

**TREATY ON THE HARMONISATION OF
BUSINESS LAW IN AFRICA**

TRANSLATION

TREATY ON THE HARMONISATION OF BUSINESS LAW IN AFRICA

PREAMBLE

The President of THE REPUBLIC OF BENIN

The President of BURKINA FASO

The President of THE CAMEROON REPUBLIC

The President of CENTRAL AFRICAN REPUBLIC

The President of ISLAMIC FEDERAL REPUBLIC OF THE COMOROS

The President of THE CONGO REPUBLIC

The President of IVORY COAST REPUBLIC

The President of GABONESE REPUBLIC

The President of EQUATORIAL GUINEA REPUBLIC

The President of MALI

The President of NIGER

The President of SENEGAL

The President of CHAD

The President of TOGO.

HIGH CONTRACTING AUTHORITIES TO THE TREATY ON THE
HARMONISATION OF BUSINESS LAW IN AFRICA.

Determined to accomplish new progress on the road to African unity and to establish a feeling of trust in favour of the economies of the Contracting States in a view to create a new centre of development in Africa;

Reaffirming their commitment in favour of the establishment of an African Economic Community;

Convinced of the fact that their membership in the franc zone is an economic and monetary stability factor and constitutes a major asset for the

progressive realisation of their economic integration and that this integration must be carried on in a larger African framework.

Mindful of the fact that the realisation of those objectives demands an application in the Contracting States of a business law which is simple, modern and adaptable;

Conscious of the fact that it is essential that this law be applied with diligence in such conditions so as to guarantee legal stability of economic activities and to favour expansion of the latter and to encourage investment;

Desiring to promote arbitration as an instrument to settle contractual disputes;

Determined to participate in common new efforts to better the training of Judges and Representatives of the law.

Have agreed as follows

TITLE I GENERAL CLAUSES

Article 1

The objective of the present Treaty is the harmonisation of business laws in the Contracting States by the elaboration and adoption of simple modern common rules adapted to their economies, by setting up appropriate judicial procedures, and by encouraging arbitration for the settlement of contractual disputes.

Article 2

So as to implement the present Treaty, it is to be understood by Business Law regulations concerning Company Law, definition and classification of legal persons engaged in trade, proceeding in respect credits and recovery of debts, means of enforcement, bankruptcy, receiverships, arbitration; are also included the following laws: Employment law, Accounting law, Transportation and Sales laws, and any such other matter that the Council of Ministers would decide, unanimously, to so include as falling within the definition of Business Law, in conformity with the objective of the present Treaty and of the provisions of Article 8.

Article 3

The realisation of the tasks planned in the present Treaty shall be implemented by an organisation called the Organisation for the Harmonisation

of Business Law in Africa (OHBLA), consisting of a Council of Ministers and a Common Court of Justice and Arbitration.

The Council of Ministers shall be assisted by a Permanent Secretary Office to which is attached a Regional High Judiciary School.

Article 4

Regulations for the implementation of the present Treaty will be laid down if necessary by an overall majority of the Council of Ministers.

TITLE II THE UNIFORM ACTS

Article 5

Acts enacted for the adoption of common rules as provided for in Article 1 of the present Treaty are to be known as «Uniform Acts».

Uniform Acts may include provisions to give rise to criminal liabilities.

Contracting States commit themselves to enforce sentences of offences.

Article 6

Uniform Acts are to be prepared by the Permanent Secretary Office in consultation with the Governments of Contracting States. They are to be debated and adopted by the Council of Ministers on consultation with the Common Court of Justice and Arbitration.

Article 7

Draft versions of Uniform Acts are to be issued by the Permanent Secretary Office to the Governments of Contracting States, who will have ninety days from the date of reception of the draft versions to submit their written observations to the Permanent Secretary Office.

After expiration of the ninety days delay period, the draft versions of the Uniform Acts, supplemented with observations of the Contracting States and together with a Report from the Permanent Secretary Office, is to be immediately forwarded to the Common Court of Justice and Arbitration. The Court will declare its opinion thereof within thirty days of its receipt of a request for consultation.

At the expiration of this consultation period, the Permanent Secretary Office will finalise the text of the draft versions for the Uniform Acts, and ask that it be listed on the agenda of the next Council of Minister's meeting.

Article 8

Adoption of the Uniform Acts by the Council of Ministers requires unanimous approval of the representatives of the Contracting States who are present and who have exercised their right to vote.

For such adoption of the Uniform Acts to be valid, at least two-thirds of the Contracting States shall be represented.

Abstention does not delay adoption of the Uniform Acts.

Article 9

The Uniform Acts come into force ninety days after their adoption, except with regard to particular clauses exempted therefrom by the Uniform Acts themselves. They may be opposed within thirty days after their publication in the Official Journal of OHBLA. The Acts are also to be published in the official publications of the Contracting States or by any other appropriate means.

Article 10

Uniform Acts are directly applicable and overriding in the Contracting States notwithstanding any conflict they may give rise to in respect of previous or subsequent enactment of municipal laws.

Article 11

The Council of Ministers, upon recommendation on behalf of the Permanent Secretary Office, approves the annual program for the harmonisation of Business laws.

Article 12

Uniform Acts can only be modified under the conditions provided in Articles 7 to 9, at the request of any Contracting State.

TITLE III

LITIGATION CONCERNING INTERPRETATION AND ENFORCEMENT OF THE UNIFORM ACTS

Article 13

Litigation regarding the implementation of Uniform Acts is settled in the first instance and on appeal within the courts and tribunals of the Contracting States.

Article 14

The Common Court of Justice and Arbitration will rule on, in the Contracting States, the interpretation and enforcement of the present Treaty, on such Regulations as laid down for their application, and on the Uniform Acts.

The Court may be consulted by any Contracting State or by the Council of Ministers on all questions falling within the field of the preceding paragraph. The right to request the advice of the Court, as herein before mentioned, is recognised to the national courts hearing a case where Article 13 applies.

By way of appeal, the Court shall rule on the decisions pronounced by the appellate courts of Contracting States in all business issues raising questions pertaining to the application of Uniform Acts and to the Regulations provided for in the present Treaty, save decisions regarding penal sanctions pronounced by the appellate courts.

The Court will rule as above with regard to non-appealable decisions delivered by any national court of the Contracting States which pertains to those matters brought to the attention of the Court by virtue of the above paragraphs.

While sitting as a court of final appeal, the Court can hear and decide points of fact.

Article 15

Final appeals, as provided in Article 14, are brought to the Common Court of Justice and Arbitration, either directly by one of the parties to the proceedings or by referral of a national court ruling on appeal, on a case to which it is referred and which raises questions concerning the application of the Uniform Acts.

Article 16

The hearing of a case on appeal by the Court, stays automatically all proceedings in view of instituting an appeal before a national court against the decision in question. However this rule does not interfere with the execution of proceedings.

Such proceedings can only be carried out after that a decision of the Common Court of Justice and Arbitration declares itself as lacking jurisdiction to hear the matter in question.

Article 17

Manifest lack of jurisdiction of the Common Court of Justice and Arbitration Court may be raised proprio motu and by all parties to the litigation in limine litis. The Court shall reach a decision within thirty days.

Article 18

Any party who, having raised before a national court hearing an appeal from inferior courts, that that national court lacks jurisdiction by virtue of the powers of the Common Court of Justice and Arbitration in the course of hearing the same appeal, can thereafter appeal to the Common Court of Justice and Arbitration within two months of the issue of the pronouncement of the contested determination.

The Court decides matters of jurisdiction on a ruling which it brings to the attention of the parties, as well as to such national court which is involved.

If the Court finds that such a national court has wrongly declared itself competent in determining an issue, the Court shall declare that latter determination as ultra vires and quashed.

Article 19

The procedure before the Common Court of Justice and Arbitration is to be laid down by Regulations adopted by the Council of Ministers pursuant to the provisions as set out in Article 8 and shall be published in the official publication of the OHBLA, as well as in the official publications of the Contracting States, or, as the case may be, in or by any other appropriate means.

Proceedings shall be adversarial in nature. Each party must be represented by a duly qualified lawyer. The hearing shall be held in public.

Article 20

The judgments of the Common Court of Justice and Arbitration are final and conclusive. Execution and enforcement shall be ensured by the Contracting States on their respective territories. In no case may a decision

contrary to a judgment of the Common Court of Justice and Arbitration be lawfully executed in a territory of a Contracting State.

TITLE IV ARBITRATION

Article 21

In applying a arbitration clause or an out of court settlement, any party to a contract may, either because it has its domicile or its usual residence in one of the Contracting States, or if the contract is enforced or to be enforced in its entirety or partially on the territory of one or several contracting States, refer a contract litigation to the arbitration procedure provided in this section.

The Common Court of Justice and Arbitration does not itself settle such disagreements. It shall name and confirm the arbitrators, be informed of the progress of the proceedings, and examine decisions, in accordance with Article 24.

Article 22

Disagreements may be settled by one arbitrator or by three arbitrators. In this and the following articles, the expression «the arbitrator» means either one or more arbitrators.

When the parties have agreed that the disagreement will be settled by only one arbitrator, they may appoint him under a mutual agreement subject to approval of the Court. If there is any disagreement between the parties, an arbitrator shall be appointed by the Court within thirty days from the date of notification from one party to another to have recourse to arbitration.

Where three arbitrators are to hear a matter, each party - pursuant to a request for an arbitrator and in view to comply to such a request - shall appoint an independent arbitrator, such appointment being subject to the approval of the Court. If one of the parties refuses or cannot do so, the Court shall appoint an arbitrator on behalf of that party. A third arbitrator, shall also be appointed solely by the Court and who will sit as Chairman. The Court may however allow the choice of the third arbitrator to be made by the two other arbitrators only where there the latter have given an undertaking that they would elect as between them a third one, and this within a given period. In such a case, it is to the Court to approve the third arbitrator. If, at the expiration of the period fixed by the parties or allowed by the Court, the arbitrators cannot reach an agreement between themselves, the third arbitrator shall be chosen and appointed by the Court.

If the parties have not agreed upon the number of arbitrators, the Court shall appoint one sole arbitrator, unless it appears to the Court that the case must be tried by three arbitrators. In such a case, each party shall have fifteen days to appoint an arbitrator.

The arbitrators may be chosen from the list of arbitrators established by the Court and updated annually. Members of the Court cannot be registered on that list.

The Court may rule on any challenge of an arbitrator by any party.

An Arbitrator shall be replaced in such circumstances as hereinafter set out, namely, where he or she has passed away, he or she is unable to perform his or her duties, he or she is to resign from office whether by reason of a challenge as to his or her suitability or otherwise, and where the Court, after enquiry decides that he or she has not fulfilled his or her obligations according to such rules of arbitration as may be applicable and according to this Treaty, or within such time as has been specified in relation to any matter. In any case, the proceedings must with paragraphs two and three of this article.

Article 23

Any national court of a Contracting State hearing a case wherein the parties have agreed that the matter to be resolved by arbitration shall hold itself as lacking jurisdiction to hear the case and, if necessary, refer the matter to Arbitration Proceedings.

Article 24

Before signing a partial or final award, the arbitrator shall submit the proposed decision to the Common Court of Justice and Arbitration, which may suggest any formal amendments to such a decision.

Article 25

Award pronounced in compliance with the stipulations provided herein shall have final and conclusive authorities in the territory of each Contracting State as judgments delivered by their national courts.

Such decisions may be enforced and executed by an order of Exequatur

Only the Common Court of Justice and Arbitration has jurisdiction to pronounce an order of Exequatur.

Exequatur may not be issued in the following cases:

- 1) The Arbitrator has not ruled by virtue of an agreement giving him jurisdiction, or has ruled by virtue of a void or expired agreement
- 2) The Arbitrator has not ruled in compliance with its conferred mandate.

- 3) The principle of adversarial procedure has not been respected.
- 4) The decision is contrary to international public order.

Article 26

The Arbitration Regulations of the Common Court Justice and Arbitration Court shall be laid down by the Council of Ministers under the conditions provided for in Article 8. They shall be published in the Official Journal of the OHBLA, and shall also be published in the official publications of the Contracting States and in or by any other appropriate means.

TITLE V THE INSTITUTIONS

Article 27

The Council of Ministers shall consist of the Ministers responsible for Justice and Ministers responsible for Finance.

The chair of the Council shall be vested in turn by each Contracting State for a duration of a year, in the following order:

Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Ivory Coast, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad (Tchad), and Togo.

Where a Contracting State cannot assume the chair of the Council of Ministers during such a year in which it has to do so, the Council shall appoint the chair to the next Contracting State according to the order provided as above.

Article 28

The Council of Ministers shall meet at least once a year upon notification from the Chairman, such notification being issued on his initiative or on the initiative of a third of the Contracting Parties. No deliberation shall take place unless at least two-thirds of the Contracting States are represented.

Article 29

The Chairman of the Council of Ministers set the agenda upon proposals from the Permanent Secretary Office.

Article 30

The decisions of the Council of Ministers, other than those provided in Article 8, are reached by an overall majority of the Contracting States present and voting. Each State can cast only one vote.

Article 31

The Common Court of Justice and Arbitration shall consist of seven Judges elected for seven years and reeligible once, from among the nationals of the Contracting States, in the following functions and under the following conditions:

1) Judges having acquired a judicial experience of at least fifteen years and having exercised high judicial functions.

2) Barristers who are members of the Bar of one of the contracting States and who have at least fifteen years standing.

3) Law Professors having at least fifteen years of professional experience.

Only two members of the Court may belong to the categories referred to in paragraphs 2 and 3 hereabove.

One seventh of the Court is renewed each year.

The Court shall not consist of more than one national of the same State.

Article 32

The members of the Court are elected by secret ballot by the Council of Ministers from a roll of nominated candidate presented for this purpose by the Contracting States.

Every State may nominate two or more candidates.

Article 33

The Permanent Secretary Office shall invite the Contracting States to proceed, within a period of at least four months before the elections, with the nomination of candidates to the Court.

The Permanent Secretary Office shall establish an alphabetical roll of the nominated candidates and shall provide a copy thereof to the Contracting States at least one month before the polling date.

Article 34

After their election, the members of the Court shall solemnly take oath to undertake faithfully their functions in full impartiality.

Article 35

In the event of death of a member of the Court, the President of the Court immediately informs the Permanent Secretary Office thereof and the Permanent Secretary Office declares the seat vacant since the date of death.

In case of the resignation of a member of the Court, or if, with the unanimous consent of the other members of the Court, a member has ceased to fulfil his functions for any other reason other than of a temporary nature, or is no more capable of fulfilling them, the President of the Court, after having invited the concerned member to appear before the Court and to give his oral submissions, shall inform the Permanent Secretary Office who shall declare the seat vacant.

In each of the hereabove circumstances, the Council of Ministers shall proceed under the conditions of Articles 32 and 33, for the replacement of the member whose seat become vacant, for the period of the mandate still to be carried on, except if six months or less remain in the mandate.

Article 36

The members of the Court shall have the security of tenure.

All members of the Court shall remain in duty until the date when his successor takes up his office.

Article 37

The Court shall elect among its own members, for a duration of three years and a half non renewable, its President and two Vice Presidents. The members of the Court whose mandate length is still running at the date of the election and is less than this duration, may be elected to exercise those functions until the expiration of their mandate. They can be reappointed to those functions if they are elected by the Council of Ministers to exercise a new mandate as member of the Court. No member of the Court shall exercise political or administrative functions. All remunerated activities must be authorised by the Court.

Article 38

The duration of the mandate of the seven Judges nominated simultaneously for the initial constitution of the Court will be respectively for three years, five years, six years, seven years, eight years and nine years. The mandate for each Judge will be determined by drawing lots,

executed by the President of the Council of Ministers, during a session of the Council of Ministers. The first renewal of the Court will take place three years from the date of its initial constitution.

Article 39

The President of the Common Court of Justice and Arbitration shall appoint the chief Registrar of the Court on advice of the Court, from among the chief Registrars of at least fifteen years standing, and presented by the member States. Upon proposal of the chief Registrar, the President shall fix, the other offices of the Court.

The chief Registrar is in charge of the Registrar office of the Court.

Article 40

The Permanent Secretary shall be appointed by the Council of Ministers for a four years term of office, renewable once.

He shall appoint his staffs in compliance with the conditions for the recruitment laid down by the council of Ministers and within the fixed number the staffs provided in the budget.

He shall be in charge of the Permanent Secretary Office.

Article 41

A Regional High Judiciary School shall contribute to the training and improvement of the Judges and judiciary staff of the contracting States.

The Director of the School shall be appointed by the Council of Ministers.

The organisation, management, resources and the services of the School will be defined by a regulation of the Council of Ministers laid down upon the report of the school Director.

Article 42

French shall be the working language of OHBLA.

TITLE VI FINANCIAL PROVISIONS

Article 43

The resources of the OHBLA consist principally of:

- a) The annual contribution of the contracting States,
- b) The loans concluded in conventions signed by OHBLA with States or international organisations,
- c) Gifts and legacies.

The sum of the contributions of the contracting States fixed by the Council of Ministers. The Council of Ministers shall approve the conventions referred to in paragraph b) and accepts the gifts and legacies referred to in paragraph c).

Article 44

Costs rate for the arbitration proceedings provided by the present Treaty as well as the distribution of the corresponding receipts shall be approved by the Council of Ministers.

Article 45

The annual budgets of the Common Court of Justice and Arbitration and of the Permanent Secretariat shall be approved by the Council of Ministers.

The accounts for each accounting period shall be certified by commissaries of accounts appointed by the Council of Ministers. They shall be approved by the Council of Ministers.

TITLE VII STATUS, IMMUNITIES AND PRIVILEGES

Article 46

The OHBLA has full international judicial personality. It has in particular the capacity:

- a) to contract;
- b) to acquire furniture and real estate and to transfer them; and
- c) to initiate legal proceedings and to be a party in litigation's

Article 47

So as to fulfil its duties properly, the OHBLA shall possess on the territories of each contracting State immunities and privileges provided in the present title.

Article 48

The assets and possessions of the OHBLA shall not be subject to any judicial action, except if it renounces to its immunity.

Article 49

The civil servants and employees of the Permanent Secretariat Office, the Regional High Judiciary School and the Common Justice and Arbitration Court, as well as the Judges of the Court and the Arbitrators designated by the latter, shall possess privileges and diplomatic immunities during the exercise of their functions. Furthermore, the Judges shall not, without due authorisation of the Court, be prosecuted for acts accomplished outside their official capacities.

Article 50

Nobody shall have access to the archives of OHBLA wherever they are.

Article 51

OHBLA, its properties, possessions and revenues as well as the operations authorised by the present Treaty are exonerated from all taxes and custom duties. The OHBLA is also exempt from any obligation related to the recovery or payment of taxes or custom duties.

TITLE VIII PROTOCOL CLAUSES

Article 52

The present Treaty shall be ratified by the signatory States in accordance with their respective constitutional processes.

The present Treaty shall come into force sixty days after the date of deposit of the seventh instrument of ratification. However, if the date of the deposit of the seventh instrument of ratification is earlier than the hundred eightieth day that follows the day of signature of the Treaty, the Treaty will be enforceable the two hundred fortieth day following the day of its signature.

With regard to any contracting State which shall deposit later its instrument of ratification, the Treaty and the Uniform Acts adopted before the ratification will be enforceable sixty days after the date of the aforesaid deposit.

Article 53

The present Treaty, as soon as it becomes enforceable, is open to all members of the O.A.U. not signatory of the Treaty. It is equally open to the adhesion of any other State not member of the O.A.U. invited to adhere to it, upon unanimous agreement of all contracting States.

With regard to any contracting State, the present Treaty and the Uniform Acts approved before its admission shall come into force sixty days after the deposit of the instrument of admission.

Article 54

No reserve is allowed to the present Treaty.

Article 55

As soon as the Treaty comes into force, the common institutions provided in Articles 27 to 41 will be established. Signatory States which have not yet ratified it may moreover sit at the Council of Ministers in the capacity of observers without right to vote.

Article 56

Any dispute that may arise between contracting States regarding the interpretation or the application of the present Treaty and which would not be settled amiably may be referred by a contracting State to the Common Court of Justice and Arbitration.

If a Judge of the nationality of one of the parties is sitting in the Court, any other party may appoint an ad hoc Judge to sit for the hearing of the case.

This last one will have to fill the conditions provided in Article 31.

Article 57

The instruments of ratification and the instruments of adhesion will be filed with the Government of Senegal which will be the authorised depository Government.

Article 58

Any State ratifying the present Treaty or adhering to it after an amendment to the present Treaty has become enforceable shall be deemed to be a party to the Treaty as amended.

The Council of Ministers adds the name of the adherent State on the list provided by Article 27, preceding immediately the name of the State which assumes the presidency at the date of the admission.

Article 59

The depository Government shall register the Treaty to the Secretary of the O.A.U. and to the United Nations Secretary Office in accordance with Article 102 of the United Nations Charter.

Article 60

The depository Government will inform without delay all the signatory or adherent States of:

- a} the dates of signatures
- b} the registration dates to the Treaty
- c} the filing dates of the instruments of ratification and adhesion.
- d} the date of the coming into effect of the Treaty.

TITLE IX REVISION AND DENUNCIATION

Article 61

The present Treaty may be amended or revised if a contracting State sends to that effect a written request to the Permanent Secretary Office of OHBLA. The amendment or the revision must be adopted in the same form as the Treaty.

Article 62

The present Treaty has an unlimited duration. In any event it shall not be denounced ten years before its coming into effect.

Any denunciation of the present Treaty must be notified to the depository Government and will take effect only one year after the date of such notification.

Article 63

The present Treaty, written in two copies in the French language, will be deposited in the archives of the Republic of Senegal which shall deliver a certified true copy to each Government of the contracting States.

In witness thereof, the Head of States and plenipotentiaries undersigned have affixed their signatures at the end of the present Treaty.

Executed in Port-Louis on 17 October 1993