

A NEW OHADA UNIFORM ACT ON INSOLVENCY AND RESTRUCTURING IN AFRICA

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Africa Alert

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A new Uniform Act Organizing Collective Proceedings for Wiping Off Debts dated 10 September 2015 (the "**Uniform Act**") has been published in the OHADA Official Gazette on 25 September 2015 and will enter into force on 24 December 2015.

OHADA is the French acronym for 'the Organisation for the Harmonisation of Business Law in Africa', which was founded on 17 October 1993 with the Port Louis (Mauritius) Treaty and now comprises 17 sub-Saharan states. These states have established a cross-border regime of uniform laws regulating most areas of business law, which are immediately applicable in the 17 member states and prevail over national laws in case of conflict. OHADA law, which is inspired by French law, has therefore been a key body of rules for companies operating in West Africa.

The new Uniform Act will replace the previous one, which was enacted on 10 April 1998 and has regulated all matters relating to insolvency law in all 17 OHADA member states. Although the number of articles in the Uniform Act has increased from 258 to 378, the new regulation will significantly modernise and simplify the existing law, as it takes into account international legal practices.

The most significant innovations include:

- the definition of key concepts in order to facilitate the implementation of the Uniform Act (Art. 1-3);
- the creation of a conciliation procedure for companies which face difficulties but are not yet insolvent (Art. 5-1 et seq.);
- the implementation of simplified bankruptcy proceedings for small companies (Art. 1-2, para. 2);
- new mandatory deadlines in order to speed up proceedings;
- the definition of a comprehensive legal framework for bankruptcy administrators and experts (Art. 4-1 et seq.);
- a new privilege for cash contributions granted to companies while they were facing difficulties (e.g. Art. 5-11);
- a clarification of the ranking of creditors' rights (Art. 166 et seq.); and
- a new cross-border insolvency regime based on the UNCITRAL Model Law (Art. 246 et seq.).

The Uniform Act constitutes a further step in the implementation of a modern and comprehensive legal system suited to the increasingly numerous international investors doing business in Africa, and its introduction is therefore to be welcomed.

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