

English Translation*
Treaty

Revising the Treaty on the Harmonization of Business Law in Africa, signed at Port-Louis (Mauritius), October 17, 1993

PREAMBLE

The President of the Republic of Benin
The President of Burkina Faso
The President of the Republic of Cameroon
The President of the Central African Republic
The President of the Union of Comoros
The President of the Republic of Congo
The President of the Republic of Côte d'Ivoire
The President of the Republic of Gabon
The President of the Republic of Guinea
The President of the Republic of Guinea Bissau
The President of the Republic of Equatorial Guinea
The President of the Republic of Mali
The President of the Republic of Niger
The President of the Republic of Senegal
The President of the Republic of Chad
The President of the Republic of Togo

The high contracting parties of the Treaty,

Reaffirm their determination to make new progress towards African unity, and their desire to reinforce legal and judicial security in the territory of the Organization for the Harmonization in Africa of Business Law (OHADA), in order to guarantee a climate of trust that will contribute to making Africa a center of development;

Determined to use the harmonization of business law as an instrument to reinforce the rule of law, as well as legal and economic integration;

Resolved to create all conditions necessary to consolidate the accomplishments of OHADA, and to enhance and promote them;

Agree to modify, amend and complete the Treaty on the harmonization of business law in Africa, signed at Port-Louis (Mauritius) October 17, 1993:

* Prepared by **Claire Moore Dickerson** and **Jean Alain Penda Matipé**

Article One

Articles 3, 4, 7, 9, 12, 14, 17, 27, 31, 39, 40, 41, 42, 43, 45, 49, 57, 59, 61 and 63 of the Treaty on harmonization of business law in Africa, signed at Port Louis (Mauritius) on October 17, 1993, are modified, amended and completed as follows:

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Article 3

An organization named Organization for the Harmonization in Africa of Business Law (OHADA) is responsible for effecting the tasks contemplated by the present Treaty.

OHADA includes the Conference of Heads of State and of Government, the Council of Ministers, the Common Court of Justice and Arbitration, and the Permanent Secretariat.

The headquarters (official seat) of OHADA is located in Yaounde in the Republic of Cameroon. It can be transferred to any other location by a decision of the Conference of Heads of State and of Government.

Article 4

Whenever necessary, the Council of Ministers shall, by an absolute majority, adopt regulations for the application of the present Treaty and take other actions.

Article 7

The Permanent Secretariat shall provide drafts of the Uniform Acts to the Governments of the Contracting Parties, which shall then have ninety days, starting on the date of receipt of such drafts, to deliver their written comments to the Permanent Secretariat.

Considering the circumstances, including the complexity of the text to be adopted, such ninety-day period may be extended for another ninety days-upon the Permanent Secretariat's request.

At the expiration of the period including any extension, the Permanent Secretariat shall immediately forward to the Common Court of Justice and Arbitration for its advice the draft Uniform Act, together with the Contracting Parties' comments and a report of the Permanent Secretariat. The Court shall provide its advice within sixty days after receipt of such request from the Permanent Secretariat.

Upon the expiration of this last period, the Permanent Secretariat shall complete the final text of the draft Uniform Act, and shall propose it for inclusion in the agenda of the Council of Ministers' next following meeting.

Article 9

Within sixty days after their adoption, the Permanent Secretariat shall cause the Uniform Acts to be published in the Official Journal of OHADA. The Uniform Acts become effective ninety days after such publication, unless these Uniform Acts contain different preconditions to entry into force.

The Uniform Acts are also published in the Contracting Parties, in their Official Journals or by any other appropriate means. This formality does not affect the Uniform Acts' entry into force.

Article 12

At the request of any Contracting Party or of the Permanent Secretariat, and upon authorization of the Council of Ministers, the Uniform Acts may be modified.

The modification is effected in accordance with the conditions set out in Articles 6 through 9, above.

Article 14

The Common Court of Justice and Arbitration is responsible for the uniform interpretation and uniform application of the Treaty, of the regulations promulgated to further the Treaty's implementation, of the Uniform Acts, and of other actions.

The Court may be consulted by any Contracting Party, or by the Council of Ministers, on any question within the scope of the prior paragraph. The same ability to request consultative advice from the Court shall belong to national courts hearing a case pursuant to Article 13, above.

On appeal, the Court shall rule on decisions rendered by appellate courts of the Contracting Parties with respect to all matters raising issues relative to the application of the uniform acts and the regulations contemplated by the Treaty, except for decisions applying criminal sanctions.

The Court shall rule in the same manner on non-appealable decisions rendered in the same litigation by any court of the Contracting Parties.

When sitting as a court of final appeal, the Court shall decide on the merits.

Article 17

In the event that it manifestly lacks competence in a matter, the Common Court of Justice and Arbitration may raise the issue sua sponte, as may, before trial, any party to the litigation.

The Court shall decide within thirty days following receipt of comments from the adverse party, or within thirty days following the expiration of the time allowed for the submission of said comments.

Article 27

- 1) The Conference of Heads of State and of Government is composed of Heads of State and of Government of the Contracting Parties. The Conference is chaired by the Head of State or of Government whose country chairs the Council of Ministers.

The Conference shall meet when necessary. It shall be convened by its Chair, upon call by the Chair or by one-third of the Contracting Parties.

The Conference decides any and all questions concerning the Treaty.

There is a quorum for decisions of the Conference only if at least two-thirds of the Contracting Parties are present.

Actions of the Conference are effective only if adopted by consensus or, failing that, by an absolute majority of the Contracting Parties present at the meeting.

- 2) The Council of Ministers is composed of the Contracting Parties' Ministers of Justice and Ministers of Finance.

The Council of Ministers shall be chaired by the Contracting Parties, each for a one-year term, to rotate continuously among the Contracting Parties in alphabetical order.

New Contracting Parties shall serve as chair in the order of their seniority as members, but only after all previous Contracting Parties have served.

If a Contracting Party cannot serve as the Council of Ministers' chair for the year during which it should so serve, the Council appoints the Contracting Party that is, pursuant to the prior paragraphs, next in line for the chair.

When the Contracting Party that was previously unable to serve as chair considers that it is able so to serve, it shall promptly so inform the Permanent Secretariat, requesting that the Council of Ministers take appropriate action.

Article 31

The Common Court of Justice and Arbitration is composed of nine judges.

Nevertheless, the Council of Ministers may, upon considering the size of the tasks and the availability of finances, fix the number of justices higher than as stipulated in the immediately preceding paragraph.

Judges of the Common Court of Justice and Arbitration are elected for a non-renewable term of seven years, from among the nationals of the Contracting Parties. They are chosen from among:

- 1) judges and magistrates having at least fifteen years of professional experience, and satisfying their respective countries' criteria for service in very senior judicial positions;
- 2) lawyers, being members of the Bar of a Contracting Party, and having at least fifteen years of professional experience;
- 3) law professors having at least fifteen years of professional experience.

One third of the members of the court must belong to the categories described at numbers 2 and 3 of the prior paragraph.

The Court may not include more than one national of any Contracting Party.

This article shall be applied in accordance with regulations promulgated pursuant to article 19, above.

Article 39

After soliciting the opinion of the Common Court of Justice and Arbitration, its President shall appoint a Chief Clerk of the Court from among chief clerks having performed such functions for at least fifteen years and having been nominated by the Contracting Parties.

After soliciting the opinion of the Court, the President shall also appoint the Secretary General charged with the responsibility to assist the Court in the discharging its obligation to administer arbitration proceedings, in accordance with the criteria defined in regulations promulgated by the Council of Ministers.

Upon the request of the Chief Clerk or of the General Secretary, as appropriate, the President shall delegate other duties.

Article 40

The Permanent Secretariat is the executive of OHADA. It is managed and directed by a Permanent Secretary appointed by the Council of Ministers for a four-year term, renewable once.

The Permanent Secretary represents OHADA and shall assist the Council of Ministers.

The appointment and powers of the Permanent Secretary, and the organization and operation of the Permanent Secretariat, are defined by regulations promulgated by the Council of Ministers.

Article 41

A centre of training and continuing education, and of study and analysis of business law, is hereby created, to be known as the Regional Training Center for Legal Officers (E.R.S.U.M.A.).

The center is attached to the Permanent Secretariat.

The name and purpose of the center may be modified by regulations promulgated by the Council of Ministers.

The center's executive is a Director General appointed by the Council of Ministers for a four-year term, renewable once.

The center's structure, operation, resources and obligations are defined by regulations of the Council of Ministers.

Article 42

OHADA's working languages are: French, English, Spanish and Portuguese.

Until such time as they have been translated into the other languages, all documents already published in French shall continue to have full effect. In the event of differences among the texts in the various languages, the French version will control.

Article 43

OHADA's resources are as follows:

- a) Contracting Parties' annual contributions, in accordance with terms stipulated in regulations promulgated by the Council of Ministers;
- b) Assistance provided in accordance with agreements entered into between OHADA and Contracting Parties or international organizations;
- c) gifts and bequests.

The annual contributions of the Contracting Parties shall be determined by the Council of Ministers.

The Council of Ministers shall have the sole authority to approve agreements contemplated by paragraph (b), above, and gifts and bequests contemplated by paragraph (c), above.

Article 45

OHADA's annual budget shall be adopted by the Council of Ministers.

The annual financial statements for each accounting period shall be certified by commissaries of accounts appointed by the council of Ministers, and shall be presented to the Council of Ministers for approval.

Article 49

In accordance with regulations, the civil servants and employees of OHADA, the judges of the Common Court of Justice and Arbitration, and the arbitrators appointed or confirmed by said Court, shall all benefit from diplomatic privileges and immunities in the performance of their duties.

As appropriate, the Council of Ministers may remove such immunities and privileges.

Further, the judges may be sued for acts outside the performance of their official duties only upon authorization of the Court.

Article 57

Instruments of ratification and instruments of accession shall be deposited with the Government of Senegal, which shall be the Depositary Government. It shall deliver a copy of each such instrument to the Permanent Secretariat.

Article 59

The Depositary Government shall register the Treaty with the African Union, and with the United Nations in accordance with article 102 of the Charter of the United Nations.

The Depositary Government shall deliver to the Permanent Secretariat a copy of the Treaty, so registered.

Article 61

The Treaty may be amended or revised if a written request to this effect is sent by a Contracting Party to OHADA's Permanent Secretariat, which then forwards it to the Council of Ministers.

The Council of Ministers shall study the subject and purpose of the request, and the scope of the proposed modification.

The amendment or revision must be adopted in the same manner as was the Treaty, upon the request of the Council of Ministers.

Article 63

This Treaty, prepared in duplicate in French, English, Spanish and Portuguese, shall be deposited in the archives of the Government of the Republic of Senegal, which will submit a certified conformed copy to each of the Contracting Parties.

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Article 2

This Treaty shall become effective sixty (60) days after the date of deposit of the eighth instrument of ratification.

The instruments of ratification and the instruments of accession shall be deposited with the Government of Senegal, which shall be the Depositary Government. It shall deliver a copy of each such instrument to the Permanent Secretary.

The Depositary Government shall register this Treaty with the African Union, and with the United Nations in accordance with article 102 of the Charter of the United Nations.

The Depositary Government shall deliver to the Permanent Secretariat a copy of this Treaty, so registered.

The Council of Ministers shall approve the consolidated text of the revised Treaty.

In witness whereof, the undersigned Heads of State and of Government and plenipotentiaries have set their hands and seals below, on this Treaty.

Made at Quebec, this 17th day of October, 2008

The President of the Republic of Benin,
Boni YAYI

The President of Burkina Faso,
Blaise COMPAORE

The President of the Republic of Cameroon,
Paul BIYA

The President of the Central African Republic,
François BOZIZE

The President of the Union of the Comoros,
Hamed Abdallah SAMBI

The President of the Republic of Congo,
Denis SASSOU N'GUESSO

For the President of the Republic of Côte d'Ivoire,
Youssouf BAKAYOKO,
Minister of Foreign Affairs

The President of the Republic of Gabon,
El Hadj OMAR BONGO ONDIMBA

For the President of the Republic of Guinea,
Ahmed SQUARE,
Prime Minister

For the President of the Republic of Guinea-Bissau,
Maria da Conceição NOBRE CABRAL,
Minister of Foreign Affairs

The President of the Republic of Equatorial Guinea,
Teodoro OBIANG NGUEMA MBASOGO

The President of the Republic of Mali,
Amadou Toumani TOURE

For the President of the Republic of Niger,
Seyni OUMAROU,

Prime Minister

The President of the Republic of Senegal,
Abdoulaye WADE

The President of the Republic of Chad,
Idriss DEBY ITNO

For the President of the Republic of Togo,
Gilbert FOSSOUN HOUNGBO,
Prime Minister