



Security and regulation

Identifying and mitigating risks

Businesses must ensure that employees, especially those in the field, are provided with statements of policy and detailed guidelines that help them to conduct business in a safe, respectful and effective manner.

Overview

Mineral-rich, with substantial oil and gas resources and low operating costs, Africa is an unparalleled investment opportunity for the extractives industry, but endemic political instability creates security risks for businesses. As industry experience in Africa grows, businesses become increasingly comfortable with the environment in which they operate, particularly in places sympathetic to foreign investment. However, the violence following Kenya's 2007 elections showed that no investment is insulated from political violence and businesses must continue to implement elevated security measures for operations in the region.

Risks to your business

Large-scale extractives operations in Africa need to be more involved in security provision than they might be in some other regions. The business may need to provide financial support to poor governments to enable them to provide adequate security, it may need to hire local personnel who may have a political agenda and it may need to source security equipment and specialists from Europe and North America.

Sanctions

Some operations will need to take place in states subject to UN or unilateral sanctions regimes. Sanctions may impede the provision of military or security equipment to state security forces. The increasing activism of states in sanctions, particularly in the context of terrorism, means that businesses can no longer focus solely on the UN Security Council, but must keep a careful eye on developments in a number of key states.

Human rights breaches

One of the most difficult-to-assess aspects of conducting security operations in Africa remains the risk of incurring liability for breaches of human rights norms. The mere presence of security personnel and security equipment in a volatile environment creates the potential for the use of excessive force or the misapplication of resources to political purposes. Complicity in such wrongdoing can result in liability for corporations both in the host state and beyond, as some states, including the US, have legislation enabling them to take action against human rights violations abroad. The US Alien Tort Claims Act sets out an expansive regime and requires only a very limited link to the US. A recent trend towards human rights litigation against corporates has coincided with the establishment of the International Criminal Court and development of governmental enthusiasm for 'universal jurisdiction' over international crimes.

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Reputational risk

Even in the absence of litigation, the reputational risk in this field is substantial. Furthermore, even when the allegations are not true, or are remedied, corporations may remain tainted by allegations, impairing goodwill in the consumer market and affecting their ability to raise financing. The adoption by many financial institutions of 'soft law' instruments such as the Equator Principles and the Voluntary Principles on Security and Human Rights mean that businesses implicated in human rights violations may encounter difficulties in raising financing until the issue is definitively resolved.

Actions to mitigate risk

Policies, guidelines and manuals

Businesses must ensure that employees, especially those in the field, are provided with statements of policy and detailed guidelines that help them to conduct business in a safe, respectful and effective manner. Clear policies circulated to the operational staff and accompanied by detailed field guidelines for security personnel are of critical importance. These may need to regulate everything from the use of force to vehicle branding and should be 'localised' to take account of the security situation at each site, to ensure that employees know what is expected of them in practice. Localisation can be achieved partly through the engagement of local stakeholders represented by civil society representatives and local government, particularly in the design of grievance mechanism and dispute resolution tools.

Compliance training and monitoring

Policies and guidelines must be supported by compliance training, ensuring that security personnel are clear on the rules on dealings with local communities. Once the policies and training programmes are in place, monitoring mechanisms, compliance audits and internal investigations should be deployed to ensure effectiveness, and to identify breaches, enabling them to be remedied before they pose a risk to the business.

Local authority relationships

One of the most complex elements of conducting operations in Africa can be the fluid and unpredictable relationships with local authorities. The key to navigating these difficulties is to use legal instruments to regulate relationships with government. Memoranda of understanding with the host state, combined with carefully negotiated host government agreements and licences, and full awareness of investing companies' rights under bilateral investment treaties, will assist in ensuring that extractives operations can take place in a stable environment.

Where we have seen this before

We have advised a major hydrocarbons company on the adaptation of its security procedures to better comply with international human rights norms. We guided the company through the adoption of the Voluntary Principles into its internal guidelines, and the drafting of a model state memorandum of understanding and framework field guidelines. We were then able to assist the company by advising on security in land and sea operations in and near Africa, drafting theatre-specific advice to help manage the company's risk profile.

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Opportunities and risks in the extractives industry