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Navigating Cross-Border Risks in Africa's Extractive Industries Amid Global Tensions

Africa's extractive industries are fast becoming one of the world's most contested investment arenas amid surging demand for critical minerals. However, rising nationalism, shifting political dynamics, and intensifying geopolitical tensions are increasing cross-border risk. These forces are driving regulatory change and disputes across the sector. Investors should adopt practical strategies to protect assets, manage political exposure, and respond to enforcement and cross-border challenges.

Africa's extractive industries are drawing increasing global attention as demand for critical minerals accelerates. However, that surge collides with aggressive resource-nationalism policies, shifting domestic power dynamics, and intensifying geopolitical competition. While opportunities arise, increasing risks are transforming the continent into a high-stakes battleground for global investors.

Recent developments underscore the challenging landscape:

- **Strategic Mineral Nationalism:** Several African Governments are tightening regulations to increase state participation in mining projects, raise royalties, and impose local requirements. These measures aim to capture greater domestic value from natural resources while requiring foreign investors to adapt their operational strategies.
- **Geopolitical Competition:** Africa's critical minerals, essential for electric vehicles, renewable energy, and advanced technologies, have attracted heightened interest from global powers, including the U.S., China, and increasingly the Gulf states in the Middle East. Geopolitical competition influences investment flows, regulatory scrutiny, and diplomatic engagement, particularly in countries controlling cobalt, lithium, and rare earth minerals.
- **Cross-Border Investment Disputes:** Rising investment in joint ventures and cross-border mining projects has led to a **potential** increase in disputes between foreign investors and domestic partners. Conflicts over ownership, profit-sharing, and operational control are expected to grow, particularly in sectors involving critical minerals tied to global supply chains.

While the decision to operate in volatile markets can be a lucrative one, businesses and individuals can take proactive steps to ensure their investments stay protected, including:

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1. **Prepare for Increasing Political Tensions.** Elections and shifting government priorities may increase risk of tensions with state-owned partners and national regulators. Investors should prepare for increased scrutiny and actively defend commercial interests amid changes in the public policy environment that may threaten their operations.
2. **Assess Asset Vulnerabilities Against Future Attacks.** Companies and individuals at risk of attack by government authorities or politically motivated third parties can consider a detailed examination of their asset structures – including those in offshore jurisdictions such as the British Virgin Islands and the Cayman Islands – and explore lawful preventative and defensive measures that can be taken should such attacks be launched. Some of these include deploying offshore strategies with foreign entities that hold share interest in the local companies being targeted, or restructuring relevant parent companies to limit potential exposure.
3. **Focus on Local Decision Makers.** Understanding key local decision-makers' motivations is a crucial component of staying on top of any potential political or economic attack. Offensive investigations targeted against potentially compromised decision-makers may uncover specific evidence demonstrating the illegitimacy of possible claims. If such a threat comes from corrupt actors, third-party governments can provide support through criminal investigations and/or economic sanctions against the wrongdoers.
4. **Proactively Collect Evidence for Global Use.** When facing politically motivated allegations, it is important to quickly – and pre-emptively, gather evidence to prove lawful conduct. Ideally, evidence should be collected and prepared in a manner acceptable to international regulatory authorities to effectively halt politically motivated investigations and preserve a company's brand (both in-market and globally). Amid volatility, investors must monitor potential changes in mining regimes, licensing, and contractual terms that could affect ongoing operations.
5. **Consider Cross-Border Enforcement.** For creditors and investors being politically targeted for looking to collect what is legally theirs, a clear understanding of enforcement strategies against sovereigns across jurisdictions can often build the leverage needed to reach successful recoveries. For example, leveraging the role of large international organizations (e.g. World Bank, International Monetary Fund) can be an effective pressure point when paired with ongoing litigation efforts. Companies at risk may also consider initiating investment treaty claims against countries that have ratified bilateral investment treaties for their failure to protect local business.

Ongoing political and economic volatility across Africa poses serious risks to investors and other key individuals, particularly if they become targets of politically motivated enforcement actions. To safeguard their businesses, reputations, and potentially their personal liberties, parties should consider taking pre-emptive measures where such risks appear likely.

About Kobre & Kim

Kobre & Kim is a global law firm focused on disputes and investigations, often involving fraud and misconduct.

To preserve the assets, liberty and reputation of individuals and their global business interests, our firm:

- Provides offensive and defensive cross-border litigation and crisis management strategies in court and out-of-court.
- Brings together roughly a dozen former U.S. and UK government lawyers in EMEA, Asia, Latin America and the U.S., including former prosecutors from the U.S. Department of Justice (DOJ).
- Has deep experience with global foreign policy, national security and economic controls and regularly interfaces with regulatory agencies that impose these controls.