



## OHADA to Prosper Business in Africa

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### I. The Purpose of OHADA

On 19 October 1993, with the aim of establishing a reliable economic area that welcomes local and foreign investors in terms of providing solid and stable business grounds, along with maintaining a resourceful and integrated internal economy, 16 countries signed the Treaty<sup>1</sup> which launched the L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA).

OHADA, in a very brief explanation, is an organization whereby Member states agree to resign from their national sovereignty to a certain

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<sup>1</sup> Traité Relatif a l'Harmonisation en Afrique du Droit des Affaires. Online: <http://www.ohada.com/traites/10/traites-relatif-a-l-harmonisation-en-afrique-du-droit-des-affaires.html>  
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extent in order to achieve a single, cross-border regime of uniform business laws.<sup>2</sup> Today, there are 17 Member States and 9 uniform acts in force both which numbers are likely to increase.<sup>3</sup>

OHADA, unlike European Union, aims for a true unification rather than harmonization. In order to achieve this, OHADA uniform acts prevail over all the domestic laws covering the same subject matter as per Article 10 of the OHADA Treaty. Moreover, in order to overcome any differences in interpretation of these laws among the member states, the Court of Justice of OHADA has been established in order to truly guarantee uniformity.

The main goal of OHADA is to promote legal certainty by enacting unified contemporary business laws that are modern, operable and understandable.<sup>4</sup> In this regard, developments i.e. expediting court process, increasing ethical and training standards<sup>5</sup> of the judicial branch, facilitating the enforcement of court decisions and promoting arbitration<sup>6</sup> as a swift, confidential and hassle-free mechanism are intended to be implemented through OHADA.

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<sup>2</sup> Dickerson, Claire Moore. Harmonizing Business Laws in Africa: OHADA Calls the Tune. 2005. p. 1

<sup>3</sup> Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of the Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo, Democratic Republic of Congo

<sup>4</sup> Kalm, Gustav. "Building legal certainty through international law: OHADA law in Cameroon" Working Paper No. 11-005, October 2011, p. 2. last accessed at on 06.02.2016: [http://buffett.northwestern.edu/documents/working-papers/Buffett\\_11-005\\_Kalm.pdf](http://buffett.northwestern.edu/documents/working-papers/Buffett_11-005_Kalm.pdf)

<sup>5</sup> Ecole Régionale Supérieure de la Magistrature, (ERSUMA), is established to provide training for judges and legal officers from all Member States on the topics that are encompassed by OHADA legislation.

<sup>6</sup> In this regard, the Common Court of Justice and Arbitration ("CCJA") , is established under OHADA Treaty. Latter in Article 14.1 stipulates that CCJA, within the jurisdiction of all member states, shall ensure the interpretation and application of the treaty and the regulations taken for its implementation, the uniform acts and the decisions.

## II. OHADA Uniform Acts in General

There are currently 9 uniform acts in force<sup>7</sup>. As may be understood from their titles, OHADA aims to achieve a unified business law in the Member States by regulating the area in its entirety and thoroughly. Nevertheless, there is still room for national legislations of the Member States in the areas where non-regulated by a Uniform Act. For example, concept of “*entreprenant*” was introduced recently in order to address the issue of informal sector in the OHADA States, when the Uniform Act relating to General Commercial Law was revised in 2010. However, the Act does not regulate what incentives exactly does this status include with regards to tax, credit, business registration and social security benefits and instead leaves each Member State to enact the necessary laws through ad-hoc secondary legislation.<sup>8</sup>

Fundamental parts of these Unification Acts are imported from international laws and conventions such as UNIDROIT and CISG as well as other jurisdictions. For example, “*entreprenant*” status was inspired by the “*auto-entrepreneur*” status in France which has succeeded to lead over 300.000 persons to register their business activity in less than a year upon its

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<sup>7</sup> Uniform Act relating to General Commercial Law, Uniform Act relating to Commercial Companies and Economic Group Partnerships, Uniform Act organizing Securities, Uniform Act organizing Summary Debt Collection Procedures and Measures of Execution, Uniform Act organizing Insolvency and Liquidation Proceedings, Uniform Act on Arbitration Law, Uniform Act organizing and harmonizing the undertaking's accounts in OHADA Member Countries, Uniform Act relating to the transportation of goods by road, Uniform Act governing Cooperative credit banks.

<sup>8</sup> Impact Evaluation of the “Entreprenant Status” in Benin. CIC Impact Program, Methodology Note, Draft. October 31 2013. Last accessed on 06.02.2016 at: <https://www.wbginvestmentclimate.org/results/upload/Methodological-note-IE-Entreprenant-status-Benin-Oct31-ext.pdf>

first application in 2009.<sup>9</sup> That said, since the laws were imported from foreign systems, OHADA is open to improvements as necessitated by the economic and social realities of the region. Introduction of new acts and revising the current ones are clear examples of its constant engagements to find solutions to the issues that come into existence.

### III. The Draft Uniform Contract Law

Without any doubt, contracts are the backbone of the modern business world. Contracts, whether simple or complex; oral or written; or long term or short term, provide a sense of security for the parties, by means of allocating each parties' rights and obligations. This is why a strong contract law is an important tool to thrive business in the OHADA States. The Draft Uniform Contract Law, when it enters into force, will have a positive effect on the business atmosphere in OHADA states by providing a single and unified code that enables businessman and investors to move securely within and among the member states.

### IV. Conclusion

OHADA, an organization whose main purpose is to generate advanced business laws in order to prosper commerce and attract investment in the Member States is a pioneer for all other African States in many aspects. OHADA, like every legal organism is an ever-evolving system. Hence, it is yet to be seen how OHADA will be shaped as it continues to seek appropriate solutions for region's needs and realities.

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<sup>9</sup> Beauchard, Renaud. "OHADA Nears the Twenty-Year Mark: An Assessment." *The World Bank Legal Review: Legal Innovation and Empowerment for Development*. Vol. 4. Washington D.C.: World Bank, 2013. p. 329.