UHY

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International Business

The network for doing business

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Africa: now a business case, no longer a handout case

Talk with Lindsey, a 19-year-old living in Lusaka, capital city of Zambia, and she'll tell you more about who's topping the American rock music charts than you'll ever know. Ask her about clothes, and she'll point to the couple of designer-label outfits (probably fake, but who worries) in her wardrobe, next to her line-up of cosmetics. Ask her what her ambition is, and she'll tell you about the job she intends to get in the US, or Europe, after college, and how she wants to marry a European (not an American apparently, although she doesn't say why).

Dream-world or reality? There's no doubting her aspiration – and after an hour or so in her company you're certain she'll achieve it. Not bad for an African orphan, in a residential children's home, after a highly traumatic start in life.

But, if you believe her carers, Lindsey typifies ambition among Zambia's middle-class-to-be teenagers – not content to accept what their parents regarded as their fate: the swirling red dust, the mud huts, the lack of money to buy food, the potholes in the dirt roads, the hours it takes to walk everywhere when you haven't got transport, the beatings men give to their women, the deaths from AIDS at a young age, the governmental corruption…

Zambia, like many of Africa's developing countries, will not change dramatically in one generation, but the pace of change is taking shape. And guess who are taking up the opportunities first: a huge roadside sign at a major Lusaka crossroads celebrates China's investment in new factories creating new jobs; a gleaming, glass-fronted Japanese embassy highlights the gap between rich and poor.

Economists from global bank Standard Chartered argue that sub-Saharan Africa is in a similar position economically to where Brazil was 20 years ago. It is, they say, an emerging market and a new global player, where investors are currently cherry-picking their opportunities, inspired by an abundance of natural resources, relative political stability and corporate pioneering.

The International Monetary Fund (IMF) points to sub-Saharan Africa's "virtuous circle" of factors that feed off each other, creating growth: exports and imports up; banks unfreezing lending; inflation low; private finance growing again; governance improving; and conflicts decreasing.

Its development seems encapsulated by the first flight touching down at Accra airport on a new Virgin Atlantic route between London, UK, and Ghana. The airline's leader, Sir Richard Branson, gets off the plane to announce: "This is a growing continent with growing prosperity." At a party that night, Sir Richard rubs shoulders with Westerners looking for an opportunity in a country that has recently discovered large reserves of oil and gas in its Jubilee Field, off the coast.

And Ghana is top of the list for US president Barack Obama who makes the country one of his first overseas visits. In the streets around his hotel, adverts for Vodafone, Standard Chartered and Barclays flutter, seemingly on every corner.

Standard Chartered's analysis of sub-Saharan economies, based on its interests in the Asian and African retail and corporate markets, refers to downsides, but the overall outlook is positive: growth and more growth, spurred on by increased consumption of goods, a growing middle class, an increase in agricultural production, and a rapid rise in commodity prices (for oil, gold, copper and platinum).

"Whereas in the past the West was the place where investments came from, and exports went to," says Standard Chartered chief executive Peter Sands, "the big story now is Asia. You see, particularly, Chinese investment in Africa and exports to China. But not just to China – to Singapore, India… many markets.

"It very much started as commodity-driven growth. Increasingly, there is now more interest in Africa as a source of agricultural produce and a place in which goods can be sold. In Nigeria, for example, China sees it as a market as well as a source of goods."

China confirms that Africa (rather than the US) is now viewed as its most important trading partner for growth: in South Africa alone, the China-Africa Development Fund and cement producer Jidong Development Group have backed a USD 218 million cement plant; the Industrial and Commercial Bank of China has made a USD 6 billion investment in South Africa's Standard Bank; Chinese car maker FAW has announced a USD 160 million investment in the country…

The Standard Chartered report shows that China's exports to Africa overall rose by 22% year-on-year in the first four months of 2010; China's imports from Africa surged by 160% in the same period. Africa now accounts for as much as 4% of all China's exports and 5% of its imports. And China's investment in Africa is expected to hit USD 14 billion by the end of 2010 – 15% of all Chinese investment abroad. Mining, oil and infrastructure projects are the leading sectors for investment from Chinese state-backed corporates in Africa – where, largely untapped, is 40% of the world's natural resources.

"You go anywhere in Africa and the scale of Chinese involvement and the number of things it touches is everywhere," says Sands. "It is easy to underestimate because it isn't on the radar screens. The number of business articles written about what's going on in, let's say, Ghana, are few and far between."

Yes – there are exceptions among the sub-Saharan countries; but even in Zimbabwe there are signs of emerging growth. Wolfram Klingler, of Altira Group, which invests in southern Africa, says Zimbabwe "might have been a bad place to be, but that was true two or three years ago. It is coming out of deep trouble, with the dollarisation of the economy, and has one of the most skilled workforces in Africa". Renaissance Asset Managers' Renaissance Africa Fund reinforces this view: its investments in Zimbabwe returned more than 70% last year – one of the fund's best-performing assets.

By comparison with Asian investment, Europe and the Americas mostly view Africa through an outdated prism and fail to see the opportunities, according to the Standard Chartered report. With some notable exceptions, Europe plays "second fiddle" to Chinese competitors. When South Africa's President Zuma visited London, UK, last year his message was succinct: some in the West have entrenched views about Africa (starvation, AIDS and coups) and underestimate changes taking place.

Yet some smarter financiers have had their eyes on (and their money in) Africa funds buying into telecommunications, banks and infrastructure. The Emerging Africa Infrastructure Fund, backed by USD 150 million from several European governments, then leveraged up to USD 500 million by development finance institutions and commercial banks, has invested in the development of a port in Ghana, a power plant in Kenya, hydro-electric projects in Uganda, and a steel producer in Nigeria. Governments behind this investment, in the form of the Private Infrastructure Development Group, did not do this as a charitable exercise but "to help mobilise private investment through a carefully crafted public-private partnership": suggesting the West is beginning to treat Africa as a business case, rather than a handout case.

And Africa's trailblazing corporate pioneers of former days are selling up handsomely to the big brand investors – people like the UK entrepreneur who took up a job at the University of Lusaka, developed Zambia's biggest mobile phone operation in his spare time, and sold it last year to Vodafone.

The benefit to Africa – and thus the world – of this intensive investment, in telecommunications in particular, is that it increases productivity: market stall holders can call for more inventory when demanded by customers, or they can access competitor prices elsewhere; and traders can securely transfer money over their phones, creating a much more liquid system.

There was a fear in 2008, during the global economic downturn, that Africa would suffer greatly, as a weaker player trampled underfoot by the recession, says Sands. "I actually think that sub-Saharan Africa has fared rather better through the crisis than you might have thought. Its direct exposure was relatively limited and its indirect exposure was relatively short-lived. It didn't benefit that much from the huge capital flows that were happening within the international financial markets, so didn't have that much to lose when those flows stopped happening.

"The most significant impact was the drop in commodity prices which led to a loss of employment, but commodity prices went down sharply then bounced back sharply."

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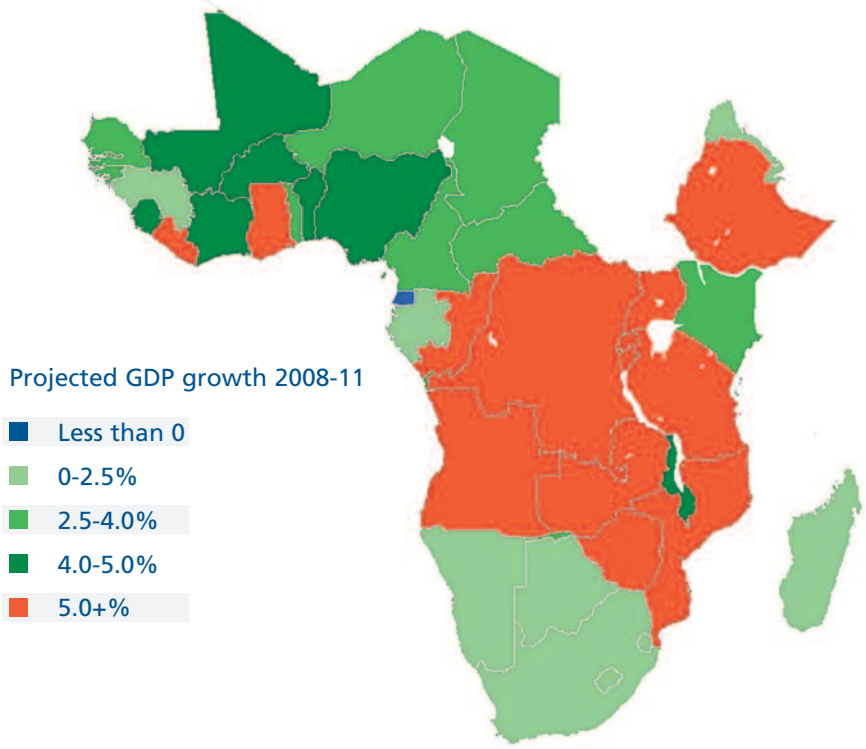
Results of sub-Saharan Africa projected GDP growth for 2008-2011 are here:



It would be naïve to claim that this is the whole story, of course. Africa is still flush with risks – corruption, accidents, incompetence, economic overheating – but risks can be priced in, says Standard Chartered. It argues that sub-Saharan Africa could now be in a similar position as was Brazil 20 years ago. But can it echo Brazil's success in, say, the likes of Congo?

> *'In sub-Saharan Africa there are 800 million people (half of whom are under 16), with comparatively little infrastructure and poor access to 21st-century telecommunication.'*

"There's certainly the potential for Africa to play a much bigger role in the world," says Sands. "There have been issues around stability, but remember that is what they said about Brazil: 'it's got all this wonderful potential, why isn't it happening?' You look at Brazil now and it is becoming an important player in the world economy."

As Standard Chartered points out, the big mistake would be to think of Africa as one country, rather than as a continent made up of many countries, each with different cultures and business practices.

Equally, it would be wrong to think that corruption is being wiped out – far from it. Certain African countries still rank highly on Transparency International's Perception of Corruption Index – Botswana, Namibia, Ghana and Malawi are all ranked near the top of the scale. "Mid-level corruption can be most aggravating for businesses," says Thomas Cargill, of UK think-tank Chatham House – access to bids, for example, may be restricted.

"But, nevertheless, there are many positive trends," says Sands, "alongside the still-shocking poverty and corruption across much of the continent. But nothing, of course, is wholly straightforward and true for all parts of Africa."

A related factor is the ease of doing business. According to the World Bank's Doing Business 2010, Mauritius is the African country that makes it simplest for investors looking to set up and run businesses; and both Botswana and Namibia are well up in those rankings. Rwanda is the world's most reformed country (up 76 places to No 67); it's a desirable location for investment because the country is being built up from scratch.

Overall, Standard Chartered recognises it's time to look further than at the BRICs countries (Brazil, Russia, India and China) for growth – Africa is the only major area of the world left to develop. Yet there is a disconnection between returns Africa is bringing to companies and the seriousness with which it is being treated in boardrooms.

As Martijn Proos, senior investment adviser with the Emerging Africa Infrastructure Fund, puts it: "Tanzania with 40 million people has approximately 900 megawatts of installed power-generation capacity: my country, the Netherlands, has 16.5 million people and approximately 20,000 megawatts."

In sub-Saharan Africa there are 800 million people (half of whom are under 16), with comparatively little infrastructure and poor access to 21st-century telecommunications.

"If sub-Saharan African countries gain anywhere near the capacity of European nations," he says, "it will lay the practical and economic groundwork for the creation of a gigantic middle class, the traditional drivers of political stability and financial growth."

Meanwhile, 19-year-old Lindsey waits impatiently for it all to happen, mobile phone at the ready.

UHY has member firms in key regions of sub-Saharan Africa, notably in Kenya and Nigeria, as well as in other parts of the continent.

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Dispute resolution just got easier

Faced with the prospect of expensive legal representation and open-season publicity from public court battles – not to mention the risk of losing and costs being awarded – more companies are turning to arbitration in a bid to resolve disputes.

Just about any type of dispute can be settled through arbitration, including contract disputes involving competitors or consumers; intellectual property disputes; employment and labour claims; real estate issues; and civil matters.

What is arbitration?

Arbitration usually refers to a dispute resolution between two or more parties, using an independent or impartial third party or panel for the determination of a final and binding decision.

The independent person or panel is known as the arbitrator/s – and in most cases the arbitrator will be knowledgeable about products, services or issues involved in the dispute.

The process is designed to be private, informal, quick, practical and economical. It generally uses a commonsense approach, without all of the legal jargon and procedural manoeuvring that may happen in a court of law.

Depending on the rules of arbitration in particular countries, arbitrators are chosen by the parties involved in the dispute and their decision may be either binding (the decision is final and enforceable) or non-binding, in which case either party may reject the decision and opt to switch to litigation, or any other method, to resolve the dispute.

The most prominent feature of arbitration is that the arbitrators are private individuals without any formal connection to the government, or judicial system, of the country. Another important feature of arbitration is its lack of formality: procedures are relatively simpler than court litigations.

Advantages & disadvantages

Arbitration has several potential advantages over judicial proceedings:

- ***Ability to select arbitrators***
  When the subject matter is highly technical, arbitrators with an appropriate qualification or expertise can be appointed (you cannot choose the judge in litigation)
- ***Secrecy of the proceedings***
  Awards are generally not made public and can be made confidential
- ***Limited discovery***
  Extensive revelations are avoided
- ***Less adversarial***
  Often the process is less adversarial than in litigation, which helps to maintain business relationships between the parties
- ***Speed***
  Arbitration is faster than litigation in court
- ***Cost***
  Arbitration can be cheaper and more flexible. Parties save on legal costs compared with litigation
- ***Enforcement***
  In the US, through provisions of the New York Convention 1958, awards are generally easier to enforce in other countries than court judgements
- ***Finality***
  Arbitration decisions can be final – and normally there is no right of appeal, which in the litigation process may lead to protracted disputes or a higher court of law changing the award.

Disadvantages are:

- Some commentators say that arbitration does little to help parties learn how to resolve their own conflicts more effectively in the future
- There is no right of appeal, even if the arbitrator makes a mistake of fact or in law
- There is no jury – which the claimant may regard as a drawback
- There is the possibility of compromise – arbitrators splitting awards
- An arbitrator may make an award based on broad principles of 'justice' and 'equity', not necessarily on rules of law or evidence.

Arbitration worldwide

The number of international commercial arbitration cases has increased in recent times, particularly in emerging economies such as in China, India and Brazil.

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Brazil has a long-standing culture of arbitration dating back to the mid-1990s. In addition, mediation is being used more often in Brazil – parties are required by law to submit a conflict to mediation before initiating a lawsuit.

The most prominent organisation globally dealing with arbitration is the International Chambers of Commerce in Paris, France. Other leading international arbitration centres globally are the London Court of International Arbitration, UK; the American Arbitration Association; the Hong Kong International Arbitration Center, and many more.

In the United Arab Emirates there are three international arbitration centres: Dubai International Arbitration Center; Abu Dhabi Commercial Conciliation and Arbitration Center; and Dubai International Financial Center.

When choosing an arbitration centre, parties are advised to select one that has an international reputation and to ensure, in advance, that its awards are respected and enforceable in the parties' own domestic courts.

In Canada – where disputes are resolved at The International Centre for Arbitration, Mediation and Negotiation – many lawyers are certified arbitrators and, say expert observers, arbitration has become more popular than litigation.

Canada's arbitration culture is supported by the ADR Institute of Canada (ADR Canada) – a national not-for-profit organisation that aims to provide national leadership in the development and promotion of dispute resolution services in Canada and internationally.

An increasing number of countries are recognising that an enforceable arbitration system is relevant to attracting foreign investment within their borders and have brought in legislation that compels protagonists in certain disputes to try to resolve their differences through arbitration before resorting to litigation.

Meanwhile, even arbitration is not the best solution in certain disputes – and they can often be resolved through mediation.

Mediation uses a consensual decision-making process in which an independent and impartial individual (often a chartered accountant) is appointed as mediator. He or she works with the disputing parties to come up with a solution – ideally that is a solution for both.

A mediator has no decision-making authority regarding the outcome (and therefore has no power to impose a settlement) and does not offer professional advice. Hence, mediation differs significantly from either arbitration or litigation.

Tim Livingstone, partner at UHY's firm in New Zealand, UHY Haines Norton (Auckland), says: "While conducted 'in the shadow of the law', and while it may involve consideration of the parties' legal obligations, there are no formal legal procedures. The strict rules of evidence and principles of natural justice do not apply. At any time parties are free to accept or reject terms of settlement suggested during mediation."

Mediation is appropriate where:

- Parties have a genuine desire to reach settlement
- Parties need the opportunity to talk openly and frankly
- Relationships between parties are continuing
- Parties wish to determine their own outcome
- Parties wish to minimise legal costs and save time.

"The whole mediation process may be confidential and the 'without prejudice' rule usually means that information submitted or statements made by the parties cannot be used in subsequent legal proceedings," says Tim. "Everyone attending the mediation conference is bound by confidentiality provisions.

"A client advisor accountant plays a pivotal role: to project manage (in consultation with legal advisors) the process leading up to mediation, which requires either producing or obtaining from various experts reports supporting the client's position, such as valuation, economic and scientific reports and legal opinions.

Other advantages of mediation are:

- Parties retain control of the process (in litigation disputants delegate to their lawyers, and ultimately the court, the function of resolving their dispute)
- Disputing parties reach agreement that meets their needs and interests ('win-win' compared to litigation that provides only 'winner and loser' outcomes)
- Litigation and inter-communication within the adversarial system tend to escalate antagonism and emotions.

For details of UHY firms in countries that provide consultancy services please contact the UHY executive office.

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Renewable energy: where yesteryear meets tomorrow

Just down the dirt track is Cimarron, one of the US' old Wild West towns – little more than a creek, a crossroads and a ramshackle hotel where, it's said, Billy the Kid once drank, and where bullet holes in the ceiling have been preserved.

That's history. But neighbouring this world of yesteryear, in this remote spot in northern New Mexico, is the world of tomorrow. Welcome to Cimarron Solar Facility. It will be the biggest solar facility in the US when it is finished early in 2011. The half a million photovoltaic panels, covering 240 acres, will generate power for 9,000 homes.

These flat, glass-fronted panels, each four feet by two feet, are guaranteed to last for 25 years. They reflect the uptake of solar power among consumers and businesses – panels appear increasingly on rooftops everywhere in the region; they power small factories and, in one case, a small shopping centre.

But the Cimarron Solar Facility is on a different scale: it's immense. It is costing about USD 250 million to build – significantly less than a gas, coal or nuclear power station. And it represents a sea-change in America's new energy business.

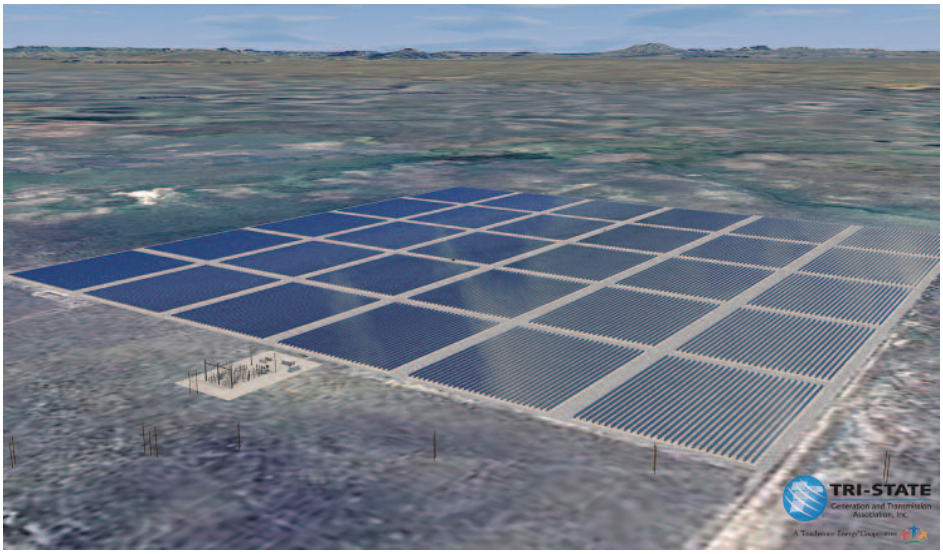
Until now the US has been notoriously devoted to hydrocarbon fuels. Oil barons funnelled money to scientists ready to pour doubt on the science of climate change, and conservative Republicans led the charge to pour scorn on those who were urging Americans to rethink where their energy was coming from. Cutting consumption and exploring renewable were not on the political agenda.

But times change and First Solar, the US' biggest solar energy company, which is building the Cimarron facility, sees commercial potential, now backed by political support, oozing from its investment. Plant manager Justin Bloch says: "There's a huge growth in interest and investment is accelerating. We're talking about billions of dollars."

Similar facilities are already planned, or under construction, in most of the US' 'sunbelt' states and there are ever-increasing levels of output in the pipeline. First Solar is even opening a plant near Toronto, Canada – a region not noted for its sunshine.

US President Barack Obama has gone out of his way to signpost the change of political will – visiting the Nellis Air Force Base in the Nevada desert for a tour of America's first solar power station, completed in 2007; visiting the new DeSoto Next Generation Solar Energy Center in Florida with its 180 acres of solar panels set amid orange groves. "There's something big happening in America when it comes to creating a clean-energy economy," he was quoted as saying.

The US Department of Energy, in its latest figures, announced a net fall in electricity production by 4%, mostly in coal and oil production, while renewable sources grew over the same period by 8%.



In the scheme of things, solar power is still a drop in America's energy ocean – green renewable represents only 8% of energy use (and of that solar power accounts for just 1%); while petrol accounts for 37%; natural gas 25%; and coal 21%. But president of the US' Solar Energies Industry Association, Rhone Resch, believes renewable will grow to 80% of energy use over a generation. Solar power, he says, will grow to provide 3% of US demand by 2015 and, at the present rate of investment and development, to 12.5% by 2020. "We have the roof space, the land and we are rapidly developing the technology," he says.

As the US emerges from its biggest economic crisis for decades, a lot is resting on the rapidly-growing green economy to create wealth – not that it may necessarily create so many jobs. When Cimarron is fully operational the only employees on the site will be a single maintenance technician and a few security guards. The ability to run such facilities virtually without a wage bill is a big incentive for investors. All the cost is in the development: sunlight comes free.

Whatever the potential, the US solar power industry still lags behind that of other smaller nations. The US is currently in fourth place in solar production, behind Germany, Japan and Spain.

Spanish developer Abengoa is said by industry watchers to be at the head of the technology race. It has started to produce 'towers of power', an alternative to vast expanses of photovoltaic panels, capable in theory of multiplying output. A field of mirrors concentrates beams of sunlight on to a receiver at the top of the tower, producing enormously high temperatures. The heat is used to create steam that spins conventional turbines. A second technology has concave mirrors super-heating oil circulating through a pipeline, transferring heat to create steam.

Abengoa's tower outside Seville is 531ft tall and there is a plan to build 'forests' of them in the Sahara, generating power to be shipped to Europe.

UHY, with its longstanding track record in the energy sector, has for the past decade been developing its expertise in the renewables market, especially at its Scotland business centre.

UHY's firm in Scotland, Campbell Dallas LLP, has been engaged by entrepreneurial clients looking at ways to diversify into long-term sustainable projects. Wind, hydro and bio-gas have all featured in their evaluation, and often investors have developed more than one outcome on the same site.

"Clients have an appetite for alternative investment," says Ian Williams, partner. "Green is a big feature now and they see renewables on a similar basis to commercial property – three stages: land; build; and payback – but with, generally, better returns and a more favourable tax treatment."

The firm's traditional expertise in oil and gas has enabled it to establish a substantial platform of expertise in renewables: clients have included large and small-scale wind farms, medium-sized hydro-electric schemes, and small and medium bio-gas sites.

Currently, the firm has 30 projects in the pipeline, of which 10 are wind, five are hydro, 10 are anaerobic digesters (AD) and five are photovoltaic (PV). "Each week it grows," says Ian. "We are at present working on several projects with wind and hydro. The AD business is growing, often with groups of landowners clubbing-together. PV has a lot of interest from clients who own, or are developing, business parks with lots of roof space.

"We have a very active involvement in the business structures that surround renewables projects. This involves trying to manage the expectations of the landowner and developer in a tax-efficient and fair structure.

"But there is still not enough interest from the mainstream banking community and we continue to lobby in an effort to get them to move."

The UHY firm has become Scotland's leading firm in the provision of accounting, tax and corporate finance advice to the SME renewables sector.

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