



The advantages of investing in the Democratic Republic of Congo and in other 16th OHADA members

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Doing business in the Democratic Republic of Congo and in the other 16th OHADA member states has become easy. This has many advantages not only for local economic operators but also for foreign investors who wish to invest there.

1. Introduction

OHADA is the Organisation for the Harmonisation of Business Law in Africa (*l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires*). It was set up to harmonise commercial law in the Franc zone and came into being with the signing of the OHADA Treaty on 17 October 1993, subsequently modified by another Treaty signed on 17 October 2008 in Quebec.

The OHADA states are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, the Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea Bissau, Guinea, Mali, Niger, Senegal and Togo.

2. The advantages of a common law of business in Africa

Legal standardisation efforts in francophone African countries have been extremely significant. Indeed, 17 countries in francophone Africa, representing more than 270 million people, have pooled their efforts to standardise their business law and their economic and monetary system, creating a large area with the same rules.^[1] This standardisation has many advantages not only for local economic operators but also for foreign investors who wish to invest there.

2.1. Modern and uniform corporate law

One of the undeniable benefits of this standardisation is that, in these OHADA countries, investors may set up subsidiaries that operate in accordance with international standards. Thus, the OHADA business laws now, for instance, offer two legal forms of companies in which investors' potential losses are limited to their contributions. This is the ***Société à Responsabilité Limitée (SARL)*** – *the Limited Liability Company (LLC)* and ***the Société Anonyme (SA)*** – *joint stock company (SA)*.

In addition, there is a Simplified Joint Stock Companies (SAS), with their characteristic of freedom of shareholders to organise the terms of corporate governance.

With the choice of available corporate form, an investor may create a company and be its sole shareholder

. In most countries such as the Democratic Republic of Congo, there is no requirement for a foreign investor to go into partnership with a local partner, and corporate executives do not have to be of the nationality of the state where the company is located.

Moreover, it is possible to create a company with a relatively small cash advance. Indeed, the capital requirement for an LLC is around USD 2,000.

In addition, one of the advantages of this standardisation is that, once a subsidiary is incorporated in one of the states, the establishment of this subsidiary or branches in other states is recognised mutually and simplified, as if this branch or parent company was formed in the same state as the subsidiary.

Additionally, under the OHADA business law, any SA or SARL that cross certain thresholds of capital, annual turnover or level of employment shall appoint an auditor. This requirement is likely to improve control, transparency and reliability of the accounts of local subsidiaries, given that all major international audit firms are present in these countries. Similarly, the accounting rules applicable to companies are standardised in 17 member countries.

Finally, all procedures of the Clerk's Office are standardised and made uniform across the 17 member countries, which is a significant simplification of the administrative life of companies. Similarly, the process of incorporation of companies is standardised in 17 countries.

2.2. Disputes and litigation

The OHADA states adopted a Uniform Act on Arbitration (the Uniform Act) on 11 March 1999, which entered into force 90 days later.

The Uniform Act sets out the basic rules applicable to any arbitration where the seat of arbitration is located in an OHADA member state.

The Uniform Act is based on the UNCITRAL model law. It supersedes the national laws on arbitration of the OHADA states.

Any third party to the arbitration proceedings that considers that the arbitral award is prejudicial to its rights can file a motion to contest the award before the arbitral tribunal.

It is recommended that an arbitration clause is included in contracts. The OHADA law standardises the arbitration law of the member countries and created a system very similar to the International Chamber of Commerce (ICC) system. There is thus provided an arbitration court common to all member states, the awards of which are enforceable in all member states, subject to obtaining the *exequatur* of the jurisdiction of the state in which the sentence should be performed.

Finally, other aspects of business law are also standardised, such as bankruptcy law, debt

collection methods, security interests and guarantees.

[1] Eight of these countries belong to the West African Economic and Monetary Union (WAEMU) with a single central bank, BCEAO, a single currency and a single banking system; six states belong to the Central African Economic and Monetary Community (CEMAC) also with a single central bank, BEAC, a single currency and a single banking system. There are three member states of the OHADA (the organisation for harmonisation of business law in Africa) that do not belong to any of these monetary and financial systems: Democratic Republic of the Congo, Comoros and Guinea (Conakry).