



Information Meeting on OHADA
With the *Corporate Council on Africa*
(CCA)

Washington DC, September 26, 2011

Presentation by the Permanent Secretary,



Preliminary comments

Exchange of ideas

Thanks



The topic at hand, and a method of analysis

Methodology :

I will speak only briefly in order to devote the rest of the time to questions from the floor. The comments should focus on how to encourage and support better results for businesses in Africa.



PRESENTATION OF OHADA

OHADA, the Organization for the Harmonization in Africa of Business Laws, was formed by a 1993 Treaty at Port-Louis (Mauricio) among 14 countries in West and Central Africa. Later, two more countries joined ; thus, the 16 current member states are : Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Comoros, the Republic of Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea Bissau, Guinea Conakry, Mali, Niger, Senegal and Togo. Most recently, a 17th country, the Democratic Republic of Congo has signed and ratified the OHADA treaty, although it has not yet deposited it with Senegal, the official depositary State.

The aggregate GDP of the OHADA member states is between roughly US \$250 billion and US \$275 billion, depending on whether the DRC is included. Its population is between 150 million and 225 million, again depending on whether the DRC is included.



PRESENTATION OF OHADA

The focus of OHADA is business, or more precisely, to create a positive business climate within its territory. It works through legal structures focused exclusively on business transactions, including through business laws.

From OHADA's inception its institutions include its legislature, the Council of Ministers; its supreme court, the Common Court of Justice and Arbitration, referred to as the CCJA; its executive, the Permanent Secretariat of which I am the head; and a school devoted to the education of legal professionals, ERSUMA.



PRESENTATION OF OHADA

All of these institutions are designed for the single purpose of improving the business climate. Thus, for example, the CCJA has the authority to reverse the decisions of member states' national courts if these decisions are contrary to OHADA legal norms.

Through its ERSUMA, OHADA also focuses directly on training all legal personnel, including judges.

Further, in order to provide transacting parties an alternative to national judicial systems, OHADA promotes arbitration to settle disputes; indeed, the CCJA has a significant supervisory role in this area as well.

As a related effort to emphasize predictability and transparency, in 2008 OHADA signed at Quebec the first and only revision to its Treaty, and this modernization creates a new institution, the Conference of Heads of State and of Government. This institution's purpose is to give the senior-most politicians a venue to discuss political matters and, thus, to protect the other OHADA institutions from political interference.



PRESENTATION OF OHADA

The instruments of OHADA are its Uniform Acts, that is, its business statutes, uniform across all of its member states. Thus, OHADA is a supranational organization whose purpose is to establish uniform business laws – not merely to harmonize them. This, too, is to guarantee the predictability and security of the business environment's legal framework:

Because OHADA's business laws are uniform, no single member state can unilaterally change or degrade the law. OHADA thus also works toward the African integration, and supports and encourages the creation of a regional market more vast and thus more interesting to investors than are the current, more limited national markets.

The uniform business law is both modern and adapted to the existing economies of OHADA's member states. In this manner, OHADA allows businesses to flourish both within the evolving international norms, and within the socio-economic realities in Africa.

These business laws, the Uniform Acts, cover business transactions from beginning to end:

With respect to the formation of a business, the following laws are directly applicable:

- (1) UA on Commercial Companies and Economic Interest Groups
- (2) The brand-new UA on Cooperatives
- (3) UA on the General Commercial Law



PRESENTATION OF OHADA

With respect to the operation of a business:

The same laws on companies, cooperatives, and commerce remain relevant, as are the following laws:

- (4) UA on the General Commercial Law
- (5) UA on secured transactions
- (5) UA on accounting
- (6) UA on carriage of goods by road

With respect to the resolution of disputes or the end of a business, all the prior UAs with the possible exception of the UA on carriage of goods are relevant, as are the following laws:

- (7) UA on simplified procedures and measures of execution
- (8) UA on arbitration
- (9) UA on bankruptcy and insolvency proceedings



PRESENTATION OF OHADA

Because, due to their colonial history, the legal heritage of OHADA's member states is chiefly from continental Europe, OHADA has that flavor. However, Cameroon, an important OHADA member and, in fact, the locus of the Permanent Secretariat's headquarters, enjoys two law systems heritage: one-third of its population is in an area that was formerly a British colony and, therefore, operates substantially under the common law system. Cameroon has had a significant influence on the development of OHADA laws.

Further, the influence of some international organizations such as UNIDROIT and International Finance Corporation of the World Bank Group has also been extremely important as OHADA seeks to choose for its Uniform Acts the most secure and adapted aspects from each of the major legal systems.

Similarly, although the majority of its member states are former French colonies, Spain, Portugal and United Kingdom also have had their impact.

Consequently, OHADA is neither a club for French speaking countries, nor a mere appendix of the civil-law legal system. OHADA's mission is to involve all African states, without concern for differences, whether of language or history. It seeks to be the crucible within which cultures mix and a foundation for economic growth. Indeed, since the Treaty's 2008 amendment, OHADA has four working languages, namely English, French, Spanish and Portuguese.



To conclude (1)

OHADA owes its creation to a recognition of the distortions resulting from the chronic dysfunction of law and justice. In the 1980s, as globalization engaged the world in merciless competition, the economies of African countries were well-known to be the weakest; there, business and investors were penalized by archaic or uncertain rules, and by unpredictable, dilatory and non-independent judicial regimes.

OHADA was formed to guarantee the predictability and security of the business environment's legal framework, and it has worked hard to disseminate information widely and transparently. It uses the Web, books, articles and pamphlets, in addition to ERSUMA's programs, to inform legal professionals, and OHADA addresses this information both within its own territory, and within countries that are its trading partners.



To conclude (2)

The international community recognizes the relevance and significant success of OHADA, as demonstrated by, among others: the G8, at its 2006 Gleneagles meeting; the Economic Community of West Africa States (ECOWAS) which is preparing to harmonize the legislation of its Anglophone members with that of OHADA; the Africa-France Summit of 2010; the African Development Bank; the World Bank; and the European Union that is currently renewing and expanding its cooperation with OHADA.

OHADA itself is conscious of the preconditions to the efficacy it seeks. It is constantly improving its own organization and its structures. The 2008 modernization of its Treaty is an example, as is its continuing effort to reform its institutions, and its adoption of a strategy and priorities for the 2010-2015 period.

Modernizing its Uniform Acts is one of these priorities undertaken with the support of the World Bank; computerization of the registry of commerce and personal-property credits is another.



To conclude (3)

But the proof is in the pudding: OHADA promotes itself by demonstrating that its business laws create a more attractive commercial environment.