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CRITICAL ANALYSIS OF BUSINESS LAWS IN AFRICA

AUTHOR'S NAME – Abeer Rakesh Wasnik, BBA, LLB, First Year.

INSTITUTION NAME – Maharashtra National Law University, Nagpur.

ABSTRACT:

Due to the variety of risks and obstacles that come with doing business in Africa, a solid legal foundation and thorough knowledge of regional laws and regulations are essential. Always choose prevention over treatment. It's crucial to comprehend the numerous business vehicles that might be used, as well as the regulations that apply to businesses and other corporate organisations. Governments in Africa are enacting more and more legislation to safeguard data privacy and consumer rights. Also essential is a thorough understanding of tax, exchange control, and banking laws and regulations. sixteen countries in West and Central Africa have ratified the OHADA system of commercial laws and implementing organisations. Organization for the Harmonization of Business Law in Africa, or OHADA as it is known in French, is known as "Organisation pour harmonization en Afrique du Droit des Affaires," or "Organisation for the Harmonization of Business Law in Africa." Port Louis, Mauritius, was founded on October 17, 1993. Currently, 16 African nations are parties to the OHADA Treaty. Regardless of whether they belong to the Organization of African Unity, all nations are eligible to join the Treaty.¹

Analysis:

In order to promote local growth, OHADA's founders stated that they sought to make international investment easier. We shall demonstrate that the member states have established a system of business laws that is based on French law and intended to promote regional economic growth by analyzing particular aspects of the OHADA statute. The structures that the OHADA legal system must strive to create in order to promote economic advancement are revealed when the comparative and development-economics lenses are combined. The authoritarian state, the extractive legal system, and the opposition to private property must all

¹ Nelson Enonchong, The Harmonization of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem? , Journal of African Law, 51, 1 (2007), 95–116

https://www.researchgate.net/publication/231992798_The_Harmonization_of_Business_Law_in_Africa_Is_Article_42_of_the_OHADA_Treaty_a_Problem https://repository.up.ac.za/bitstream/handle/2263/20812/Doris_Regionalism%282012%29.pdf?sequence=1&isAllowed=y <https://www.jstor.org/stable/27607980>

be opposed by OHADA. The unfavorable outcome of the comparative analysis is that. Second, it has to deliberately provide a structure that encourages both domestic and foreign investment.

Probably created to boost exports and promote economic growth, this type of organization. However, OHADA categorically declines to take a position on the macroeconomic, and political issues including, for instance, the wisdom of the neoliberal notion of free trade as the engine of economic progress.² The OHADA regulations are solely concerned with increasing business transaction predictability and do not address macroeconomic political choices about capital or trade barrier policy. We will examine its standard legislation affecting companies and other business groups to see if the OHADA regulations are flexible rather than restrictive and if they do in fact promote investment. This is just one, but given how it approaches corporate governance concerns and, more especially, how it focuses on the types of investors that should be supported, it serves as a fair substitute for the others. Less formal organisations don't provide as many corporate law similarities, so we'll focus on the Socijt Anonyme, which is the most formal type of business association under those laws (SA). Following that examination, we will talk about issues with enforcement.

OHADA's system:

The laws of OHADA are exclusively applicable to business and are quite similar to the laws that were previously in force across the rest of the OHADA region. The agreement establishes a supranational framework for the enactment of new OHADA laws. Given that the bulk of the current member countries were once French colonies, it stands to reason that the new OHADA legislation will continue to be influenced by French law, at least in the near future. In order to further ensure that judicial interpretation would not compromise the consistency of the OHADA law, the treaty also created a single transnational court. The court's procedures closely reflect the French judicial system. When a practice greatly deviates from French standards, scholars take notice of the circumstance.

"The fact that six of the seven justices on the Cour Commune de Justice et d'Arbitrage (also known as the Common Court of Justice and Arbitration, or CCJA) now come from countries where the majority of the population speaks French as their only language suggests that the

² Draft 031605\ Columbia Journal of Transnational Law (2005)\ HARMONIZING BUSINESS LAWS IN AFRICA: OHADA CALLS THE TUNE\ Claire Moore Dickerson\ <https://law.bepress.com/cgi/viewcontent.cgi?article=3073&context=expresso>\ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1636533\ Last Visit 12\01\23\

French language has a significant influence on the court system. French legislation has a substantial impact on OHADA, although it may be losing some of its impacts. The OHADA member states' four official languages each "All of these languages will become official for OHADA purposes once a treaty revision is completed. The others are listed alphabetically after French and are English, Portuguese, and Spanish.

1. Ministerial Council :

By revising legislation that, in some cases, was more than a century old and had generally not been changed since independence, the architects of OHADA claim that the act enhances pre-OHADA company law.³ For the more complex economic transactions they seek to speed up, the member nations of OHADA prefer a Western/Northern system than a traditional or customary one. They contend that a system with a high degree of familiarity will allay the worries of international investors and almost certainly result in significantly cheaper transaction costs. The adoption of the system has reportedly received democratic approval, claim OHADA proponents.

The national governments continue to provide guidance on the creation of new OHADA regulations despite the fact that the 1993 treaty was adopted by the national parliaments. There is little question that the fact that the Justice and Finance Ministers make up the OHADA legislative body, the Council of Ministers, and that they are therefore at least one step removed from the public, makes it less democratic. Additionally, the degree of democratic involvement exhibited by the national entities, particularly the national parliaments, that have embraced the entire system varies per country.

2. Enforcement:

Restraining Regardless of how well-crafted it was, a statute's efficacy rests on how well it is executed. As we have seen, the authority protects the uniformity of the OHADA law throughout the territory. On the other hand, in order to implement judgments, the OHADA regime and the national legal system must inevitably be connected. When a court has rendered its decision in accordance with OHADA standards and disagreements over the execution of the decision are settled in national courts, the country's bailiff is required to levy. The OHADA zone's legal community is quite concerned about enforcement, as evidenced by the interviews

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I conducted with practitioners, in-house counsel, judges, and professors throughout the summer of 2004. It was noteworthy that the interlocutors' focus was on how the rules were being applied, even though the study was in its early stages and the evidence was anecdotal.

OHADA Corporate Law :

First, there is the Based on Given and Means dilemma, also known as agency expenses, which, according to Northern experts, start to show up the moment ownership and administration are separated. Investor disagreements represent the second issue. These problems are dealt with on two distinct levels under OHADA corporate legislation. The expectations of the community for company behavior are taken into consideration in its concept of corporate social responsibility. Recently, both in the United States and Europe, there has been a lot of interest in the issue of corporate governance, which mostly has to do with how the relevant CSR principles are put into practice. Because of this, it is crucial to comprehend OHADA's perspective on corporate social responsibility before analyzing its corporate governance structure. I chose the United States as the baseline for comparison due to its unchanging perspective.

Corporate Social Responsibility :

Milton Friedman, a Nobel Prize-winning economist from the Chicago school, is credited for defining corporate social responsibility in the United States. He stated in 1970 that the goal of a business is to maximize its shareholders' profits within the law. Anything else would be considered a form of corporate management levy on the shareholders. Employees may be taxed through lower earnings or customers may be taxed through higher pricing in some cases. Managers shouldn't use company funds to further what, in Friedman's opinion, is the greater good. If they continue, they will be misusing resources to do what the body politic has shown itself incapable of doing.

Corporate management must prioritize maximizing value for its owners, which is entirely congruent with the current prevalent perspective in the United States and represents "shareholder primacy." There are competing schools of thought on corporate social responsibility even inside the United States, such as the Progressives who have championed the stakeholder idea, according to certain students of American business law. My sole criticism is that, to the degree that these other schools depart from the shareholder primacy paradigm, they do so as a matter of norm; as a matter of strictly descriptive law, the American legal system

is staunchly committed to shareholder primacy.⁴ The goal of the corporation is to maximize value for shareholders, with some managerial discretion. That is part of the company's social accountability.

Relationships between and among shareholders :

A ban on misuse by either the majority or the minority is the primary principle relevant to shareholder relationships under the OHADA corporate code. This balance implies that the OHADA initiative attempts to protect owners' capital, regardless of the investors' nationality or quantity of ownership, given that domestic shareholders already have sizable holdings and that foreigners typically hold a majority of public companies. As a result, OHADA protects domestic investment in establishing enterprises while also promoting international investment. Naturally, in addition to the necessary requirements, there are extra restrictions. A double-vote provision and pre-emptive rights are two more provisions that, although they may surprise outsiders, embody the balance that the OHADA drafters have sought.

In France, pre-emptive rights are still favoured; but, in the United States, they are viewed as restricting management's capacity to raise capital, particularly as shareholdings become more dispersed and the procedures for exercising these rights become more onerous.⁵

As a result, they have mostly gone from corporate practise there. In general, pre-emptive rights allow shareholders to keep their current stake in the company even if fresh shares are issued. If a shareholder currently owns 20% of the new issue, they may purchase up to 20% more at the issue price. Pre-emptive rights usually safeguard domestic minority shareholders since foreign investors now control the majority of public corporations, making them in control of foreign investors. The authors of the document must have believed that businesses would be successful in acquiring the necessary cash, either from the sources that were originally intended or from current owners who exercised their pre-emptive rights.⁶

Long-term effects of OHADA :

Effects to Date Although OHADA's study shows that its stated goals emphasize international investment, its actual actions actually encourage local investment. OHADA has developed a

⁴ Supra 2

⁵ Supra 2

⁶ Dickerson, Claire Moore, Harmonizing Business Laws in Africa: Ohada Calls the Tune (2005). Vol. 44, p. 17, 2005, Tulane Public Law Research Paper, Available at SSRN: <https://ssrn.com/abstract=1636533>

framework to safeguard private property and offer incentives for capital growth while attempting to avoid the procedural aspects of modern authoritarian regimes. The OHADA nations, in particular, formed a legislative and judicial system that ran concurrently with its national equivalent and focused on commercial legislation. In order to promote responsible management behavior and strike a balance between the interests of domestic and international investors, OHADA established legislation in the late 1990s, including a corporation law.

The OHADA statutes do all of this while maintaining a level of simplicity appropriate for a developing legal system. The OHADA regime thereby resolves issues raised by comparative law and development economics on the applicability of civil-law models in underdeveloped nations. As an illustration, the laws and organisations of OHADA safeguard property rights in private transactions in a variety of ways, such as by recognizing both majority and minority owners and by placing a strong emphasis on openness. Future Steps Legal experts in the OHADA zone have been heard praising the OHADA legislation's clarity in particular.

However, those who live and work with these laws on a daily basis, such as practicing attorneys, judges, academics, businesspeople, and members of the OHADA institutional hierarchy, also voiced two main grievances. First, users of OHADA laws want greater access to judicial interpretations and academic research on such laws. While a privately managed website, www.ohada.com, makes scholarly commentary available for a charge and shows the texts of the code and of judgments, the Internet only offers limited public access due to the instability of connectivity in many locations. For instance, a satellite hook-up, which is somewhat expensive, is the only practical option to get a dependable, quick connection to the Internet in Cameroon.⁷

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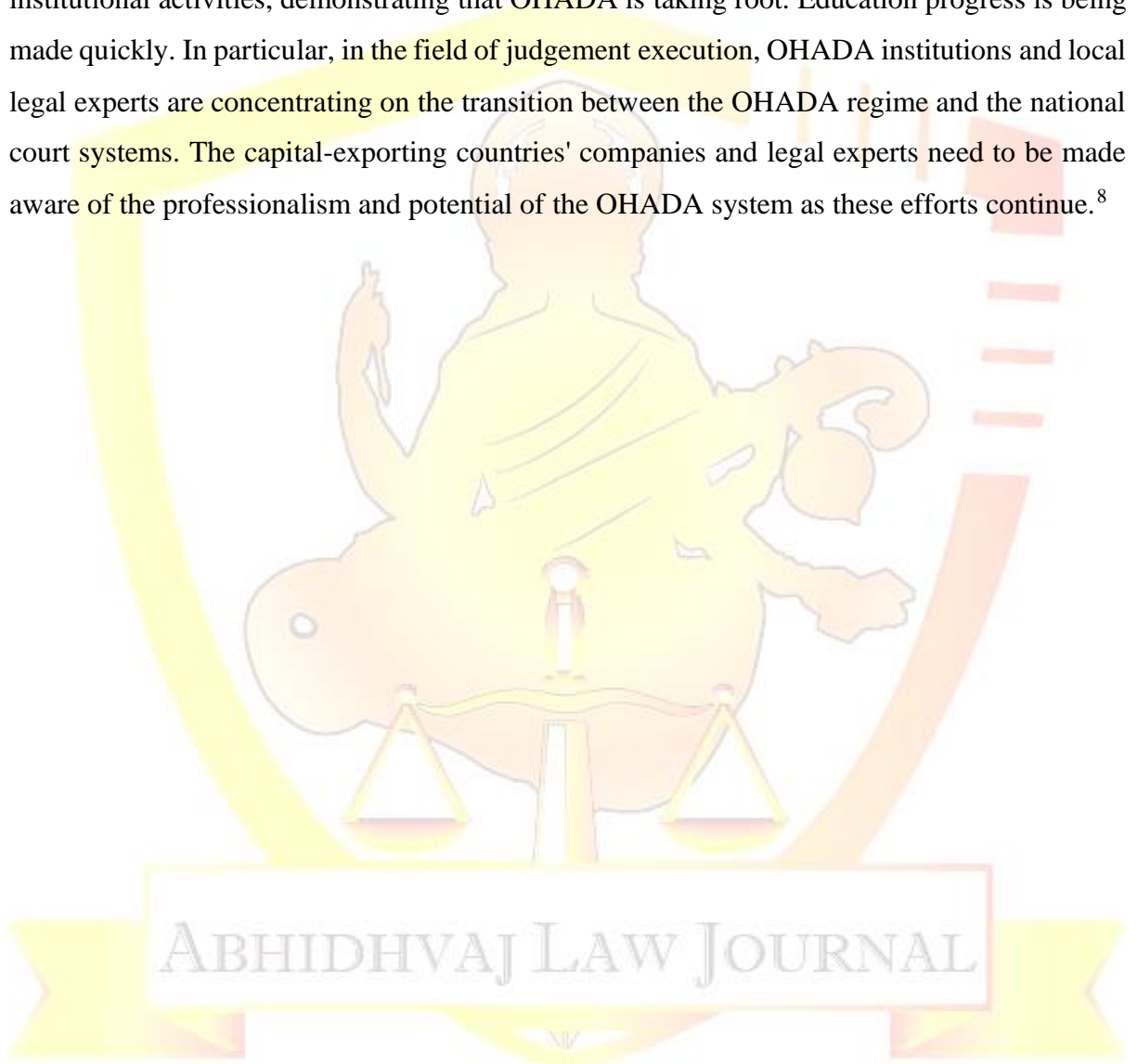
CONCLUSION:

Due to the fact that it has also developed essential legal institutions, OHADA offers much more than just legislation. The national governments of the member states are automatically represented in the framework of the Council of Ministers, which enacts new legislation and amends existing ones. In order to maintain the homogeneity of those rules throughout the whole

⁷ Supra 2

OHADA territory, it is creating new methods to improve its capacity to receive comments from the legal experts and businesspeople who implement the OHADA laws.

This court is a model of openness and competence. The regional school, with the help of the Permanent Secretariat, supports all these initiatives by offering continuing legal education. A community of OHADA supporters is being formed by legal professionals in addition to these institutional activities, demonstrating that OHADA is taking root. Education progress is being made quickly. In particular, in the field of judgement execution, OHADA institutions and local legal experts are concentrating on the transition between the OHADA regime and the national court systems. The capital-exporting countries' companies and legal experts need to be made aware of the professionalism and potential of the OHADA system as these efforts continue.⁸



⁸ Supra 2