examples include George Weah in Liberia and John Magufuli in Tanzania.

Leaders have realised that not only can they win elections on a clean government platform when elections are free and fair but implementing clean government policies creates good PR both domestically and internationally, assisting a re-election campaign as well as lowering the cost of borrowing on the international market.

## Why multinationals find themselves in trouble with regulators

### Regulatory perspective

- Weak, contradictory and inconsistent actions which make it difficult for a market participant to respond coherently and correctly. This is no excuse for being in breach of rules but does explain why certain companies find themselves in that position.
- Growing regulatory dynamism in the region due to additional expertise from internationally gained experience. Regulators are also learning from one another – e.g. the trend of using fines as a way of raising revenue. After the large fine on MTN in Nigeria, other telecommunications regulators began increasing their fines as well as market surveillance.

### Company perspective

- There is a tendency for companies which are initially successful in emerging markets to be quite adventurous and aggressive. This is useful for driving up profits but can have negative regulatory compliance consequences.
- Companies failing to read the winds of change. A change in government in Nigeria on a promise to eradicate corruption and proper governance was accompanied by a new regulatory approach. There was pressure on the regulator and government to make a statement. Certain companies that had hitherto enjoyed a good relationship and understanding with the previous regulatory order, were unable to change.

### How important is an understanding of cultural nuances to deal making?

It is essential. Africa is strewn with investments that have come unstuck because of a lack of cultural due diligence. Attitudes in Cape Town will not necessarily work in Kaduna. Moreover, because countries' borders in our region have been arbitrarily constructed, cultural nuances within a country become very complex.

### It's an interesting time across the continent with Cyril Ramaphosa as South Africa's new President, Emmerson Mnangagwa as President of Zimbabwe, John Magafuli trying to clean up Tanzania and João Lourenço in Angola. We are seeing more examples of this. How do you see this changing regulation and relationships across the continent?

The economic and political future for this continent excites me because it bears out what we have been explaining to clients for some time. That there is an appetite for good ethical business practices.

This "good governance" trend has not caught the attention of the mainstream global media but it is easily one of the most important trends to be seen in the region for decades. Consequently, economies will grow as FDI flows increase attracted by a regulatory playing field that is not made uneven by corruption.

### What do you think are the key drivers to attract foreign investment?

If one looks at the favourite four countries for FDI flows – South Africa, Egypt, Morocco and Nigeria – what links them is that they all have become regional economic hubs. They have a relatively large educated middle class, who are consumers and reduce the need to import people from abroad.

A key driver is stability and certainty; whether it is political, fiscal or regulatory. Investors need to be able to fully understand the risks of the landscape before entering. The mining charter in South Africa has given rise to a great amount of uncertainty. There have been a number of examples of uncertainty around tax laws across the region. This lack of certainty gives rise to disputes between multinationals and governments which often have divergent interests. Have a look at the mining sector in Zambia if you want to know more about this issue.

## Africa's relationships with the East and the West

I remember when putting together a project finance deal the players were either from the US or Europe and occasionally Brazilian. Now Chinese, and increasingly the case Russian, companies have become viable options.

The nationality of foreign partners should be less important than the viability of the project and ensuring it is fit for purpose. Projects should be approved on a transparent basis, fulfilling the long-term objectives of the country, affordable with a reliable and technically sound partner.

That being said, China is Africa's main export market and also its largest source of imports. China accounts for about 20 per cent of imports in Sub-Saharan Africa and about 15 per cent of its exports. China is also the region's largest lender, and is crucial to the economic development of the region.

Global M&A volumes by Chinese companies in 2017 amounted to US$150 billion, whereas volumes from the US were US$170 billion. China is catching up with the US regarding global investment. However, the vast majority of deals with China were in commodities and utilities and therein lies the issue. Africa is too dependent on the export of raw materials. Many commodity rich African countries, such as Equatorial Guinea, South Africa and Angola have a significant exposure to China. Politically, African countries also need to manage the sometimes-negative perception of China, in particular by local people.

We are also seeing US and Chinese government-led initiatives to support their companies in doing business in Africa. For example, former President Obama set up Power Africa in response to the role the Chinese government was playing in sweetening power deals in the region. Essentially, government policy and investment are closely aligned when doing business in Africa.

### Do you believe Sub-Saharan Africa has the policies to support growth through M&A and FDI?

Growth in M&A and FDI would increase exponentially if borders were opened and free trade permitted. Regional economic blocs are looking at removing barriers to trade between member countries. Unfortunately, progress has been slow. This has been in part because the only major good the countries import from each other is people, exports are sent to the US, China and Europe. The main economic power house in each block has labour issues of its own without the need to import more.

The Tripartite Trade Agreement signed two years ago between the economic communities of the Southern African Development Community, East African Community and the Common Market for East and Southern Africa countries is a significant and important step towards free trade in the continent. If this agreement can be realised it will attract significant FDI flows into member countries.

### What about private public partnerships (PPP)?

Infrastructure will continue to attract the greatest FDI flows for the next ten years. Nigeria needs regular power to drive its hopes at diversifying the economy. The road networks in the region are poor. Water in Southern Africa will be a significant risk unless it attracts major investment. The growth in the young population requires schools to be built.

It is easy to see the attraction of PPP. African governments lack the funding to support their infrastructure needs.

The chance of moving a significant capital cost of governments' balance sheets to the private sector is very attractive. Moreover, the private sector is so much better at implementing large complex projects than governments.

### What are the stumbling blocks?

The challenge with PPP is getting the profit: cost elements right both for the private sector and the government. The recent insolvency of Carillion in the UK was in part due to a wrong cost structure for implementing PPP projects. However, if they are drawn up correctly they can be mutually beneficial.

A further stumbling block is ideological. African governments are concerned that they may lose their economic leverage and sovereignly over the economy if they increase the role of the private sector.

### Where do you see the opportunities?

Entertainment – this will be driven by Nigeria. Already we are seeing Nigerian artists and movies becoming popular not only in Africa but in more mature entertainment markets such as the UK and US.

Power – the provision of power is not fit for purpose. It is too centralised and expensive. Gas – cleaner energy sources such as gas are going to play a larger role in the future. Nigeria, Egypt and Algeria will be the main players in this area.

Logistics and distribution – as we move to the "Internet of things", it is vital to watch this area.

*Interview conducted by Iris Sibanda, Partner with the Johannesburg office of Brunswick Group.*

## About Boye Gbadebo

Boye Gbadebo is the Managing Director at the government relations, regulatory risk and public policy firm Aké Partners. A former senior lawyer at Barclays Africa, UK-born Mr. Gbadebo is a Nigerian who speaks English, Russian, French and Yoruba. He has more than 20 years' experience in advising clients on regulatory and public policy matters, and on entering and operating in markets across sub-Saharan Africa, with a focus on West Africa.