

OHADA Corporate Law Reform means that sub-Saharan Africa will become a more attractive place to do business

LSE alumnus Jacques Jonathan Nyemb says that innovations introduced through the new OHADA Corporate Law will help more businesses to thrive in the modern highly competitive global environment.

Over the past 15 years, sub-Saharan Africa has experienced a remarkable level of economic growth. But, with such a rapidly changing business landscape, the region's laws have inevitably struggled to keep pace. It is in such a context that, in 2007, the 17 African states that are parties to the OHADA treaty^[1] launched a complete overhaul of their business laws. The latest result of these efforts is the reform of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups (OHADA Corporate Law).



The Ohada Zone

Originally adopted on 17 April 1997, the Uniform Act has been significantly revised recently. The new OHADA Corporate Law, which was adopted on 30 January 2014 by the OHADA Council of Ministers and will come into effect on 5 May 2014, introduces significant innovations. The goal of this new Law is to nurture the creation and development of companies, strengthen the legal protection of economic activities and financial transactions, and encourage local and foreign investments. The changes are designed to make OHADA Corporate Law simpler, more secure and more adaptable to economic realities and the international arena.

Indeed, to help businesses thrive in today's highly competitive global environment and enter the digital era, the new Uniform Act simplifies the rules on creating and running companies (*i.e.* use of new technologies to convene meetings, participate and vote in shareholders or board meetings). It also reinforces the rules of corporate governance. For instance, review of self-dealing transactions aiming to avoid possible conflicts of interests in joint stock companies has been strengthened with new rules which require board and shareholder approval not only for agreements entered into between the company and its directors but also henceforth for those entered into between the company and shareholders holding at least 10% of its share capital.

A key focus of the reforms was also to facilitate legal and financial engineering within the OHADA zone. To address that need, a new corporate entity has been introduced: the simplified limited liability company (*société par actions simplifiée*). For small and medium-sized entrepreneurs, the primary attraction of this new form of enterprise is that a simplified limited liability company has no minimum level of share capital.

Furthermore, the reform also brings in innovations in relation to the legal regime for equity and debt securities. On a continent where capital is scarce, creative legal tools are critical for businesses and investors to be successful in finding solutions for their mutual needs. Over the past few years, numerous Africa-focused private equity firms have emerged. If these firms are to prosper, they should be able to call on sophisticated legal tools – such as variable capital, equity-linked securities, convertible bonds, warrants, preference shares, etc. – that are available elsewhere in the world. Before the reform, investors' sole structuring choice was between shares and bonds, thus impeding investments flows in the region. As of May 2014, all possible ranges of "tailor-made" financial solutions will at last be freely available in the OHADA region.

From a different perspective, the reform also seeks to pave the way for employees to share in the ownership and profits of OHADA companies. In the light of the latest developments in the OHADA countries, it is more important than ever to find ways to attract and motivate the many promising young professionals working in Africa. It is also crucial to retain skilful management for companies with high potential. Before the reform, no long-term mechanisms, other than usual monetary bonuses and advantages, were available to incentivise top quality management in OHADA companies. The Uniform Act from now on contains amendments allowing for incentives to be implemented smoothly.

There are several other long-awaited improvements within the new OHADA Corporate Law. These include notably the formal definition of the provisional administrator's status, as well as the legal framework of his role, and updated regulations regarding initial public offerings and securities for joint stock companies (*sociétés par actions*).

Looking ahead, it is clear that more needs to be done to boost local and foreign investments in the OHADA zone. The onus is on the leaders of the OHADA countries to keep the momentum and make it easier for business by opening up opportunities for investors and, in particular, adopting regulatory measures that will help implement the latest OHADA reforms. For example, tax and employment measures (which currently remain the responsibility of each member state) are needed to enhance the attractiveness of employee participation schemes.

Overall, the latest reform represents an important effort on the part of the 17 OHADA member states towards creating a modernised legal regime for economic activities in the region. Once they come into effect later this year, the reform will significantly improve doing business in the OHADA region.

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[1] OHADA is a system of **business** laws and implementing institutions adopted by 17 **West** and **Central African** nations. OHADA is the French acronym for “*Organisation pour l’Harmonisation en Afrique du Droit des Affaires*”, or “Organisation for the Harmonization of Business Law in Africa”. OHADA was created on October 17, 1993 in **Port Louis, Mauritius**. The 17 member States are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d’Ivoire, Comoros, Democratic Republic of Congo, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, Republic of Congo, Senegal and Togo.

[2] <http://www.ohada.com/actualite/2101/l-organisation-pour-l-harmonisation-en-afrique-du-droit-des-affaires-ohada-se-dote-d-un-droit-des-societes-commerciales-renove.html>

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