

The Ohada and Ecowas Treaties as Tools for Regional Integration and Regulatory Reforms

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Introduction

- This Presentation is intended to highlight the Ohada and Ecowas Treaties as Tools for Regional Integration and Regulatory Reforms as the title indicates.
- The highlights are by no means exhaustive as they are tailored to meet the needs of the this conference within the limits of the time allotted to the presentation. The topic is elaborate and wide and cannot therefore be exhausted in a single presentation with limited time limit. This presentation therefore serves, to a large extent, as an insight to the wide topic, which on future occasions, as the opportunity presents itself, may be expanded.

It is important to note that there are eight Ohada States in Ecowas out of the total membership of fifteen. The Ohada States are Benin, Burkina Faso, Cote D'Ivoire, Guinea, Mali, Niger, Senegal, and Togo. The Non-Ohada Member-States are Cape Verde, Gambia, Ghana, Guinea Bissau, Liberia, Nigeria, and Sierra Leone. The total combined population of Member-States is over Two Hundred and Sixty Million people. There is therefore a similarity of purpose between the Ohada and Ecowas Treaties.

- I wish to express my gratitude to the Organisers for the opportunity afforded me to present this paper.

The Ohada Treaty

- ✦ "Ohada is the acronym for 'Organisation pour l'Harmonisation en Afrique du Droit des Affaires' "Organisation for the Harmonisation of Business Law in Africa, 'OHBLA'".
- ✦ The Ohada Treaty was signed in Port-Louis (Mauritius) on 17 October, 1993, by 14 African States. The Treaty created Ohada as an international organisation.
- ✦ The Ohada Treaty was recently modified by the Treaty of Quebec which was signed by the Ohada Heads of States and Governments on 17th October, 2008
- ✦ Ohada Member States - Benin, Burkina Faso, Cameroon, Central Africa, the Comoros, Congo, Ivory Coast, Gabon, Guinea, Bissau Guinea, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo. The Democratic Republic of Congo is in the process of joining of Ohada.

The Ohada Treaty As A Tool for Regional Integration and Regulatory Reforms in the Ecowas Sub-Region

➤ The Aims and Objectives of the Ohada Treaty

- - To harmonise/unify business laws in Member States
- - To establish a judicial system (including uniform legal proceedings) for the interpretation and execution of Uniform Acts enacted pursuant to the Ohada Treaty.
- To create a Legal tool for Economic Integration and Development
- - To create a secured legal environment for doing business in Member States
- - To attract Foreign Direct Investments (FDI)

The Ohada Uniform Acts

- Uniform Act on General Commercial Law – January 1, 1998
- Uniform Act on Companies and Economic Interest Group – January 1, 1998
- Uniform Act on Securities Law – January 1, 1998
- Uniform Act on Debt Recovery and Enforcement Law – July 10, 1998
- Uniform Act on Bankruptcy Law – January 1, 1999
- Uniform Act on Arbitration Law – June 11, 1999
- Uniform Act on Accounting Law – January 1, 2002
- Uniform Act Law on Regulating Contract for the Carriage of Goods by Road – January 1, 2004

Regulatory Reforms Pursuant to the Ohada Treaty and Uniform Acts

- ✦ Most Commercial Laws in Ohada States were colonial laws inherited from France dating back to 1867 and had remained unchanged until the Ohada Treaty came into force on October 17, 1993 making it possible to enact eight Uniform Acts till date.
- ✦ The Uniform Act on Companies Law established a centralised system commercial Registries known as the Registre du Commerce et du Credit Mobilier (RCCM) – Article 9 General Commercial Code
- ✦ All commercial companies and individual operators established in any Member State and branches of foreign companies must be registered with the RCCM within one month of their incorporation – Article 27 General Commercial Code
- ✦ All companies except joint ventures in the form of a sciété en participation must be registered with the RCCM – Article 97 Company Code
- ✦ The RCCM registers charges over shares, businesses, professional equipment and motor vehicles. Article 63 General Commercial Code

Regulatory Reforms Pursuant to the Ohada Treaty (contd)

- ✦ Commercial Companies registered in any of the Ohada Member States are subject to the same law throughout the Ohada States – Article 1
- ✦ All companies incorporated from January 1, 1998, (the date of coming into force of the Uniform Act On Companies Law) are subject to the Uniform Act. – Article 907 Company Code
- ✦ All companies in existence before the Uniform Act On Companies Law came into force were give a grace of two years to comply with the provisions of the Act, including the amendment of their Articles of Association. – Article 908 Company Code Article 120 in this regard applies to foreign companies operating through a branch.
- ✦ The Uniform Act on Companies Law also creates and defines offences giving rise to criminal liabilities of the management of companies.

Benefits of Harmonizing Business Regulation in Ohada States

- Promotion of Investments
 - - Encourages both vertical and horizontal direct foreign investments
 - - Secured Investment Climate
 - Stimulation of Economic Growth (Burkina Faso –Doing Business)

- Certainty of Laws
 - Legal Integration
 - Simplification of applicable laws
 - Unification of applicable laws
 - The Supremacy of Ohada Uniform Acts over the national laws of Member States

- Institutionalised Commercial Dispute Resolution Mechanism
 - - The Establishment of a Common Court of Justice and Arbitration (CCJA)
 - The resolution of commercial disputes involving the interpretation and application of Uniform Acts and Arbitration.

- Standardisation of best practices in companies and commercial transactions

Benefits of Harmonizing Business Regulation in Ohada States (contd)

✦ Unification of Business Laws on:

- General Commercial Law
- Companies and Economic Interest Group
- Uniform Act on Securities Law
- Debt Recovery and Enforcement Law
- Bankruptcy Law
- Arbitration Law
- Accounting Law
- Law on Regulating Contract for the Carriage of Goods by Road

Major Challenges to Harmonisation of Business Regulations in Ohada States

- ✦ - Bi-jural legal system in Cameroon
- ✦ - Judicial confrontation between national courts and the Common Court of Justice and Arbitration over supremacy.
- ✦ - The use of French (until recently) as the official language of Ohada
- ✦ - Funding
- ✦ - The effectiveness of Ohada National Commission in each State Party
- ✦ - The opening-up of membership to non-French speaking States

Ecogas Treaty As A Tool for Regional Integration

- What is Ecogas Treaty? - The Econcomic Community of West African States (Ecogas) is a regional group of fifteen countries, established by a Treaty signed in Lagos, Nigeria, on 28th May, 1975 to promote economic integration in "all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters"
- **Ecogas Revised Treaty** was signed in Cotonou, Republic of Benin, on 24th July, 1993.
- Member States of Ecogas are Benin, Burkina Faso, Cape Verde, Cote D'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo with a total combined population of over Two Hundred and Sixty Million people.

The Aims and Objectives of the Ecowas Treaty – Article 3

- - To promote co-operation and integration leading to the establishment of an Economic Monetary Union.
- - **To** establish of an economic union through the adoption of common policies in economic, financial social and cultural sectors, and the creation of monetary union.
- - To promote joint ventures by private sectors enterprises and other economic operators, in particular through the adoption of a regional agreement on **cross-border investments**.
- - To adopt measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises.
- - To **establish an enabling legal environment**.
- - **To harmonise national investment codes leading to the adoption of a single Community Investment Code**.

The Aims and Objectives of the Ecowas Treaty – Article 3 (Contd)

- y - To harmonise standards and measures
- To promote balanced development of the region, paying attention to the special problems of each Member State particularly those of landlocked and small island Member States
- To encourage and strengthen relations
- - To promote the flow of information particularly among rural populations, women and youth organizations and socio-professional organizations such as associations of the media, business men and women, workers, and trade unions
- - To adopt a Community population policy which takes into account the need for a balance between demographic factors and socioeconomic development
- - To establish a fund for co-operation, compensation and development;
- - To promote any other activity that Member States may decide to undertake jointly with a view to attaining Community objectives.

Benefits of Harmonizing Business Regulation in Ecowas States

- Economic Integration in Ecowas Region
- Promotion of Investments
- Standardisation of best practices in companies and commercial transactions
- Certainty of Laws
- Unification of Business Laws

Major Challenges to the Aims and Objectives of the Ecowas Treaty

- ✦ Implementation of the aims and objectives of the Ecowas Treaty
- ✦ Non promulgation of supranational laws
- ✦ Non-Adherence to the Ecowas Treaty
- ✦ Non-Adherence to Protocols established pursuant to the Ecowas Treaty
- ✦ Lack of political will in the implementation of the provisions of the Treaty e.g. the non-implementation of a common currency.
- ✦ Free movement of citizens of Member States within the Ecowas Region
- ✦ Free movement of goods and services within the region
- ✦ Trade barriers between Member States
- ✦ Greedlock at the borders of Member States impeding the free movement of goods etc.