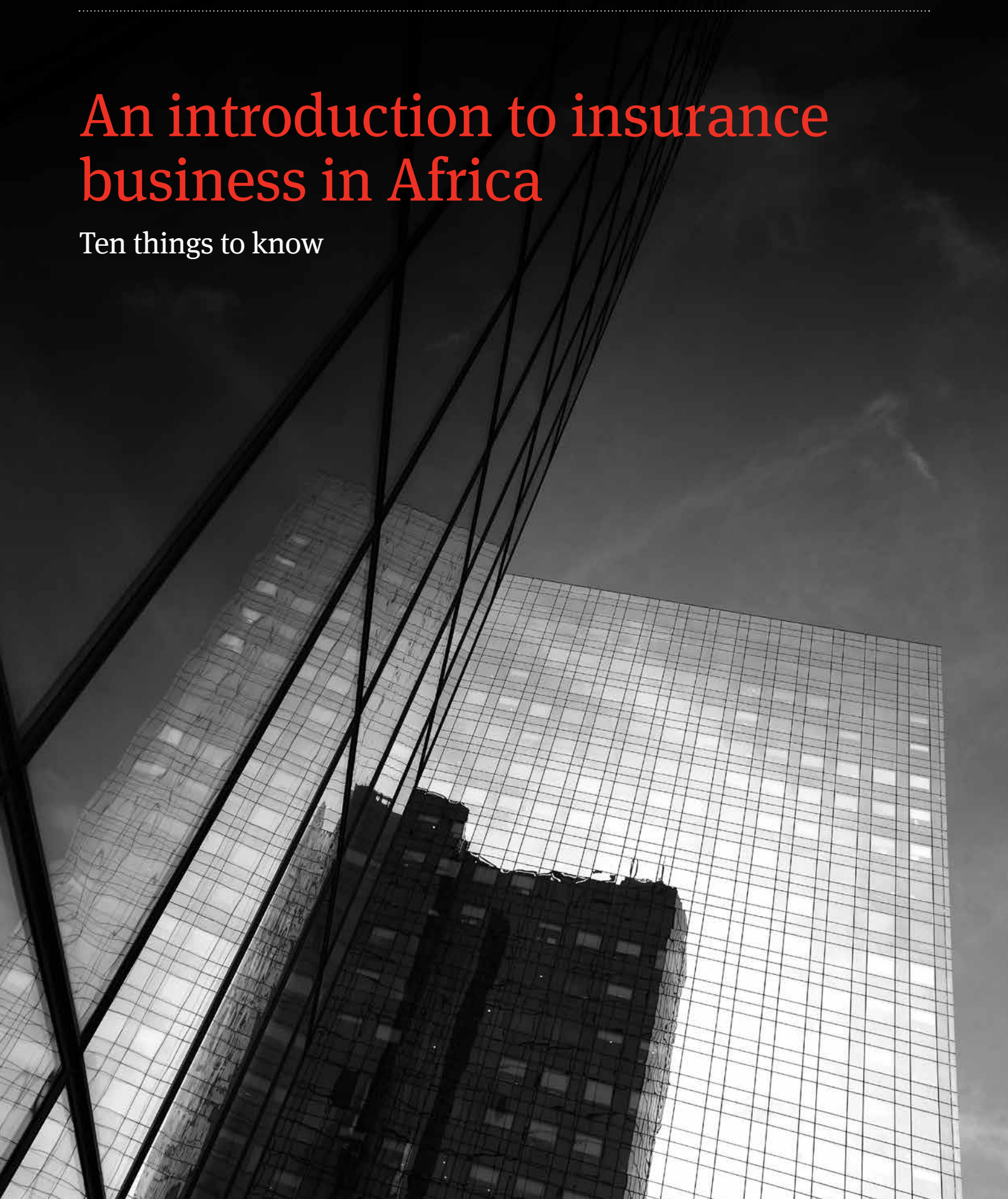


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An introduction to insurance business in Africa

Ten things to know



An introduction to insurance business in Africa

Africa is a diverse, developing and exciting continent with many opportunities. The insurance market is largely untapped. There is the potential to introduce or develop innovative offerings. There is scope for Shariah compliant insurance because a large proportion of the African population is Muslim. The concept of bancassurance is gaining ground and using the more developed banking sector to tap into the insurance market is an interesting prospect. There are many opportunities in Africa but you need to be mindful of the following legal issues.

01 | Jurisdiction

Africa is made up of 55 states. It is vital when doing business in Africa that laws specific to each country are considered. They differ considerably from country to country.

Across Africa there is a mix of common law and civil law jurisdictions. Civil law jurisdictions are found mainly in central and west Africa, whereas common law jurisdictions generally prevail in sub-Saharan Africa. Countries may have a hybrid system. For instance South Africa incorporates principles of a Roman-Dutch based common law with English commercial law influence, and some local customary law mainly applicable to local individuals.

02 | Regulators

Most African countries have insurance regulations and legislation in place and licences are required to do business (it is not just a system of policies and informal practice, although practice may impact more heavily in some jurisdictions).

The extent of regulation varies across the continent and the more sophisticated legal systems are usually less bureaucratic. Various regions are working towards harmonising certain laws. For example the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) was created to harmonise commercial laws for signatories who are mainly francophone countries. The East African community has been in talks to harmonise insurance regulation, for countries including Uganda, Kenya, Tanzania, Rwanda and Burundi.

03 | Ownership and indigenisation

Foreign investment is generally welcome in Africa but there are local law conditions that require a specified percentage ownership or employment for citizens (which could also have employment law implications). Depending on the jurisdiction, 100 per cent foreign ownership of an entity may not be possible. For instance, indigenisation policies may require local shareholding in foreign-owned entities.

04 | Foreign insurance and reinsurance restrictions

There are various laws requiring the placing of insurance business with locally registered insurers. It is easier to place reinsurance rather than direct insurance offshore, but in some cases even a percentage of the reinsurance has to be placed locally.

An entity's solvency and capital requirements must also be carefully considered for each jurisdiction, as these will be regulated.

05 | Local partners

It may be necessary or advisable to partner with local insurers in order to comply with local ownership requirements. Engaging with local partners will facilitate business and assist in understanding the business culture. Making use of trusted local counsel (ask us) is worthwhile.

06 | Exchange control

Approvals may be needed for receiving premiums or paying claims cross-border. For instance in South Africa, the approval of the relevant regulator and the South African Reserve Bank is required for cross-border flow of money. There are also tax implications to consider.

Some regions are working at facilitating cross-border trade. For instance the Common Monetary Area, which includes Lesotho, South Africa and Swaziland, has agreed to accept South African Rand as the common currency for the area (even though they all still have their own currencies).

Some countries have quirks relating to their local currency. For instance the Malawi Kwacha and Ethiopia's Birr are not tradable and therefore the method and currency of payments cross-border is an issue.

07 | Policyholder and consumer protection

Consumer protection is on the rise in Africa but is not fully developed yet. You are likely to find consumer protection requirements in various pieces of legislation. The development of overarching codified consumer protection rules are yet to be developed in many states. South Africa is a front runner in this regard, with a dedicated Consumer Protection Act as well as Treating Customers Fairly principles for the insurance industry.

08 | Data protection

Data protection and protection of personal information is developing and many states have specific legislation in this area. Angola's data protection law is particularly strong. South Africa has passed the Protection of Personal Information Act, to be in line with international data protection standards.

09 | Choice of law and dispute resolution

Choice of law clauses and arbitration clauses in insurance contracts are important. It is usually quicker to enforce rights through independent arbitration due to the fact that the parties have more control over driving the process to completion.

There are a number of good jurisdictions for arbitration. These include the Arbitration Foundation of Southern Africa, the London Court of International Arbitration in Mauritius, The Cairo Regional Centre for International Commercial Arbitration and the Common Court of Justice and Arbitration in Côte d'Ivoire.

A number of African states have acceded to the New York Convention which provides for the recognition and enforcement of foreign arbitral awards.

10 | Competition laws

Apart from various African countries having their own competition laws, the Common Market for Eastern and Southern Africa (COMESA) aims to harmonise competition laws across its area of operation. The 20 African countries that are members of COMESA form a Common Market for the purpose of regional competition law regulation. The member states include Kenya, Libya, Mauritius, Uganda and Zambia.

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