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MAP OF THE OHADA ZONE

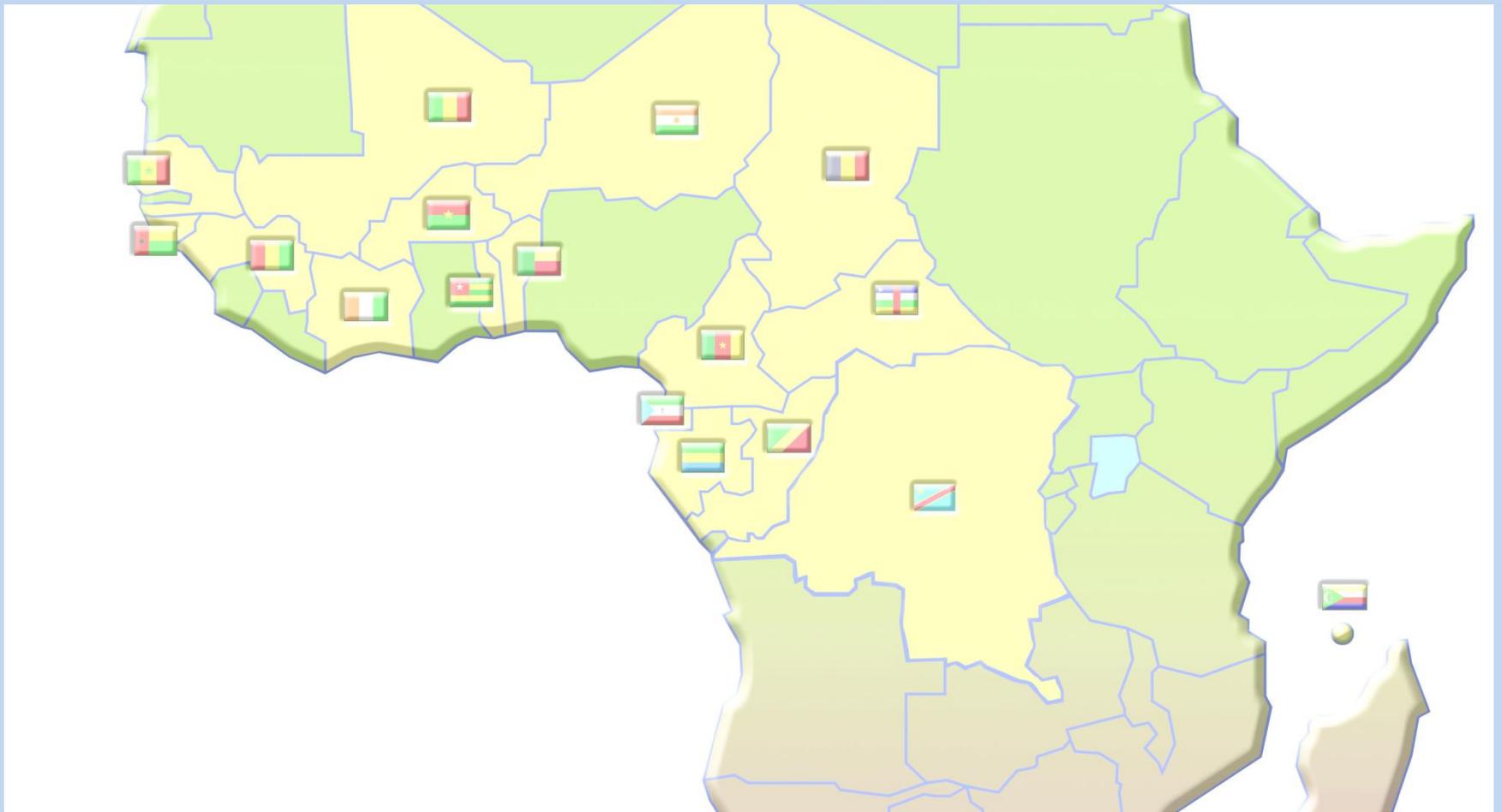




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I. OVERVIEW OF OHADA LEGISLATIVE PROCESS

1. Preliminary Remarks

- Pre-OHADA and the uniform Acts: application of **outdated and inefficient** laws.
- Purpose of OHADA Treaty: achieve legal reform throughout the member states and **adopt simple and modern laws**.

2. OHADA Institutions

(i). The Conference of Head of State and of Government

- Forum of discussion of national political concerns relating to the OHADA Treaty.

(ii). The Council of Ministers

- Legislative body (made of Ministers of Justice and Finance of member states).

(iii). The Common Court of Justice and Arbitration (CCJA)

- Supranational court of final appeal for all issues pertaining to the interpretation of the uniform Acts.
- Ensures uniform interpretation and application of the OHADA Treaty.

(iv). The Permanent Secretariat

- Executive body of the organization.
- A **regional training center** for judges, lawyers and other legal professionals is attached to it.



I. OVERVIEW OF OHADA LEGISLATIVE PROCESS

3. The Legislative Process

1. Draft uniform Act are prepared by **experts** (international call for tender), under the instruction and supervision of the **Permanent Secretariat**;
2. Review of draft law by **member states: (90) days** to provide their written observations to the Permanent Secretariat (substantial national consultation and participation through **national OHADA commissions** (legal and financial experts));
3. Further amendments by the Permanent Secretariat following comments by member states; Report to CCJA for its advisory opinion;
4. **CCJA** review: **(60) days** to give its recommendation;
5. Finalization of draft law by the Permanent Secretariat and submission to the **Council of Ministers** for adoption at their next meeting;
6. Adoption by Council of Ministers (**unanimous vote** required);
5. **Publication** of the newly adopted uniform Act in OHADA official gazette by the Permanent Secretariat within **(60) days** of its adoption.



I. OVERVIEW OF OHADA LEGISLATIVE PROCESS

3. The Legislative Process (Continued)

- The uniform Acts are directly applicable and mandatory in all the member states.
- They enter into force in all of the member states within **90 days** of their **publication in OHADA official gazette**.
- The lack of publication in the official gazette of the member states does not affect their entry into force and enforceability in such member states.
- There is **no need for a ratification** of these statutes by the member states.
- The OHADA Treaty allows the application of national laws which have the same purpose as the uniform Acts but do not conflict with them (areas not covered by the Treaty, as well as areas expressly excluded).



I. OVERVIEW OF OHADA LEGISLATIVE PROCESS

4. Uniform Interpretation and Application of the Uniform Acts Across the Member States

- The CCJA: **guardian of uniform interpretation and application of the uniform Acts** across the member states (court of last resort);
- CCJA **decisions are immediately enforceable** in each member state;
- Actual enforcement of the uniform Acts, as interpreted by the CCJA, is the responsibility of the **member states' judicial systems** (risk of disparate enforcement in different national jurisdictions, and even within national jurisdictions);
- The Permanent Secretariat also contributes, to some extent, to the protection of the uniformity of the statutes: **publication of CCJA's decisions** pertaining to their interpretation.



II. OVERVIEW OF OHADA UNIFORM ACTS CURRENTLY IN FORCE

1. Brief Overview of all of the Uniform Acts in Force

- (i) Uniform Act on General Commercial Law (**Adopted 1997; Amended in 2010**);
- (ii) Uniform Act on Arbitration (**Adopted 1999**);
- (iii) Uniform Act on Commercial Companies and the Economic Interest Group (**Adopted 1997; Amended in 2014**);
- (iv) Uniform Act on Cooperatives (**Adopted 1997; Amended in 2010**);
- (v) Uniform Act on the Organization and Harmonization of Companies Accounting (**Adopted 2000; Amended in 2017**);
- (vi) Uniform Act on Bankruptcy Proceedings (**Adopted 1998; Amended in 2015**);
- (vii) Uniform Act on Simplified Debt Collection Procedures and Enforcement Proceedings (**Adopted 1998**);
- (viii) Uniform Act on Road Freight Agreements (**Adopted 2003**); &
- (ix) Uniform Act on Security Interests (**Adopted 1997; Amended in 2010**).



II. OVERVIEW OF OHADA UNIFORM ACTS CURRENTLY IN FORCE

2. Overview of the Uniform Act on Security Interests

(i). Genesis and Sources of Inspiration

a. Genesis

- One of the first three uniform Act adopted (no security interest, no credit);
- Adopted on April 17, 1997; Amended on December 15, 2010 (published on February 15, 2011 & entered into force on May 16, 2011).

b. Sources of Inspiration

- OHADA Treaty and other OHADA Acts;
- French Reform of March 23, 2006 and subsequent consecration of the Trust (Act of February 19, 2007 and Order of 30 January 2009) but with significant differences and improvements;
- ICC uniform Rules for demand guarantees and model forms No. 758, Revision 2010;
- Recommendations of the 2008 UNCITRAL legislative guide on secured transactions.



II. OVERVIEW OF OHADA UNIFORM ACTS CURRENTLY IN FORCE

2. Overview of the Uniform Act on Security Interests (Continued)

(ii). Philosophy of the Reform of OHADA uniform Act on Security Interests

- The revision reflects the experience garnered in 13 years;
- The purpose of the 2010 revision was, mainly to supplement the 1997 version with the addition of new security interests, to improve it in its drafting and presentation, and to bring it into line with the other uniform Acts to which it is connected;
- It aimed to improve the business legislation environment in the OHADA zone through the updating and modernization of the uniform Act.

The reform consisted of:

- **Supporting credit institutions** in the financing provided to economic operators for their investments and to individuals to **support household consumption**;
- **Enabling access to financing and credit development**, largely determined by a debtor's ability to freely offer a reliable security interest to lenders;
- **Fostering trust**, "Keystone" of credit activities, and more generally, increase the attractiveness of business law.



II. OVERVIEW OF OHADA UNIFORM ACTS CURRENTLY IN FORCE

2. Overview of the Uniform Act on Security Interests (Continued)

- Governs security interests in personal and real property;
- Modernizes, simplifies and liberalizes rules pertaining to security interests, particularly security interests in personal property ;
- Favors non possessory security interests in personal property;
- Strengthening of publicity and transparency (hence, credit security / access to credit).

The amended statute:

(i) clarifies that a security interest may be granted to secure future, conditional, unconditional, fixed and floating obligations, provided that they're sufficiently identified;

(ii) introduces new type of security interests: ((a) a **simplified assignment of receivables** as security interest, provided that such assignment is made in favor of banks; and (b) **transfer of cash** by way of security).



III. UNIFORM ACTS BEING REVISED AND FUTURE ACTS

1. Uniform Acts being revised

- (i) Uniform Act on arbitration; and
- (ii) Uniform Act on on Simplified Debt Collection Procedures and Enforcement Proceedings.

2. Future uniform Acts

- (i) Labor law;
- (ii) Special agreements (outsourcing and franchising as well as public-private partnership contract); and
- (iii) Conflict of laws, the circulation of public documents, joint venture or joint venture, commercial mediation.



IV. CONCLUSION

Late judge Kéba MBAYE:

“OHADA, is a legal tool imagined and developed by Africa to serve economic integration and growth”.



THANK YOU!

