

Date of entry into force

- General Commercial Law: January 1, 1998.
- Company law: January 1, 1998.
- Securities law: January 1, 1998.
- Debt recovery and enforcement law: July 10, 1998.
- Bankruptcy law: January 1, 1999.
- Arbitration law: June 11, 1999.
- Accounting law:
 - January 1, 2001 for consolidated accounts.
 - January 1, 2002 for combined accounts.
- Law regulating contact for the carriage of goods by road: January 1, 2004.

Debt recovery and Enforcement Law

The uniform Act sets out the legal proceedings that the creditor can rely upon to force his debtor to meet his commitments : payment of a sum of money, obligation to deliver a good or to hand it back...

The text deals with the simplified debt recovery and seizure of property (distrain) proceedings; it institutes quick, inexpensive and efficient methods of debt collection such as the injunction to pay (writ of execution issued by the judge against the debtor, in favor of the creditor) and the restitution procedure, which will be a strong protection for the unpaid creditor.

Bankruptcy Law

The uniform Act relating to bankruptcy and insolvency law :

- sets out rules for the prevention of difficulties,
- gives preference to the protection of sustainable businesses,
- organizes a preventive settlement procedure for the businesses corporations which can be salvaged,
- lays down a judicial recovery procedure in the case of insolvent debtors,
- sets out rules with regard to corporate managers' responsibilities and obligations.

Arbitration Law

The uniform Act is the common arbitration law for the 16 Members States. It outlines the arbitration principles and its different stages: arbitration agreement (arbitration clause or out-of-court settlement), designation of the arbitrators, different stages of the proceedings, decisions and Exequatur.

Three forms of recourse are available: action for cancellation, petition for review and opposition by a third party.

Accounting Law

This uniform Act relates to business accounting principles and standards; it includes the OHADA specific accounting system: sets of accounts, financial statements, consolidated accounts and encompasses all the regulations pertaining to financial and accounting information and reporting.

Law regulating contracts for the carriage of goods by road

This uniform Act applies to all contracts for the carriage of goods by road when the merchandise pick-up and delivery points, as shown in the contract, are located in an OHADA Member State or in two States where at least one of them is an OHADA Member State. The following are excluded from the field of application of this uniform Act: the transportation of dangerous goods, funeral transportation, removal transportation and transportation of goods carried out under the terms of international postal agreements. The uniform Act is applicable irrespective of the domicile and nationality of the parties to the transportation contract.

www.ohada.com

This website is dedicated to the OHADA business legal environment. The entirety of OHADA regulations and most of the case law and doctrine are available on the site.

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The harmonization of business law in Africa

Benin



Bissau Guinea



Burkina Faso



Cameroon



Central Africa



Chad



Comoros



Congo



Equatorial Guinea



Gabon



Guinea



Ivory Coast



Mali



Niger



Senegal



Togo

DRC (Democratic Republic of Congo)
(adhesion to Ohada under way)**In brief...**

« O.H.A.D.A. is a legal tool thought out and designed by and for Africa to serve the purpose of regional integration and economic growth on the Continent. » Keba MBAYE

This brochure, outlining the OHADA business legal framework, has been published by
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The UNIDA website dedicated to the OHADA business legal environment

THE TREATY

Set up by a treaty signed on October 17, 1993 in Port-Louis (Mauritius), OHADA's purpose is to promote regional integration and economic growth and to ensure a secure legal environment through the harmonization of business law.

Hence, OHADA provides its Member States with:

- A single, modern, flexible, and reliable business law, adapted to each country's economy,
- Arbitration as an appropriate and trustworthy way to settle disputes,
- An opportunity for training judges and judiciary staff and ensuring their specialization.

OHADA establishes the supremacy and the direct effect of OHADA uniform laws.

THE MEMBER STATES

In september 2006, the uniform OHADA business law is applicable in 16 sub-Saharan African states : Benin, Burkina Faso, Cameroon, Central Africa, Comoros, Congo, Ivory Coast, Gabon, Guinea, Bissau Guinea, Equatorial Guinea, Mali, Niger, Senegal, Chad, Togo.

Pursuant to article 53 of the OHADA Treaty, any Member State of the African Union may become a member, if it wishes to do so. Many countries are currently giving active consideration to joining soon the OHADA common system of business laws.

The Democratic Republic of Congo has officially announced its decision to become an OHADA member and currently proceeds with the adhesion process.

INSTITUTIONS

OHADA includes four institutions:

- the Council of Ministers of Justice and Finance which is the legislative body,
- the Common Court of Justice and Arbitration, based in Ivory Coast (Abidjan).
- the Permanent Secretariat, based in Cameroon (Yaounde),
- the Regional Training School of the Judiciary, based in Benin (Porto Novo), administratively attached to the Permanent Secretariat.

Management team of the Ohada organisation:

- President of the Council of Ministers: M. Maty ELHADJMOUSSA, Minister of Justice of Niger.
- President of the CCJA (Common Court of Justice and Arbitration): Mr. N'Dongo FALL.
- Permanent Secretary: Mr. Kwawo Lucien Johnson.
- Managing Director of ERSUMA: Mr. Mathias P. Niambekoudougou,

The Common Court of Justice and Arbitration plays the following role:

- Advises on the Uniform application and interpretation of the common OHADA business law.
- Reviews decisions rendered by Courts of appeal of the Member States in cases involving the application of the OHADA business law.
- Monitors the arbitration proceedings conducted pursuant to the OHADA Uniform Arbitration Act.



These texts lay down the common rules governing business. The following uniform laws have already been adopted by the Council of Ministers:

1. General commercial law,
2. Corporate law and rules concerning different types of joint ventures,
3. Laws concerning secured transactions (guarantees and collaterals),
4. Debt recovery and enforcement law,
5. Bankruptcy law,
6. Arbitration law,
7. Accounting law.
8. Law regulating contracts for the carriage of goods by road.

The next regulations to be harmonized are labor law and consumer sales law ; the process of their harmonization is well under way.

The OHADA Council of Minister made the decision in 2001 to go ahead, within a rapid time frame, with the unification of the following additional business and legal regulations: competitions law intellectual property law, banking law, laws related to unincorporated forms of business, law of contract and law of evidence.

General Commercial law

Businesses (individuals or business corporations) have to be in full compliance with the new regulations since January 1, 2000, especially with regard to the following:

- merchants' status: definition, general rules, and accounting standards.
- the Register of Commerce and Personal Property Transactions (RCCM): in each Member State, the competent court holds a register which is a tool for collecting registration entries from natural and legal persons, together with amendments relating to such entries. The Register is also a record of guarantees given by traders on movable property together with retention of title clauses and leasing agreements.
The clerck of the competent sales jurisdiction keeps the RCCM above mentioned which is extended by a national file; a regional file is also kept at the Common Court of Justice and Arbitration.
- commercial leases and goodwills.
- business intermediaries: brokers, sales representatives...
- sales and mercantile law.

Companies and Economic Interest Group (EIG) Law

The uniform Act provides the operating rules for commercial companies and economic interest groups. It constitutes the commercial corporate law for all Member States since January 1, 2000. The first part of this Uniform Act covers relevant issues, from the formation and the functioning of the company to the various types of commercial companies: partnership, limited partnership, limited liability company, corporation, joint venture, de facto partnership and EIG...

Any subsidiary owned by a foreigner, has to be attached to a national company no later than 2 years after the subsidiary is set up, unless this obligation is waived by a specific national decision.

A commercail company may be a sole proprietorship.
The civil liability of managers is clearly defined.

Laws concerning secured transactions (Collaterals and Guarantees)

The uniform Act lays down the different types of guarantees available to creditors to reinforce their rights on their debtors. It deals with the following:

- Classification of collaterals,
- Personal guarantees,
- Securities on movables,
- Mortgages and leases.

Innovations

- Memorandum and articles of association (statutes charter, by laws) as well as their subsequent modifications must take the form of a certified deed (speciality deed).
- Equity must be fully paid-up after a three-year period.
- Auditors are assigned a duty of both advice and control.
- The method of administering each corporation should be clearly defined in the articles of association which may choose between two distinct options:
 - Corporation with a board of directors, which is headed by a President (Chairman) or by a President - Managing Director (Executive Chairman).
 - Corporation with a Sole General Director.
- Under OHADA law, a publicly limited company or a limited liability company can have a single shareholder.