

OHADA Project

Economic Development through Regional Integration and Commercial Law Reform

Program Update October 2009

This document provides an update on IFC's OHADA Business Law Reform project, undertaken under the umbrella of the joint IFC-World Bank-MIGA FIAS program. After a brief presentation of OHADA, it focuses on progress achieved to date, key next steps, and funding needs.

Introduction

OHADA (*Organisation pour l'Harmonisation du Droit des Affaires en Afrique*; Organization for the Harmonization of Business Law in Africa) is an ambitious and innovative initiative, established in 1993 by 16 African countries in West and Central Africa,¹ with the aim to foster economic development and improve the investment climate of the region through the adoption and implementation of a **modern, unified legal framework which governs commercial activities and business transactions**. OHADA represents a **unique form of regional integration** through a common approach to law and legal reform, which complements the more “traditional” regional integration approaches centered on monetary, customs and trade policies (most OHADA countries also participate in economic groupings such as ECOWAS, UEMOA, and CEMAC).

Pursuant to the OHADA Treaty, the *Council of Ministers* (CM) is OHADA's highest institution and legislative body; it adopts the laws called Uniform Acts (UAs). The Council of Ministers operates with the assistance of the *Permanent Secretariat* (PS), the administrative arm of the CM. OHADA's other institutions that support the implementation of its regional integration approach are the *Common Court of Justice and Arbitration*, and the *Regional Superior School of Magistrates*.

The current eight OHADA Uniform Acts cover the following areas: General Commercial Law, Companies and Partnerships, Arbitration, Bankruptcy, Secured Transactions, Debt Recovery and Enforcement, Contracts for the Transportation of Goods by Road, and Corporate Accounting. All these topics are critically relevant for private sector development.

The OHADA Uniform Acts constitute a clear progress compared to the laws that were in place before OHADA, most of which dated from colonial times and represented a fragmented and outdated legal environment, resulting in un-necessary uncertainty and costs to business transactions. The OHADA laws have helped to create a more stable and predictable investment climate in the OHADA zone. However, several studies and surveys have found that the

¹ OHADA 16 member countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. The Democratic Republic of Congo is in the process of becoming the 17th member country.

investment climate in the 16 countries of the OHADA zone still requires considerable improvement. Improving the business legislation provided for in the OHADA laws is a critical component of investment climate reform efforts and is supported by the World Bank Group's multi-donor Investment Climate Advisory Service (FIAS), as further outlined below.

Project Overview and Approach

1. Project Objective

The current FIAS project was initiated at the request of OHADA. There is a broad consensus within the region, the World Bank Group and the donor community that OHADA is a critical initiative to promote private investment and private sector development in the 16 African countries concerned. The project also enjoys broad support of the business community in the OHADA zone.

The overall project objective is to improve the quality and effectiveness of the legal and institutional framework created by OHADA and therefore help the 16 member countries increase their attractiveness for domestic and foreign private investment.

The project's regional approach is justified by the fact that the laws supersede national legislation and are directly applicable in the 16 member states. Pursuant to the OHADA Treaty, their adoption and amendment require the member countries' unanimous vote.

2. Project Description:

Component I: Review and Amendment of OHADA Laws: more than a decade after the enactment of the first OHADA laws, this component aims at identifying unnecessary sources of constraints and costs to businesses embedded in the laws, and formulate amendments designed to further improve the investment climate in the OHADA zone. This technical review is conducted by several groups of independent local and international experts, and World Bank Group specialists. Based on this diagnostic, other teams are assembled to draft amendments to the Uniform Acts. These teams comprise both experts of the subject matter and legal drafting experts, who are in charge of ensuring the formal quality of the proposed amendments.

Component II: Institutional Support: this component has two aspects:

- Technical Assistance to the **Permanent Secretariat:** this activity seeks to provide expert advice to the SP on various OHADA issues and to help build the required capacity needed to ensure meaningful coordination of the implementation of the Project and other OHADA technical activities, such as the amendment process.
- Support for the reorganization and computerization of the **Companies and Secured Transactions Registries (RCCM):** this activity supports the development of a framework for the design and implementation of modern and well functioning registry solutions in OHADA member countries.

Component III: Communication, Advocacy, Dissemination Activities: such efforts will be undertaken to help build and sustain critical support for the project. The project's design has already included the development of several critical partnerships with major OHADA stakeholders (such as prominent local experts and practitioners), with several units of the World Bank Group, and with donors and partners such as France, ICF (*Investment Climate Facility for Africa*), USAID, and OIF (*International Organization of Francophone Countries*).

FIAS would like to continue building additional partnerships with other key OHADA stakeholders, locally and internationally.

Program Update

The project's **first phase** (September 2008-July 2009) consisted of a diagnostic assessment carried out by about 30 international and local consultants. The strengths and weaknesses of six of the eight Uniform Acts were analyzed, and recommendations were made for their modernization based on the findings of the assessment. **Phase I is now completed**, with all final reports submitted to FIAS.

The project's **second phase** was launched in August 2009 and will cover the coming 18 to 24 months. The goal of this phase will be to support OHADA with the adoption of amendments to the Uniform Acts based on the recommendations made during the assessment phase and to support the computerization and reorganization of the Companies and Secured Transactions Registries.

Draft amendments to two Uniform Acts (General Commercial Law and Secured Transactions) have been submitted (or will be submitted shortly) to the OHADA Permanent Secretariat, and will soon be circulated to member states. These draft amendments recommend a reorganization and computerization of the Companies and Secured Transactions Registries (RCCM).

The timetable for the reform of the Uniform Acts depends on the OHADA Permanent Secretariat and Council of Ministers' schedules. FIAS' objective is to get a decision on the reorganization and computerization of the Registries at the next OHADA Council of Ministers, in December 2009. The draft amendments to the Uniform Acts on General Commercial Law and Secured Transactions should be discussed by member states at a Plenary Council of OHADA National Commissions in March 2010, for decision by the Council of Ministers in May-June 2010.

The amendments to the six additional Uniform Acts under review could then be considered by the OHADA Council of Ministers in December 2010, May 2011, and December 2011.

Current Partner Contributions

- **World Bank Group via FIAS program:** costs for project preparation as well as for the project's assessment/law review phase (Phase I), including the costs for the law reviews as well as consultations with a wide range of stakeholder, have been mainly covered from FIAS' regular (core) budget. These costs are estimated at roughly \$900,000. At present, the OHADA project core team includes 3 FIAS staff based at Headquarters (including the Task Team

Leader) as well as three field based staff; a wide range of highly qualified consultants has been involved in the implementation of Phase I.

- **France:** the French Development Agency (AFD) has made a significant intellectual contribution during the initial discussions that helped identify technical problems in several of the Uniform Acts. These discussions provided a solid basis for FIAS' OHADA project. AFD also provided the services of a senior AFD lawyer to the FIAS OHADA team; AFD has recently confirmed the extension of the secondment for Phase II of the OHADA project. Finally, the French Ministry of Economy, Finance and Industry is directly financing a consultant based in the OHADA Permanent Secretariat in Yaoundé; this consultant is ensuring effective communication and coordination between the Permanent Secretariat and the FIAS team and is providing assistance in building the Secretariat's capacity to implement the program.

- **Investment Climate Facility for Africa (ICF):** with the support of FIAS, the OHADA Permanent Secretariat recently submitted a request for funding to ICF (a multi-donor facility based in Tanzania working to improve the investment climate in Africa). The funding request proposed that ICF support several activities that fall under the scope of Phase II of the OHADA project, including work related to the drafting of the legislative amendments and the analysis of the two Uniform Acts that are not currently covered by the FIAS project. In early July, ICF approved the funding request and signed an agreement with OHADA under which the Facility will provide funding support of up to one million dollars (\$1,000,000) for the project. This funding is being allocated directly to OHADA.

The activities outlined in the next section of this document (below) are not currently funded by the above-mentioned partners (France and ICF), or only partially so. They are complementary and will ensure proper overall project management as well as comprehensive technical support by FIAS for the result-oriented delivery of Phase II of the OHADA project.

Next Steps and Funding Needs

A range of Phase II activities are now financially well supported via confirmed contributions from the French Government and ICF. In addition, to hold the project together and ensure implementation under a comprehensive and sustainable umbrella, OHADA has requested FIAS' continued involvement in a range of complementary activities that will be undertaken at both the regional and country level.

1. Phase II Activities at Regional Level

a. Modernization of the Uniform Acts: plenary assemblies and public-private dialogue

Confirmed ICF funding will cover about one third of the resources needed to organize the first plenary assembly, scheduled to be held in March 2010, to consider the proposed amendments to the Uniform Acts on General Commercial Law and Secured Transactions. No funding has yet been identified to cover the costs of subsequent assemblies required to consider and adopt the amendments to the remaining Acts.

The plenary assemblies are among the most important stages in amending the Uniform Acts, as provided for in the OHADA Treaty. It is in this context that the preliminary draft amendments are considered and debated (or modified) by the OHADA national commissions in the member States. Another objective of this crucial step is to promote and strengthen dialogue between the public and private sectors. The thorough preparation and effective organization of these plenary assemblies will facilitate the adoption of the amendments by the Council of Ministers.

FIAS proposes that donors consider making funding available for the un-met costs of the first assembly (\$200,000), and 1-2 subsequent assemblies (\$300,000 each).

b. Companies and Secured Transactions Registries - RCCM

The computerization of the regional RCCM in Abidjan will be funded with a contribution from the African Development Bank (ADB) which has already approved a grant of \$500,000 for this purpose. FIAS is proposing that donor funding be made available to co-finance the set-up of computerized registries in at least two OHADA pilot countries, to be chosen by mutual agreement from among the eleven member states that have not yet been computerized (the five that already have current or anticipated programs are Côte d'Ivoire, Congo, Benin, Mali, and Senegal). *Estimated indicative costs: approximately \$800,000 (for 2 pilot countries)*

2. Follow-on Activities at National Level

a. Harmonization of domestic laws with the OHADA Uniform Acts

(i) *Determination of domestic legal provisions abrogated by the Uniform Acts:* this operation is the longest and most delicate part of harmonization. It consists of identifying the domestic laws that have the same purpose as the Uniform Acts and, in each of these laws, seeking out the provisions which are abrogated by OHADA law.

(ii) *Completion of the OHADA Uniform Acts:* this somewhat simpler operation consists of replacing the generic terms in the Uniform Acts with specific national terms and determining penal sanctions in two ways: either by referring to existing penal sanctions for comparable infractions, or by establishing new sanctions. *Estimated indicative costs: approx. \$80,000 per country/\$400,000 for 5 countries*

b. Establishment of commercial courts

The lack of business law courts delays the effective and speedy settlement of commercial disputes. The primary objectives would be to simplify procedures, upgrade the expertise of judges, and modernize working tools. The creation of specialized courts will enhance the confidence of the business community in the judicial system. Better institutional communication will ensure that judges and auxiliary personnel are better informed about the body of applicable laws and legal precedents necessary to enhancing the predictability of the application of the rule of law.

The computerization of commercial courts (computerization and transfer to electronic form of procedural documents) and systematic publication of court decisions via the court's web site will help to (i) reduce the possibility of extremely questionable decisions; (ii) identify contradictions on legal issues in order to harmonize jurisprudence; (iii) reveal the imperfections of national and/or community law in order to improve the existing laws; (iv) streamline the administrative management of commercial courts. *Estimated indicative costs: approx. \$800,000 per country.*

c. Creation of arbitration and mediation centers and development of alternative dispute resolution mechanisms

FIAS is currently developing a project to support the development of commercial mediation in Burkina Faso. The scope and duration of the project are fairly limited; its basic purpose is to support training and communication activities and the development of the regulatory framework, and a practical mediation experiment to be carried out in close collaboration with the courts of Burkina Faso. The project's initial budget is approximately US\$ 270,000. A similar project in another country, however, might differ significantly in nature and cost, depending on the needs and context. [Note: This proposed activity is currently under review and will require additional scoping.] *Estimated indicative costs: approx. \$250-300,000 per country (preliminary estimate; costs might vary significantly depending on country needs and context) / \$600,000 for 2 pilot countries*

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