



BOWMANS

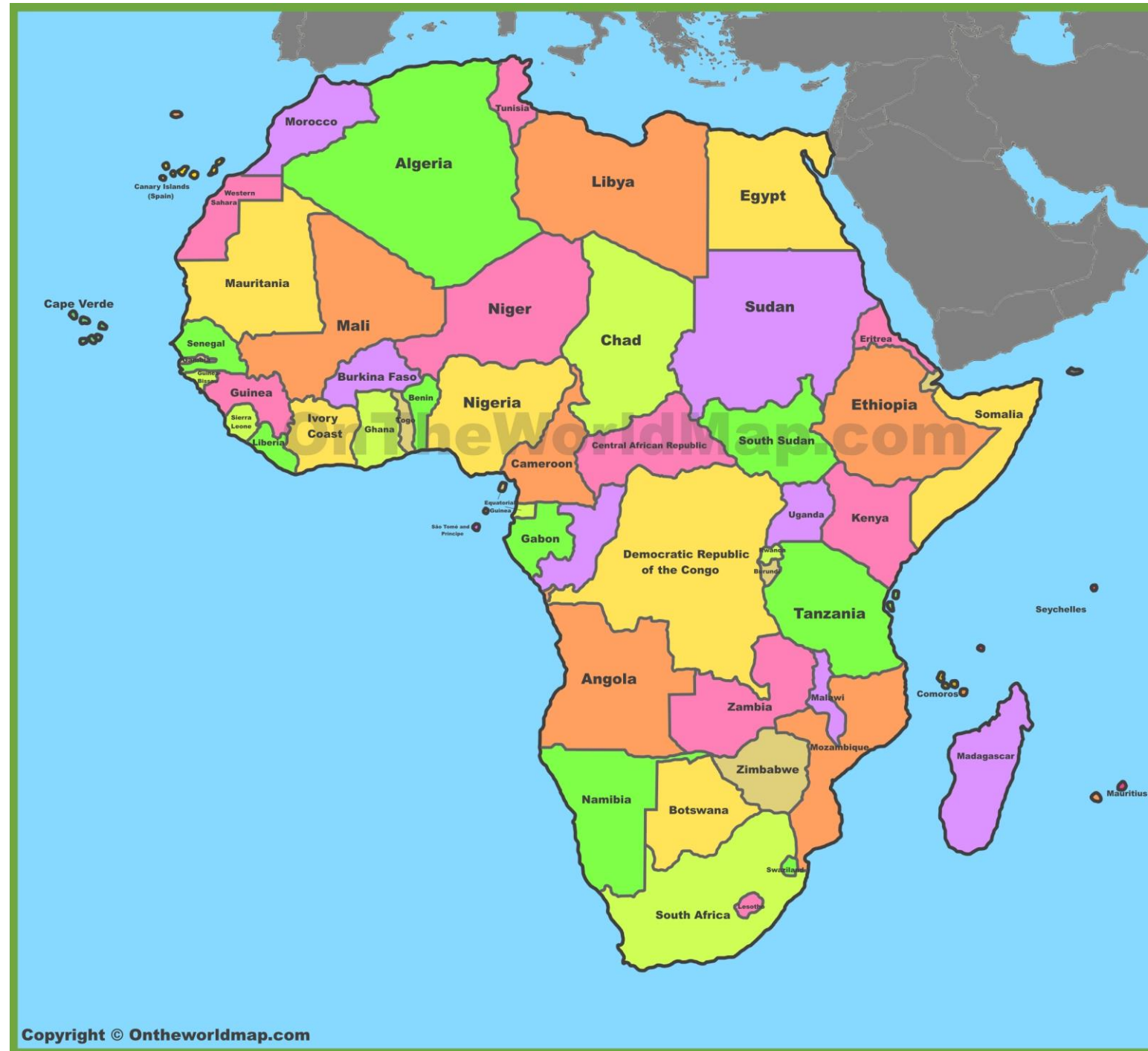
THE VALUE OF KNOWING

HOW TO HANDLE EXPATRIATE CONTRACTUAL DISPUTES

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AFRICA



- Each has its own Labour Legislation
- Applicable to all employers and employees
- Not contract based
- Courts/Tribunals/Regulators enforce laws

Simplest Contractual Arrangements

- Local employer
- Contract drafted compliant with legislation
- Understanding local legislation
- Using local lawyers/HR Practitioners
- Incorporate expatriate terms

Expatriate Terms

- Remuneration
- Protection against local currency fluctuations
- Compliant with local tax and foreign exchange laws
- Housing
- Transport
- Medical support
- Relocation allowances
- Education support
- Family arrangements
- Flights to home country
- Duration
- Termination arrangements
- Visas
- Localisation

Understanding Local Legislation

- The basics
- Complexity and oddities
- Regulators/Courts/Tribunals
- Expecting the unexpected

Secondment Arrangements

- Additional complexity
- Dual employment arrangement
- 2 possible sources of law
- Forum shopping

Simplest Secondment Arrangement

- Local primary contract
- Offer to employ on completion
- Offer contains:
 - Position
 - Benchmark salary
 - Acceptance conditional on successful completion
- No remuneration or benefits payable while on secondment
- Single current employment arrangement

Secondment Arrangements – Evolving Complexity

- Home (foreign) contract only
- Dual employment contract
- Neutral jurisdiction contract (with/without local contract)

Home (Foreign) Contract Only

- Problem of no local employer
- Enforcing jurisdiction and court orders
- Forced registration
- Tax registration and compliance
- Foreign exchange compliance
- Visa compliance
- Contract seeking to determine applicable law

Dual Employment Contract – Primary Local Contract

- Ongoing home employment contract
- Primary employment contract
 - Local remuneration and benefits
 - Compliance with local legislation
 - Housing/transport/education etc.
 - Secondment period
 - Termination arrangements
- Home contract
 - Maintenance of benefits (pension/medical aid)
 - Continuity of employment
 - Benchmark remuneration
 - Position
 - Arrangements on return
 - Termination arrangements

Complexities

- Termination by local company for cause
- Local jurisdiction
- What happens to home contract?
 - Re-employ?
 - Simultaneous termination?
 - Breach of duty to local company
 - Breach to home company?
 - Local company as agent
- Home contract jurisdiction

Neutral Jurisdiction Contracts

- Isle of Man
- Little risk of home country intervention
- If retrench little protection
- Suitable for internationally mobile
- Pension/medical arrangements

Our Courts/Tribunals Attitude in dealing with extra-territorial disputes

- Kleinhans v Parmalat S.A. (Pty) Ltd [2002] ZALCD
- Astral Operations Ltd v Parry (2008) 29 ILJ 2668 (LAC)
- Monare v South African Tourism & Others [2015] ZALAC

Arbitration Clauses – Unfair Dismissal Disputes

- Attempt to define tribunal
- Attempt to define law
- Attempt to define country
- Introduce certainty
- Courts/Tribunals attitude to arbitration clauses

Arbitration and Choice of Law Clauses – Contract Disputes

- Restraints
- Intellectual property
- Foize Africa v Foize Beheer (752/2011 Zasca 123)



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THANK YOU

