

AAC 2015 CONFERENCE – BUSINESS SECTION

**LEGAL OPPORTUNITIES AND CHALLENGES  
TO INVEST IN AFRICA**

*PRACTICAL OVERVIEW OF OHADA'S EXPERIENCE*

BENOIT LE BARS

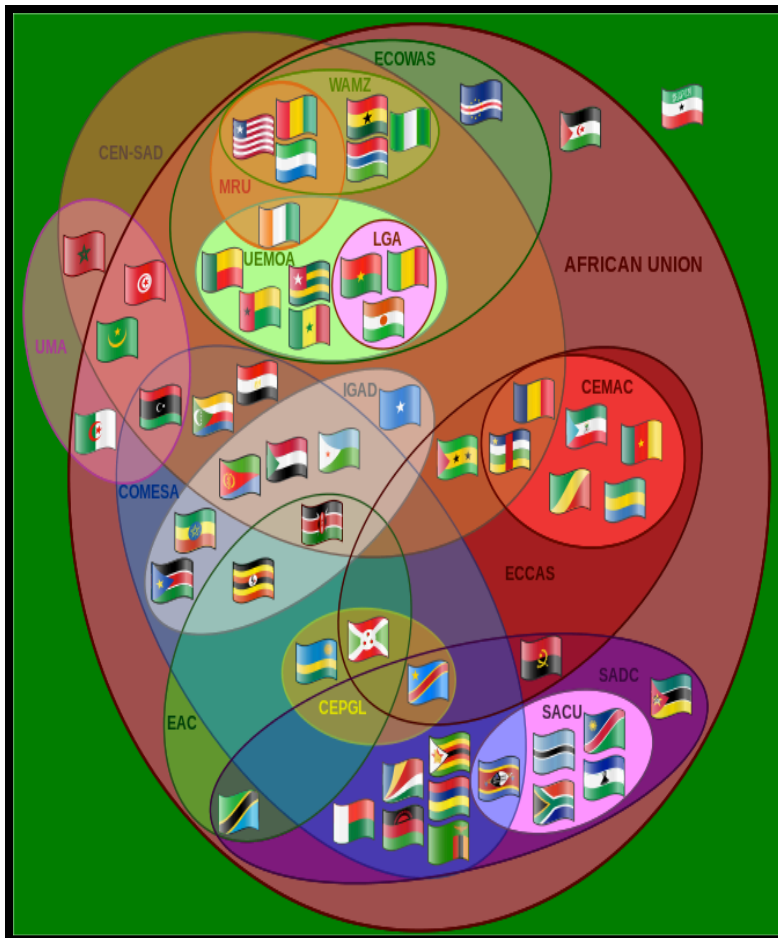
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# OHADA – AN OVERVIEW



- Organization for the Harmonization of Business Law in Africa: an international treaty
- Created on 17 October 1993 in Port Louis, Mauritius
- 17 member states from West and Central Africa
- Francophone countries: except for Guinea-Bissau and Equatorial Guinea
- Common currency (FCFA): except for the Republic of Guinea and the DRC
- The DRC was the most recent signatory in 2012
- A set of business law statutes directly applicable to all member states

# INTERNATIONAL TREATIES IN AFRICA & OHADA COUNTRIES



- |   |   |  |
|---|---|--|
|    |    |   |
| Bénin   | Burkina Faso  | Cameroun   |
|    |    |   |
| Centrafrique  | Comores   | Congo  |
|    |    |   |
| Côte d'Ivoire   | Gabon   | Guinée   |
|    |    |   |
| Guinée Bissau   | Guinée Equatoriale  | Mali   |
|   |   |  |
| Niger   | RD Congo  | Sénégal  |
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| Tchad   | Togo  |  |

# OHADA – UNIFORM ACTS - OVERVIEW

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- The uniform acts are directly applicable in Member States: same law for the different countries
- They cover main areas of business law from company law to securities and bankruptcy
  - Uniform Act relating to Commercial Companies and Economic Group (amended act to be applied from 5 May 2014)
  - Uniform Act relating to General Commercial Law (amended )
  - Uniform Act Organizing Securities (amended)
  - Uniform Act relating to Cooperative Companies
  - Uniform Act relating to the Transportation of Goods by Road
  - Uniform Act Organizing and Harmonizing the Accounting Systems of Undertakings in Ohada Member States
  - Uniform Act on Arbitration
  - Uniform Act Organizing Collective Proceedings for Wiping Off Debts (bankruptcy law)
  - Uniform Act organizing Summary Debt Collection Procedures and Measures of Execution

# OHADA – ACHIEVEMENTS AND CHALLENGES

## Achievements

- The creation of a supranational organization in a relatively short period of time
- The fulfilment of the aim of harmonisation of business laws
- Legal certainty and predictability
- The reforms have helped break up existing malpractices in Member States
- The reforms have simplified the procedures for the setting up of companies, and also reduced the cost of the setting up of companies in most OHADA countries
- The introduction of the Uniform Law on Arbitration has helped boost the confidence of investors

## Challenges

- The difficulty of obtaining the unanimous consent of Member States for the adoption of uniform acts – adoption of new acts is slow (contract law, mediation, financial contracts...)
- Budgetary constraints
- The OHADA institutions such as the Permanent Secretariat are understaffed
- Significant backlog of cases at the CCJA due to the absence of fast-track procedures
- Unwillingness of domestic courts to apply the Uniform Law in some countries
- Unavailability of official versions of the OHADA acts and documents in all the official languages (French, English, Spanish, Portuguese)

# ECONOMIC PROGRESS IN THE OHADA COUNTRIES-A VIEW FROM THE OUTSIDE

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- In 2014, the *Doing Business* report (a co-publication of the World Bank and the International Finance Corporation) confirmed that OHADA countries offer strong protections to investors, notably to minority investors, from self-dealing, i.e. the use of corporate assets by company directors/senior officers for personal gain.
- According to the report, OHADA countries obtained a rank of 151/189 on the *strength of investor protection index* (189 being the strongest level of protection against self-dealing), as opposed to a rank of 66/189 for the EU and 114/189 for Latin America.
- Similarly, OHADA countries obtained a rank of 147/189 on the *ease of enforcing contracts index* (189 representing the highest level of efficiency, as regards the ease of enforcing contracts through local proceedings), as opposed to a rank of 45/189 for the EU and 112/189 for Latin America.
- These reforms seem to have translated into economic development, as, according to the World Bank figures, the annual GDP in 2014 had increased significantly in a majority of the OHADA economies, since the creation of the OHADA in 1993.

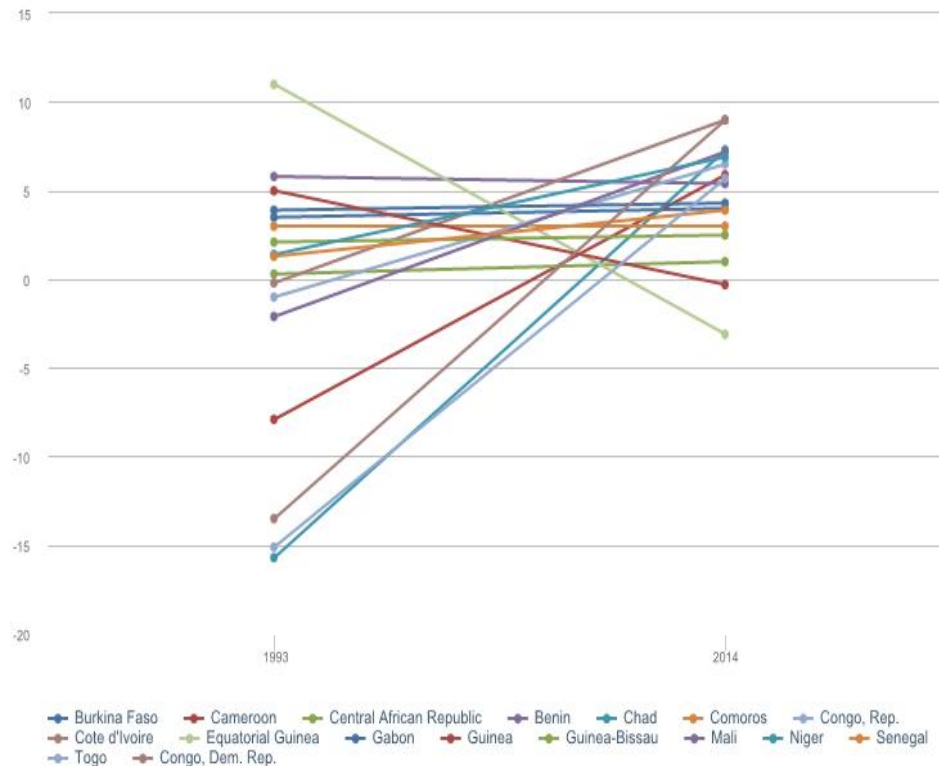
# ECONOMIC PROGRESS IN THE OHADA COUNTRIES

	1993	2014
<b>Benin</b>	5.8	5.4
<b>Burkina Faso</b>	3.5	4.0
<b>Cameroon</b>	-7.9	5.9
<b>Central African Republic</b>	0.3	1.0
<b>Chad</b>	-15.7	7.3
<b>Comoros</b>	3.0	3.0
<b>Congo, Rep.</b>	-1.0	6.5
<b>Cote d'Ivoire</b>	-0.2	9.0
<b>Equatorial Guinea</b>	11.0	-3.1
<b>Gabon</b>	3.9	4.3
<b>Guinea</b>	5.0	-0.3
<b>Guinea-Bissau</b>	2.1	2.5
<b>Mali</b>	-2.1	7.2
<b>Niger</b>	1.4	6.9
<b>Senegal</b>	1.3	3.9
<b>Togo</b>	-15.1	5.7
<b>Congo, Dem. Rep.</b>	-13.5	9.0

Created from: World Development Indicators

Series : GDP growth (annual %)

Created on: 08/02/2015



Series : GDP growth (annual %)

Source: World Development Indicators

Created on: 08/02/2015

# OHADAC: ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN THE CARIBBEAN

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- A project inspired by the success of OHADA
- Originates from a Declaration adopted on 15 May 2007, at the conference of Pointe-à-Pitre, Guadeloupe
- Aims at harmonizing the business laws of the common and civil law countries of the Caribbean
- As a final step towards its establishment, an official presentation of the OHADAC project will take place on 18 and 19 September 2015, in Guadeloupe, in the presence of the representatives of the Caribbean States, the representatives of the different institutions of OHADAC, OHADAC experts, lawyers and academicians.
- At this event, the establishment of the first OHADAC institution, the OHADAC Caribbean Centre for Arbitration and Conciliation will be announced.
- The draft statutes of the OHADAC Caribbean Centre for Arbitration and Conciliation are yet to be approved.



## HOW CAN OHADA HELP IN THE CREATION OF A FREE TRADE ZONE?

- A nexus of uniform business rules proved to be an efficient support for economic growth
- It helps foreign investment: creating a corporation is easy and enforcement of contracts can be secured with arbitration clauses under OHADA law or under the existing international arbitration institutions recognized and protected by the Ohada arbitration act
- A mining company for example can benefit from a contract under Ohada law (predictable) with an arbitration clause facilitating a solution in line with the international practice and principles
- It helps managers leverage their legal analysis in court
- OHADA countries have civil law based systems: contract is the law of the parties and must be applied in good faith (“*pacta sunt servanda*”)
- African countries need to converge these days: pressure from the population, youth and democratic changes

## BENOIT LE BARS

- ❖ **Adjunct Professor of Law, Vermont Law School, USA**
- ❖ **University lecturer in private law**
- ❖ **Founding Partner, Lazareff Le Bars AARPI**

Benoit Le Bars, co-founder and Managing Partner of Lazareff Le Bars, represents clients in international arbitration, mediation and alternative dispute resolution. He also advises on contracts, international projects and litigation proceedings.



Benoit specialises in corporate law, international trade law, international contracts and the law of OHADA, on which he published a book in 2011, “*Droit des sociétés et de l’arbitrage international – Pratique en droit de l’OHADA*”. An updated English version of this treatise (*International Arbitration and Corporate Law: An OHADA Practice*) was published in December 2013.

In addition to his work as counsel, he also serves as elected president of the arbitral tribunal, sole arbitrator or co-arbitrator in a wide spectrum of international arbitrations.

For many years, Benoit has been deeply involved in business and law in Africa. His in-depth knowledge of OHADA law, as well as his passion for the continent, led him to create a quarterly magazine focused on corporate law in Africa, (MIDAA), as well as to host a conference for lawyers and business players across Africa (RIDAA), which is to be hosted on an annual basis in different jurisdictions in Africa.

Benoit Le Bars received at the eleventh annual *Cauris d’Or* gala held in Dakar, Senegal, the prestigious “*Cauri d’Or de l’intégration*” prize from Mr. Sidiki Kaba, Minister of Justice Chairman of the Assembly of States Parties of the International Criminal Court, in recognition of his commitment to the African continent and his involvement in dispute resolution in Africa.

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