



JONES DAY
COMMENTARY

REVISED UNIFORM ACT BRINGS MAJOR INNOVATIONS FOR SUB-SAHARAN OHADA MEMBER STATES

ONLY 100 DAYS TO GO!

On January 30, the Organization for Harmonization of Business Law in Africa (“OHADA”) adopted a revised Uniform Act on Commercial Companies and Economic Interest Groups (the “Revised Act”). The Act will enter into force on June 30 and be directly enforceable in the 17 sub-Saharan OHADA member States.

The Revised Act introduces a number of much-awaited legal innovations, thus enhancing the attractiveness of this region where economic growth has been rapidly increasing over the recent period. The main advantages contemplated under the Revised Act are as follows:

NEW CORPORATE FORM—THE *SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE*

The *Société Par Actions Simplifiée* (“SAS”) draws its inspiration from the French corporate form of the same name. It offers a welcome alternative to the rather strict alternative corporate forms available until

now by providing a very high degree of flexibility, in particular in terms of corporate governance, that can be widely tailored by the shareholders in the articles of incorporation.

CORPORATE GOVERNANCE PRACTICAL IMPROVEMENTS

The use of electronic communications (convening notices by email, meetings by video conferences, etc.) is now permitted and is a practical innovation of obvious importance for foreign investors.

Shareholders’ ability to delegate powers to the board for share capital increases will also facilitate the day-to-day governance of companies in the OHADA region.

NEW TYPES OF SECURITIES

The validity of preferred shares or hybrid securities such as convertible bonds was unclear before the Revised Act. These sophisticated legal tools are now

expressly permitted. The new legal regime for these securities will facilitate private equity investment, which has become a key provider of financing in OHADA member States.

ENFORCEABILITY OF SHAREHOLDERS' AGREEMENT

The Revised Act expressly confirms the legal validity of shareholders' agreements. Until now, their validity was uncertain, and they were governed by the non-harmonized domestic laws of each of the OHADA member States. This recognition of shareholders' agreements significantly improves legal certainty and will promote stability of the investment structuring.

The enhanced legal certainty and greater flexibility provided by the Revised Act will be more than welcome in the current context where, in contrast to the rest of the world's sluggish growth and uncertainty, African economies stand out for their high rates of growth and the increasing confidence they inspire in new investors.

For already existing companies, the relatively small bother of going through the transformation process to adopt this new corporate form of SAS should, in most instances, be largely overcome by the advantages it offers.

Jones Day regularly is involved in OHADA jurisdictions in the context of OHADA law, largely inspired by French law. We can assist companies in evaluating the appropriateness of such a transformation and in defining the content of the new bylaws to be adopted, which may widely vary to meet your specific needs, in view of the flexibility offered by the newly introduced SAS.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Hervé Castelnau

Paris
+33.1.56.59.46.74
hcastelnau@jonesday.com

Laurent Vandomme

Paris
+33.1.56.59.39.31
lvandomme@jonesday.com

Thibaut Kazémi

Paris
+33.1.56.59.46.76
tkazemi@jonesday.com

Denis Bandet

Paris
+33.1.56.59.46.91
dsbandet@jonesday.com

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