



OHADA's 17 African States Adopt the Uniform Act on Mediation

IN SHORT

The Situation: In November 2017, 17 states of sub-Saharan Africa adopted the Uniform Act on Mediation.

The Result: The practice of mediation, although it already has legislative support in Burkina Faso, Ivory Coast, and Senegal, will be substantially expanded in the region with the OHADA states' adoption of the Uniform Act on Mediation.

Looking Ahead: Will the new mediation act enhance the security of doing business and facilitate alternative dispute resolution in sub-Saharan Africa?

In many parts of the world, mediation has become a strong tool for achieving the resolution of commercial disputes. It derives from the ancient tradition of palaver ("*la palabre*"), which is well known on the African continent. In modern business transactions, in particular long-term contracts, mediation has become part of a "package" to which parties agree in order to attempt to reach a solution early on and prevent a conflict from escalating to the point of arbitration or litigation in court. As such, parties agree on multi-tier dispute resolution clauses, providing for recourse to mediation as the first step in the avoidance of conflict, often as a prerequisite to proceeding to arbitration or litigation.

Mediation in the OHADA Region

The Organization for the Harmonization of Business Law in Africa ("OHADA") is an international organization based in Yaoundé, Cameroun. It is made up of 17 states from mostly Central and Western Africa with a total population of about 200 million inhabitants.

Three of these OHADA states—Burkina Faso, Ivory Coast and Senegal—are quite familiar with mediation, having recognized its importance as an alternative dispute resolution mechanism by adopting their own national mediation laws a few years ago. The arbitration centers of Burkina Faso (CAM-CO) and the Ivory Coast (CACI) have their own mediation rules in addition to the arbitration rules of their institutions. One of the challenges faced by those institutions remains the training of qualified mediators and gaining a better understanding by local business partners, including from the prevalent public sector, of the benefits of mediation.



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In conjunction with its adoption of the Uniform Mediation Act, OHADA also reformed its uniform arbitration law, which was first created in 1999 (see Jones Day *Commentary*, "[Revised Uniform Act Brings Major Innovations for Sub-Saharan OHADA Member States](#)"). By uniformizing the arbitration and mediation frameworks for the OHADA region, the organization has remained true to the OHADA founding Treaty, which seeks to harmonize the business laws of its member states and to promote investment in the region. Mediation was rightly seen as a tool to serve these objectives.

Key Features of the Uniform Act on Mediation

The [Uniform Act on Mediation](#) has 18 Articles, with some key features:

Definition. The term "mediation" is meant to be interchangeable with the term "conciliation," while the former is more frequently used today. A mediation is any process by which parties ask an independent third party to assist them in finding a solution to their dispute or disagreement resulting from their legal or contractual relationship. Such disputes may involve physical or legal persons, whether from the private or public sector.

Scope of Application. The new law applies to any disputes submitted to a mediator, without any restriction as to geographical location or the subject matter of the relevant dispute. Moreover, it covers either conventional or judicial mediations, i.e., whether foreseen by the parties in their contract or imposed at the initiative of a judge.

Confidentiality. The confidentiality of the mediation and related information is protected. A mediator cannot reveal the content or result of the discussions that take place during mediation, nor can a

mediator subsequently act as an arbitrator, expert, or counsel in related proceedings.

Enforcement. A unique and innovative uniform regime for the recognition and enforcement of settlement agreements is being implemented in the 17 states, with possible remedies before local courts and the OHADA Regional Court (the Common Court of Justice and Arbitration).

Future of OHADA's Uniform Act on Mediation

While the Uniform Act on Mediation was inspired by the 2002 UNCITRAL Model Law on International Commercial Conciliation and takes into account benchmarks of international best practices, it has adopted innovative provisions for the enforcement of settlement agreements within OHADA. This is likely to encourage parties to settle their disputes through mediation.

The successful implementation of the new Uniform Act on Mediation will depend on the efforts of each OHADA member state to develop the practice of mediation, for example by encouraging judges to send litigants, whenever appropriate, before a mediator, and by making enterprises, whether from the private or public sector, aware of the advantages of mediation. The successful implementation will also require the training of an increasing number of qualified mediators and the development of institutions providing both mediation and arbitration services.

On a regional level, this task will be challenging since no single institution provides mediation services for the entire OHADA region. As the arbitration center of the Common Court of Justice and Arbitration in Abidjan has no mediation rules as such, those engaging in cross-border business transactions in the OHADA region are likely to continue to prefer recourse to national or international institutions that offer both mediation and arbitration services, such as the ICC.

TWO KEY TAKEAWAYS

1. Seventeen African states recently adopted the Uniform Act on Mediation.
2. The act's intent is to enhance the transparency, speed, and efficiency of arbitral proceedings in the OHADA region, thereby increasing the confidence of investors and other participants in the area.

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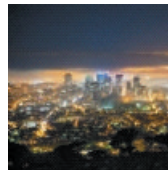
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