

# Insight: Energy, Infrastructure and Project Finance

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## The new OHADA Uniform Act in a nutshell

Legal integration in Francophone Africa results in particular from the "Uniform Acts" adopted by the Organization for the Harmonization of Business Law in Africa ("OHADA"), established by the Treaty signed in Port Louis (Mauritius) on 17 October 1993 as amended in Québec on 17 October 2008.

OHADA includes 17 Member States ("Member State") of West and Central Africa, almost all of which are francophone (except for the Republic of Guinea-Bissau).

On 30 January 2014 a new Companies Uniform Act ("Amended AUSCGIE") was adopted in Ouagadougou by the OHADA Council of Ministers.

The Amended AUSCGIE will enter into force on 30 June 2014 (which is 90 days after publication in the OHADA Official Journal which shall take place 60 days following the Amended AUSCGIE ratification) and will bring significant improvements in companies law.

The main innovations of the reform may be summarized as follows:

### Introduction of the simplified joint-stock company (*Société par Actions Simplifiée*)

This is reflected by the creation in Part 2 of the Amended AUSCGIE of a new Book 4-2 following Book 4 relating to the limited company (*Société Anonyme*). Twenty-three new articles (articles 853-1 to 853-23) set out in detail the regime governing the simplified joint-stock company under OHADA law, broadly inspired by the current French model. The legal regime governing the simplified joint-stock company is characterized by a high degree of flexibility in its organization as compared to the traditional *société anonyme*. The single-shareholder simplified joint-stock company (*Société par Actions Simplifiée Unipersonnelle*) is also recognized in the first article and initial public offerings are not allowed (article 853-4).

### Shareholders agreements have been enshrined

The reform explicitly recognizes shareholders agreements, and confirms their legal validity. Thus, under article 2-1, the shareholders of commercial companies may enter into extra-statutory agreements in particular to organize, in accordance with procedures which have been freely agreed upon,:

- the relationships between the shareholders;
- the composition of the management bodies;
- the conduct of the company's affairs;
- the access to share capital;
- the transfer of company shares.



### Paule Biensan

Partner, Paris

+ 33 1 5504 1505

pbiensan@whitecase.com

### Hugues Martin-Sisteron

Associate, Paris

+ 33 1 55 04 58 93

hmartinsisteron@whitecase.com

White & Case LLP  
19, Place Vendôme  
75001 Paris  
France  
+ 33 1 55 04 15 15

### An up-to-date regime for branches and representative or liaison offices

Article 120 provided for the obligation to attach the branch of a foreign company to a new or pre-existing legal entity of one of the Member State within two years, unless exempted from that obligation. The new post-reform system provides that an exemption may only be granted for a non-renewable two-year term, bringing the maximum deadline for incorporation to four years. In the event of failure to comply with this provision, the removal of the branch from the Trade and Personal Property Credit Register may be declared. This new framework will probably bring an end to the practices of some Member States which allowed foreign companies, through exemptions, to maintain their branches after the initial two-year period set by OHADA, by granting renewals by order.

In parallel, the reform introduced a chapter 5 relating to representative and liaison offices. The representative and liaison offices neither possess management autonomy nor legal personality, and have no activity other than connecting the companies to which they are attached to the market of the Member State in which they are located. They may be an establishment of a foreign company but they have to be registered with the Trade and Personal Property Credit Register.

### New types of securities

#### ■ Introduction of preferred shares

The Amended AUSCGIE substitutes the preferred shares to the priority shares (article 755). Furthermore, a new chapter 2-1 sets out the applicable regime (articles 778-1 to 778-15), which is similar to that applicable under French law. Thus, preferred shares may carry "special rights of any kind," provided that they do not contravene the provisions of the Amended AUSCGIE, which should be construed as being mandatory (articles 2, 243 and 244). For instance, they may be associated with double voting rights or dividend rights.

#### ■ Compound securities

A new title 2-2 is dedicated to compound securities giving access to share capital or giving entitlement to the allotment of debt securities (articles 822 and seq.), for the shareholders of SA or SAS entities. This novelty is appropriately limited by several requirements to protect the holders as long as the securities have not been exercised.

### Improvement of corporate governance

Under the terms of new articles 160-1 to 160-8, the relevant court may appoint a provisional administrator when the functioning of the company is impossible, due to the shareholders or corporate bodies. In order to facilitate the holding of general meetings and board of directors meetings for limited companies (*Société Anonyme*) and simplified joint-stock companies (*Société par Actions Simplifiée*), the shareholders will be able to attend via videoconference (article 133-2).

The Amended AUSCGIE also provides for the introduction of companies with a variable capital (articles 269-1 and seq.) and an innovative framework for approval clauses/share transfer restriction clauses/rights of first offer in both limited companies (*Société Anonyme*) and simplified joint-stock companies (*Société par Actions Simplifiée*) (articles 765-1 to 771-3).