OHADA Project

Economic Development through Regional Integration and Commercial Law Reform

Partnership Proposal
October 2008

Summary

OHADA (Organisation pour l'Harmonisation du Droit des Affaires en Afrique; Organization for the Harmonization of Commercial Law in Africa) is an ambitious and innovative initiative, established in 1993 by 16 African countries in West and Central Africa,[1] with the aim to foster economic development and improve the investment climate of the region through the adoption and implementation of a **modern, unified legal framework which governs commercial activities and business transactions**. OHADA represents a **unique form of regional integration** through a common approach to law and legal reform, which complements the more "traditional" regional integration approaches centered around monetary, customs and trade policies (most OHADA countries also participate in economic groupings such as ECOWAS, UEMOA, and CEMAC).

Recognizing that a vibrant and growing private sector is critical to economic growth, job creation and sustained development, OHADA's objectives include the promotion and facilitation of business transactions, the effective resolution of commercial disputes, the creation of legal stability and security needed to foster economic activities, in order to promote domestic and foreign investment and achieve economic development and integration. To that effect, each OHADA Member State agreed to abandon some degree of sovereignty in order to establish a single, cross-border regime of uniform business laws, immediately applicable in each Member State, without resort to the national parliaments.

Pursuant to the OHADA Treaty, the *Council of Ministers* (CM) is OHADA's highest institution and legislative body; it adopts the laws called Uniform Acts (UAs). The Council of Ministers operates with the assistance of the *Permanent Secretariat* (PS), the administrative arm of the CM. OHADA's other institutions that support the implementation of its regional integration approach are the *Common Court of Justice and Arbitration*, and the *Regional Superior School of Magistrates*.

The current eight OHADA laws cover the following areas: General Commercial Law, Companies and Partnerships, Arbitration, Bankruptcy, Security Interests and Mortgages, Debt Recovery and Enforcement, Contracts for the Transportation of Goods by Road, and Corporate Accounting. All these topics are critically relevant for private sector development.

---

[1] OHADA 16 member countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali Niger, Senegal, and Togo. The Democratic Republic of Congo is in the process of becoming the 17th member country.

The OHADA laws constitute a clear progress compared to the laws that were in place before OHADA, most of which dated from colonial times and represented a fragmented and outdated legal environment, resulting in un-necessary uncertainty and costs to business transactions. The OHADA laws have helped to create a more stable and predictable investment climate in the OHADA zone. However, several studies and surveys have found that the investment climate in the 16 countries of the OHADA zone still requires considerable improvement. Improving the business legislation provided for in the OHADA laws is a critical component of investment climate reform efforts and is supported by the World Bank Group's multi-donor Investment Climate Advisory Service (FIAS), as further outlined below.

Project Overview and Approach

1. Project Objective

The current FIAS project was initiated at the request of OHADA. There is a broad consensus within the region, the World Bank Group and the donor community that OHADA is a critical initiative to promote private investment and private sector development in the 16 African countries concerned. The project also enjoys broad support of the business community in the OHADA zone.

The overall project objective is to improve the quality and effectiveness of the legal and institutional framework created by OHADA and therefore help the 16 member countries increase their attractiveness for domestic and foreign private investment.

The project's regional approach is justified by the fact that the laws supersede national legislation and are directly applicable in the 16 member states. Pursuant to the OHADA Treaty, their adoption and amendment require the member countries' unanimous vote. Individual member states cannot unilaterally amend the OHADA law and, in practice, all 16 countries must be involved in the revision process and approve proposed amendments.

2. Project Description:

The project includes three interrelated components:

Component I: Review and Amendment of OHADA Laws

More than a decade after the enactment of the first OHADA laws, this component aims at identifying unnecessary sources of constraints and costs to businesses embedded in the laws, and formulate amendments designed to further improve the investment climate in the OHADA zone. This technical review is conducted by several groups of independent local and international experts, and World Bank Group specialists. As of September 2008, 30 experts have been recruited and the ongoing review effort, which also includes a quality control process, will be completed by the end of 2008.

Thereafter, the presentation and discussion of the experts' recommended reforms will take place during regional workshops to be organized together with the OHADA Secretariat and other institutions. This will help ensure effective and meaningful ownership by OHADA's public and private sector stakeholders in order to build consensus and support for the reform agenda at national and regional levels.

Component II: Institutional Support

The project aims to provide capacity building support to two OHADA institutions and one very critical legal and financial infrastructure: the Business and Collateral Registries.

- Technical Assistance to the **Presidency of the Council of Ministers**: this activity will assist the Presidency in better fulfilling its oversight of OHADA initiatives and will also build the capacity necessary to drive the reform agenda. It will also help the country currently assuming the presidency to prepare and implement a smooth transition with the country that will take over the presidency.

- Technical Assistance to the **Permanent Secretariat**: this activity seeks to provide expert advice to the SP on various OHADA issues and to help build the required capacity needed to ensure meaningful coordination of the implementation of the Project and other OHADA technical activities, such as the amendment process.

- Support for the design and establishment of **Business and Collateral Registries** (RCCM): this activity will support the development of a framework for the design and implementation of modern and well functioning registry solutions in OHADA member countries.

Component III: Communication, Advocacy, Dissemination Activities

Several communication, advocacy, dissemination efforts will be undertaken to help build and sustain critical support for the project.

The project's design has already included the development of several critical partnerships with major OHADA stakeholders (such as prominent local experts and practitioners), with several units of the World Bank Group, and with donors and partners such as France, USAID, and OIF (*International Organization of Francophone Countries*).

FIAS would like to continue building additional partnerships with other key OHADA stakeholders, locally and internationally.

Partnership Proposal

FIAS invites its donors and development partners to participate in and collaborate on the development and implementation of its OHADA project whose objectives are to improve the quality and effectiveness of the OHADA legal and institutional framework and to help the 16 member countries augment their attractiveness to domestic and foreign private investment. A preliminary budget is attached as Annex.

Over the past year, FIAS has provided seed funding for the project's development, preparation and launch phase. Going forward, FIAS is seeking support from interested donors who would be interested in **co-financing the scaling up and implementation of this critical regional initiative.**

Partnership can include the following modalities:

- Partial or full funding of one or several of the activities identified in the proposal (based on the indicative budget included in the annex); co-financing of this project can also be achieved via a core contribution to FIAS
- Collaboration on and contribution to the technical review of the uniform acts;
- Other modalities to be discussed.

Benefits for donor countries or technical partners:

- Participation in a bold, innovative regional integration initiative (through law and legal reform)
- Multiplier effect: contributing to the project is a means to help 16 countries at once, many of which are least developed, conflict-affected countries
- Improving the investment climate of the member countries will directly benefit all companies doing business in the region (as investors, traders, financiers, etc), equally benefiting local companies and companies from donor countries involved.
- Visibility and acknowledgements in outputs, workshops, and activities of the project that will be supported by the donors involved.

Contact Us

If you are interested in partnering with FIAS on the implementation of the OHADA project, please contact:

Xavier Forneris, OHADA Project Manager, ph. +1 202 458-1810, xforneris@ifc.org, or
Beat Heggli, FIAS Donor Coordination, ph. +1 202 458 5566, bheggli@worldbank.org

Annex - Indicative Budget (amounts in USD)

The budget below is indicative and represents the lower end of our preliminary cost estimates for the initial 2.5 years of the project (with the higher end being in the area of $6 million). FIAS is interested in working in partnership with one or several donors who would co-finance the implementation of the OHADA project via a single- or multi-donor Trust Fund, to be administered by the International Finance Corporation (IFC).

	Activities	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
I. Review and Amendment of OHADA Laws				
1	*Consultants Fees for the review of the OHADA laws by experts*	200,000	-	-
2	*Consensus Building and Regional Workshops (presentation and discussion of recommendations)*	480,000 [Companies, Commercial, Secured Transactions, Bankruptcy]	680,000 [Debt Recovery, Arbitration, Accounting, Transportation]	-
3	*Consultants Fees for Drafting of amendments*	100,000	150,000	100,000
4	*Staff cost (Project management & field missions)*	200,000	250,000	250,000
II. Institutional Support				
1	*Technical Assistance to the Presidency of the Council of Ministers, for capacity building/ reinforcement*	150,000	200,000	200,000
2	*Technical Assistance to the Secretariat Permanent, for capacity building/ reinforcement*	150,000	200,000	200,000
3	*Support for the design and establishment of Companies' and Collateral Registries (RCCM)*	100,000	150,000	250,000
III. Communication, Advocacy, Dissemination activities				
1	*Consultants Fees*	50,000	50,000	50,000
2	*Staff Time*	25,000	25,000	25,000
3	*Logistics*	25,000	25,000	25,000
	SUB-TOTAL	**1, 480,000**	**1, 730,000**	**1,100,000**
TOTAL: 4, 310,000.00 USD				