

# Support to the promotion of the business law harmonization in West Africa Final Study report



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## Executive summary

The existence of different legal and regulatory regimes in the ECOWAS space is one of the obstacles in doing business in the region. While the 9 French-speaking member states of ECOWAS (Benin, Burkina, Cote d'Ivoire, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo), operating within the framework of OHADA, have harmonized the framework of business and commercial law, the other six member states (Cap Verde, Gambia, Ghana, Liberia, Nigeria, Sierra Leone) apply different regimes according to the principles of English Common Law. This situation generates different contractual systems as well as different commercial principles and practices which induce compartmentalisation of the region's economic space by legal / regulatory barriers in different Member States. The region's competitiveness for foreign direct investment and trade is negatively impacted as investors feel that they are deprived of economies of scale from which they would have benefited in a harmonized legal and contractual environment.

To overcome this issues, the ECOWAS Commission initiated in October 2005, the business law harmonisation process which led to the production of reports containing summaries of the business laws of the five non-OHADA States in ECOWAS; charts identifying similarities and dissimilarities of the business laws of the OHADA States with the OHADA regime; and draft supplementary acts covering a number of areas. These draft acts were examined during technical meetings comprising representatives of the ECOWAS Commission and the consultants who produced the draft acts. Since 2015, the process of harmonizing business law has broken down due to various factors including, the lack of involvement of the private sector.

In the context of the deepening of regional economic integration in West Africa and to allow the private sector in the region to fully benefit from the African Continental Free Trade Area (AfCFTA), FEWACCI is committed, in collaboration with the ECOWAS Commission, in promoting the harmonization of business law in the ECOWAS region with the involvement of the private sector. It is supported in this initiative by the Investment Climate Reform Facility (ICR) co-financed by the European Union and the Organization of African, Caribbean and Pacific States (OEACP) under the 11th EDF, with the German Federal Ministry for Economic Cooperation and Development (BMZ) and the British Council. It is implemented jointly by GIZ, the British Council, Expertise France and SNV.

The present study report carried out under this support proposed key outlines for the promotion of the harmonization of business law in the ECOWAS region and two draft harmonized acts which will be submitted to the ECOWAS Commission for adoption by its competent bodies.

The strategy and recommendations include the following:

### Vision

“Make business law harmonization a lever to carry out ambitious reforms and use the uniform legal provisions to promote value chains and improve the level of trade at regional and continental level with a view to inclusive growth for the well-being of the West African population”.

### Objectives

The objective of the strategy is to align the various ECOWAS business regulatory regimes in a harmonized regulatory environment that ensures the security and predictability of business transactions in a single economic space.

Specifically, the strategy aims to ensure the involvement of the private sector in the business law harmonisation process, facilitate advocacy for the mobilization of all stakeholders, contribute to the implementation of the ECOWAS economic integration tools, allow the private sector to take advantage of the AfCFTA, and provide a framework for dialogue on business law with a view to continuously improving the legal environment for business.

### Axes of intervention

Axis 1: Governance of the harmonization of business law

Axis 2: Support to the identification, drafting and adoption of supplementary acts to improve business regulation

Axis 3: Improving the technical capacities of private sector actors on business law harmonisation

Axis 4: Monitoring the implementation of the uniform acts

Axis 5: Strengthening the appropriation of the business law harmonisation through improved communication strategy

## Thematic areas for drafting harmonized acts

To respond effectively and in a holistic manner to the needs of the private sector disclosed during the consultations would require harmonizing business laws in many areas including: rules of origin, customs documentation and procedures; border policing and security operations; financing and credit facilities; electronic commerce; payment systems; technical and quality standards; hire purchase and conditional purchase; general commercial law; contracts and sale of goods; banking and insurance; dispute resolution mechanisms; consumer rights; competition; investment law; securities law; carriage of goods by road, rail, sea and air; business associations including companies, partnerships; business entities; accounting standards; employment / labour law; intellectual property; and security of tenure law as it relates to foreign residents.

However, given the limited human and financial resources available, the mission has determined that company law, electronic commerce; and contracts on the sale of goods constitute priority areas and proceed therefore, to prepare draft acts in these areas. This is without prejudice to the mission working on two draft acts instead of three given the limited duration of the mission.

### Company law

Although ECOWAS protocols guarantee the right of establishment, ECOWAS nationals who seek to exercise that right in another ECOWAS country must comply with the laws of the host state on registration and operation of business associations. Stakeholders have complained about the difficulties posed by the lack of a common approach in the ECOWAS region in the area of company law. The adoption of a harmonized regional instrument on company law would respond to the needs of the private sector and facilitate the implementation of the relevant ECOWAS protocols.

The proposed Draft Harmonized Act on Company Law is based on the existing ECOWAS Draft Supplementary Acts, Companies and Allied Matters Act of Nigeria, new developments in ECOWAS and new developments in the OHADA regime. With the notable exception of the Nigeria's Companies and Allied Matters Act of 2020 (CAMA 2020), no significant deviations from the rules proposed in 2008 were noted with respect to the ECOWAS instruments and the OHADA regime.

Consistent with the strategy of the mission to propose draft harmonized acts that reflect the dynamism of the national and regional rules in ECOWAS, the rules developed in 2008 have been revised to incorporate the new changes in CAMA 2020 that were determined not to conflict with the existing rules of the OHADA regime.

Some of the notable changes in the legal environment regarding company law and which have been incorporated in the Draft Harmonized Act are:

- A single person can form and incorporate a private company by complying with the requirements for private companies (this will enable small scale entrepreneur to exercise absolute control and authority over the operation and management of their businesses)
- Two or more associations with similar aims and objects may merge under terms and conditions as the national Companies Commission may prescribe by regulation.
- A foreign company intending to carry on business in a country without fulfilling the requirement of the law regarding incorporation in-country now has the option to file an application for an exemption directly to the Minister of Trade (and no longer to the President through the Council of Ministers as was the case under the old law)
- Where an exempted foreign company fails to provide an annual report to the Commission, the company will be liable to a penalty for every year of default
- Recognition of partnerships as a body corporate and therefore subject to provisions governing limited liability companies.
- All companies -public or private – are required to first offer newly issued shares to their existing shareholders, in proportion to their existing holdings
- Public companies are required to have a company secretary, even though this requirement is dispensed with for private companies
- Replacement of the concept of authorised share capita with a requirement that companies must have at least the minimum issued share capital specified by law.
- Requirement that companies must keep a "Register of Director' Residential Addresses" which must contain the usual residential address of the company's directors. However, the information is considered to be protected information and there are restrictions regarding its use.
- Requirement that companies keep a register called "Register of Persons with Significant Control". A person has significant control of a company where that person directly or indirectly holds at least 5% of the shares, interest or voting rights in the company, or has the right to appoint or remove a majority of the directors in the company.

- The compensation of managers of the company must now be disclosed to members of the company as part of the ordinary business to be transacted at the annual general meeting.
- Every public company must now include a statement relating to “changes in equity” in its financial statements
- Every public company must display its audited accounts on its website
- An audit committee is now required to consist of five members, made up of three shareholders and two non-executive directors. All members of the audit committee must be financially literate.
- Companies are now required to publish their list of unclaimed dividends in two national newspapers
- Private companies can hold their annual general meetings electronically, but this does not apply to public companies who absent a special dispensation must continue to hold their general meetings physically
- The use of company seals is now optional for all companies

## E-commerce

The adoption of harmonized regional rules on e-commerce, focusing on electronic transactions such as money transfer and payment, taxation, cybersecurity and consumer protection would facilitate trade and deepen the process of regional integration in ECOWAS. It would promote more efficient provision and greater access to financial services to facilitate cross-border trade. Integrating regional financial markets in this manner can be an important mechanism to allow greater scale in the provision of financial services, to lower the costs of financial services, increase competition and increase access to finance.

The proposed Draft Harmonized Act on E-Commerce is based on regional frameworks (ECOWAS, WAEMU, OHADA) and national laws. The survey of the regional and national frameworks has disclosed the existence of cyber laws in some ECOWAS Member States covering aspects of e-commerce including electronic transactions, computer crime and cyber security, data protection and privacy, consumer protection, online content and domain name regulation. However, the three regional instruments that are part of the ECOWAS framework have not been uniformly transposed into national laws, are underenforced and do not take into consideration many of the emerging features of the digital ecosystem.

Few of the national laws are informed by the results of the pioneering efforts of UNCITRAL with regard to the development of international instruments on e-commerce. For an effective regional strategy on e-commerce, it is desirable to develop a draft harmonized supplementary act that builds on the existing regional framework and incorporates relevant principles of the key UNCITRAL instruments that respond to the dynamism in the e-commerce ecosystem. This consideration has been taken into account in the drafting of the proposed harmonized act on e-commerce.

A very critical area that must also be incorporated in an e-commerce framework to facilitate regional trading is a functioning payments system. That would respond to the complaints and frustrations expressed by the private sector during the stakeholder consultations about difficulties with regard to access to funds or transfers of funds when transacting business in another ECOWAS Member States, including the costs of cross-border payments and money transfers.

Most electronic transactions are paid for in cash on delivery because of the very limited penetration of formal banking systems in many ECOWAS economies, uneven patterns of electronic money usage across ECOWAS countries and the unpopularity of systems for paying for goods in advance on delivery, which in many cases is attributable to mistrust on the part of online buyers.

ECOWAS started work on a regional payments and settlement system in 2015. The aim is to establish a multilateral mechanism whereby national currencies will be used for the payment and settlement of intra-Community transactions. The key policymakers in this context include the ECOWAS Commission, the Community Central Banks and the West African Monetary Agency. The work is on-going and no date has been set regarding the completion and finalization of a payment systems in the region.

However, given the critical nature of the payments and settlement and also the reality that many of the transactions will be effected electronically, it is expedient while waiting for the completion and operationalization of a regional framework to include in the proposed e-commerce laws, a section on payments and settlements system drawing on the experiences of other countries or model laws that are available.

The mission has sought to respond to the void by incorporating relevant principles reflecting international best practice. The key instrument that has been used in developing the section on payments systems in the draft harmonised act on e-commerce is the EU Directive of 2015 on Payment Services in the Internal Market, Directive (EU) 2015/2366.

The Draft Harmonized Act on E-Commerce provides a definition of Payment Service Providers not limited to banks, and which includes institutions that must meet certain capital and risk requirements. An eligible institution in an ECOWAS Member country can apply for authorization to provide payment services which includes cash deposits and cash withdrawals but excludes paper



checks. The application would be submitted to the designated competent authority in the ECOWAS Member country. An institution whose application is approved may provide the payment services in other ECOWAS countries.

The Draft Harmonized Act on E-Commerce provides for strict supervision of the payment institutions by the national central banks, the submission of regular information by payment institutions to the designated competent authorities, and for the exchange of information between competent authorities of Member States about the payment services providers authorized to operate by Member States. The central bank would maintain a register of authorized payment institutions which will be publicly available.

### **Contracts on the sale of goods**

The law of contracts is fundamental to the negotiations and enforcement of the rights and obligations linked to business transactions. Stakeholders have complained about uncertainties in the application of the rules regarding the formation and enforcement of contracts on the sale of goods due to the differences in the civil or common law orientation of ECOWAS member States. The adoption of common regional rules on contracts on the sale of goods would provide greater certainty and clarity to the rights and obligations of parties under legal arrangements between parties who come from different ECOWAS member States. A draft act in this area could be provided going forward with the business law harmonization process.

## **Coordination, implementation and monitoring of the business law harmonization in ECOWAS region**

The mechanism for coordination and monitoring of the business law harmonization process in ECOWAS region will include:

- A technical committee to coordinate and monitor the implementation of the business law harmonization process. This committee will be chaired by the Ministry of Justice of the ECOWAS member State which holds the presidency of ECOWAS. The Focal point for the ECOWAS Commission will be the Directorate of Legal Affairs. The Executive Directorate of FEWACCI will be the regional Focal point for the private sector. Members of the Committee will include: ECOWAS and UEMOA Commissions and their member States, private sector institutions, technical institutions (ECOWAS Court of justice, OHADA).
- Ad hoc working groups to prepare the draft acts/decisions in its area. The working group will be co chaired by the ECOWAS Directorate of legal affairs and relevant sectorial private sector associations. Members will include: consultants and experts from academia and legal practice, experts from the sector (public agencies, companies), specialised institutions (OHADA, Court of Justice, AfCFTA).
- National focal points to support the implementation of the business law harmonization process in the country and to serve as an interface between the regional technical committee and the national actors. The national focal points will include one focal point from the public sector (Ministry of justice) and one focal point from the private sector (Chamber of commerce and industry).

## **Platform for public-private dialogue on the business law harmonization in ECOWAS region**

A thematic regional public-private dialogue platform on the business law harmonization will be established. This thematic platform will be linked to the regional Public-Private Dialogue platform when initiatives underway on the establishment of the regional platform, including the ECOWAS Business Council, are operationalized. The mission of the thematic platform will include providing guidance on policies and reforms in the area of business law harmonization, developing advocacy, approving report, reviewing the implementation process and addressing any challenges related to the business law harmonization process. The platform will be co-chaired by the Minister of justice and a Regional business association (private sector apex). Members will include ECOWAS bodies and relevant institutions, Ministers of Justice, UEMOA Commission, private sector associations, civil society organisations, technical partners.

## **Involvement of private sector in the business law harmonisation process**

To ensure a greater involvement of private sector in the business law harmonization process, the private sector will have to make contributions at each stage of the decision-making process of ECOWAS. In particular, private sector bodies should seek the support of the ECOWAS Parliament, which should verify, before giving its approval, whether the private sector has been consulted. The referral of the Parliament is mandatory given the nature of the area, which has to do with the adoption or review of the community Acts relating to economic and monetary, private sector and promotion of investments.

There is also need that FEWACCI implements a communication strategy with a view to increase awareness and ensure understanding of the relevance and impact of the business law harmonization among range of target audiences, including private sector and policy influencers through external communication. Expected results includes greater interest, advocacy and engagement of the stakeholders in the business law harmonization, greater awareness of the role of the private sector in the business law harmonization process, broader contributions to business law harmonization, more constructive deliberations leading to positive decisions and consensus and effective and efficient circulation of, access to information. The communication strategy will concentrate on outreach to decision makers and those affected by the business law harmonisation. Key messages will aim to remove the obstacles and counter the psychological barriers to the business law harmonization in the ECOWAS space. The messages for advocacy will include the benefit for all stakeholders, the relevance to the AfCFTA, and show proof through good practices and key achievement in the area of legal integration in Africa and around the world. The strategy proposes a number of channels that could be prioritized based on adaptability and value-for-money criteria that can be used by a wide range of target audiences.

In addition, the capacity of relevant stakeholders should be strengthened to carry out the business law harmonization process. It is recommended to recruit a long-term Technical Assistant under FEWACCI secretariat to support the contribution of private sector to the promotion of the business law harmonization. Ensuring a greater involvement of the private sector in the business law harmonization process will contribute to he sustainability of actions in this area.

The proposed action plan includes specific activities under each axis of intervention and covers a period of three years. It is based on the assumptions that interest in the business harmonization process by the public and private sectors remains high, is supported by adequate funding and is led by persons strongly committed to the objective of business law harmonization in the ECOWAS region.

## 1. Introduction

The regional integration process in West Africa is supported by the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA), working alongside specialized technical agencies and regional institutions. The two regional organisations, through their founding Treaties, were mandated to create common markets based on the free movement of people, goods, services, capital and the right of establishment. This objective was also reflected in the just ended ECOWAS 2020 vision, which aimed at creating a prosperous, peaceful and harmonious area without borders, based on governance, where people can access vast resources and create value from them. The ECOWAS Commission is in the process of adopting the 2050 vision document, which should obviously capture this objective.

The Member States of ECOWAS have recognized the crucial role of the private sector in their quest to achieve rapid economic growth and development. They consider the private sector to be the main actor in the conduct of regional, continental and international trade in the production and distribution of goods and services. The department in charge of the private sector of the ECOWAS Commission leads the implementation of the ECOWAS Strategic Framework for private sector and enterprise promotion.

As part of the implementation of the provisions of Article 3 (paragraph c, d and e) of the Revised Treaty, the ECOWAS Commission has worked to revitalize the Regional Business Associations (RBA) to prepare businessmen to be capable and able to develop business partnerships between themselves on the one hand and the wider world on the other. Among these RBA, is the Federation of West Africa Chambers of Commerce and Industry (FEWACCI).

The main objective of FEWACCI is to enhance the participation of private sector actors in the promotion and deepening of regional economic integration through the strengthening of contacts and communication among members, the development of new export markets and the facilitation of cross-border investments.

The integration process has made significant progress towards deepening the common market. In particular, many efforts have been made to improve the level of intra-community trade in goods. A trade liberalization scheme has been put in place, which has resulted in the establishment of a free trade area. The ECOWAS Common External Tariff (CET) has been in place since 2015 as part of the creation of the Customs Union. Significant advances have been made creating new business opportunities for individuals and economic agents. This progress includes the harmonization of tariff and non-tariff regimes, adoption of a new customs code, adoption of the ECOWAS investment code, reforms on the free movement of people, reforms of the financial sector, construction and modernization of road and port infrastructure, improvement of energy supply, development of telecommunications. ECOWAS is currently pursuing the achievement of a common investment market in accordance with the requirements of the revised treaty of this Organization. These assets are reinforced by the growing openness of the region to international trade. In this regard, ECOWAS and its member states are engaged in the negotiation and implementation of bilateral, continental and multilateral trade agreements, in particular the African Continental Free Trade Area (AfCFTA).

Despite this progress, persistent challenges exist which limit the increase in intra-regional trade and do not promote an environment conducive to business and investment. The level of intra-community trade is around 12% with an average growth rate that stabilized at 6% before the advent of the COVID-19 pandemic that appeared in West Africa during the first quarter 2020.

The business environment is hampered by several obstacles, including obstruction of trading across borders, weak access to finance and unsuitable payment system, difficult enforcing contracts conditions, inefficient market development, protectionism and non compliance with the intellectual property rules, poor infrastructure and weak legal business environment.

Concerning the legal business environment, the existence of different legal and regulatory regimes in the region is one of the challenges to be met. While the 9 French-speaking member states of ECOWAS (Benin, Burkina, Cote d'Ivoire, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo), operating within the framework of OHADA, have harmonized the framework of business and commercial law, the other six member states (Cap Verde, Gambia, Ghana, Liberia, Nigeria, Sierra Leone) apply different regimes according to the principles of English Common Law. This situation generates different contractual systems as well as different commercial principles and practices which induce compartmentalisation of the region's economic space by legal / regulatory barriers in different Member States. The region's competitiveness for foreign direct investment and trade is negatively impacted as investors feel that they are deprived of economies of scale from which they would have benefited in a harmonized legal and contractual environment.

In the context of the deepening of regional economic integration in West Africa and to allow the private sector in the region to fully benefit from trade agreements, in particular the African Continental Free Trade Area (AfCFTA), the Federation of West African Chambers of Commerce and Industry (FEWACCI) is committed alongside the ECOWAS Commission in promoting the harmonization of business law in the ECOWAS region.

The Investment Climate Reform Facility (ICR) approved the request of FEWACCI, for support to promote the harmonization of business law in the ECOWAS region within the framework of its mandate aimed at improving the business climate for the development of private investment. This technical assistance falls within the framework of the objectives of the ICR Facility. Indeed, this Facility aims to support ACP partner countries and regional institutions in their process of structured public-private dialogue in order to improve the business environment and the business climate. The Facility is co-financed by the European Union and the Organization of African, Caribbean and Pacific States (OEACP) under the 11th EDF, with the German Federal Ministry for Economic Cooperation and Development (BMZ) and the British Council. It is implemented jointly by GIZ, the British Council, Expertise France and SNV.

This support is implemented through a technical assistance mission with a specific view to assisting FEWACCI in the promotion and implementation of the ECOWAS business law harmonization process in targeted priority sectors, with the inclusive involvement of the private sector. The mission will result in the preparation of:

- a study report on the business law harmonization in the ECOWAS region with the participation of the private sector and an action for the involvement of the private sector in the harmonization efforts,
- two or three draft harmonized acts and advocacy for the harmonization of business law,
- a coordination and monitoring mechanism,
- an external communication plan and a public-private dialogue mechanism on the harmonization of business law.

This report has been prepared within this framework, with the contribution of stakeholders from government, private sector, civil society, ECOWAS and UEMOA Commissions and specialized institutions. Consultations with these actors took place mainly during the field mission from April 26 to June 2, 2021 in Abuja (Nigeria).

## 2. Situation of business law harmonization in ECOWAS region

### 2.1. Existing harmonized regional policies and tools relevant to the business environment

Significant work has been undertaken by ECOWAS with regard to the harmonization of policies of its Member States. As of May 2021, ECOWAS Member States have adopted common positions and harmonized policies in a number of areas relevant to trade. These include:

- the ECOWAS Trade Liberalisation Scheme (ETLS) which involves the creation of free trade area marked by the elimination of tariffs and reduction of non-tariff barriers in intra-regional trade, including guarantees for the free movement of persons, goods, services and the right of establishment, the establishment of a customs union and the adoption of the common external tariff in the trade of ECOWAS Members with third countries
- ECOWAS common biometric passport and identity cards issued by MS for intra-regional and international travel
- a harmonised quality policy to facilitate compliance with international trade rules and technical regulations and enhance market access of products
- a common regional investment policy and code and establishment of a regional competition authority
- a harmonized VAT and excise duties system
- common trade defense measures
- an IT-assisted ECOWAS interconnectivity system SIGMAT which permits automated data transmission of transit data to customs authorities in Member States
- the expedited work on a harmonised payments and settlement systems with an investment guarantee mechanism

The private sector through its organizations contributed to these achievements in ECOWAS. In particular, FEWACCI carried out initiatives that have made it possible to achieve these results in accordance with its mission as a forum for public-private dialogue, advocacy, monitoring and promotion of policies and protocols leading to the improvement of the business climate in West Africa.

## 2.2. State of play of the business law harmonization initiative undertaken by the ECOWAS Commission

In October 2005, the ECOWAS Commission established a Working Group of Resource Persons and Consultants to, among other things: (a) identify study and analyse business laws of the five non-OHADA States in ECOWAS; (b) distill the common principles applicable to the five member states; (c) identify the areas of similarities and dissimilarities with the OHADA regime (if any); and (d) draft supplementary acts that as much as possible harmonize business laws within the region which are consistent with international standards.

Between 2006 and 2010 the Working Group worked to produce reports containing summaries of the business laws of the five non-OHADA States in ECOWAS; charts identifying similarities and dissimilarities of the business laws of the OHADA States with the OHADA regime; and draft supplementary acts covering a number of areas.

Additional work was carried out in the period 2013-2015 with the conduct of consultations to review and finalise the draft supplementary acts. There were also meetings to sensitise stakeholders on the content of the draft supplementary acts, the last of which occurred in 2015.

For this phase of the harmonisation process, the effort was made to interface the prior non-OHADA centred approach with the OHADA regime through the participation of representatives from UEMOA and OHADA. This required a much closer scrutiny of the dichotomy between the common law and the civil law provisions of Member States.

The areas covered by the studies include General Commercial, Business Association, Investment and Securities, Carriage of Goods, Bankruptcy and Insolvency, Banking and Insurance, Intellectual Property/Copyright, Arbitration and Dispute Resolution, Employment Law/Labor, Landlord and Tenant, Consumer Protection/right, Recovery and enforcement measures, Competition, Accounting Standards and Conventions.

The studies were carried out in 5 countries out of the 6 non-OHADA member countries. The study was not carried out in Cape Verde. It can be seen from the table above that the areas covered in all the countries of the study concern General Commercial, Business Association, Investment and Securities, Carriage of Goods, Bankruptcy and Insolvency, Banking and Insurance, Intellectual Property / Copyright, Arbitration and Dispute Resolution. Issues related to Recovery and enforcement measures, Competition and Accounting Standards and Conventions have been studied in less than half of the countries. A critical analysis of existing national laws and principles was made aimed at drawing out the similarities and differences between national laws and the texts of OHADA. The countries and areas covered are presented in table 1 below:

**Table 1: Areas covered in the national studies carried out in 2007**

	Area	Country				
		Sierra Leone	Nigeria	Gambia	Ghana	Liberia
1	General Commercial	X	X	X	X	X
2	Business Association	X	X	X	X	X
3	Investment and Securities	X	X	X	X	X
4	Carriage of Goods	X	X	X	X	
5	Bankruptcy and Insolvency	X	X	X	X	X
6	Banking and Insurance	X	X	X	X	X
7	Intellectual Property/Copyright	X	X	X	X	X
8	Arbitration and Dispute Resolution	X	X	X	X	X
9	Employment Law/Labor	X	-	X	X	X
10	Landlord and Tenant	X	-	X	X	
11	Consumer Protection/right	X	-	X	X	
12	Recovery and enforcement measures	-	X	-	-	
13	Competition	-	-	X	X	

14	Accounting Standards and Conventions	-	-	X	X	
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Source: Study report

They study pointed out certain problems that may not necessarily prevent but could slow down the process of harmonization of business laws in the region such as the differences in the legal systems, currencies, tax structures and the economic and financial systems of member states. Hence there is need for the gradual harmonization of these differences as ECOWAS pursues the path of harmonization of business laws in the region.

Fourteen draft supplementary acts were prepared in the above-mentioned areas. Most of these acts were drawn up in 2008 and revised subsequently, particularly in 2011 and 2013. The existing draft supplementary acts are presented in table 2.

**Table 2: Existing draft supplementary acts**

	Title
1	Supplementary act on the uniform rules on carriage of goods by road
2	Supplementary act on the uniform rules on carriage of goods by sea
3	Supplementary act on the uniform rules on carriage of goods by air
4	Supplementary act on the uniform rules on the copyright
5	Supplementary act on the uniform rules on the designs
6	Supplementary act on the uniform rules on patents
7	Supplementary act on the uniform rules on the trademarks
8	Supplementary act on security of tenure for local and foreign nationals relating to business premises in ECOWAS
9	Supplementary act on the principles of commercial contracts
10	Supplementary act on the uniform rules on the sale of goods
11	Supplementary act on the community rules on the establishment of the ECOWAS accounting standards agency
12	Supplementary act on the uniform rules on insurance
13	Supplementary act on the employment/labour matters in ECOWAS
14	Supplementary act on common principles of company law and related commercial entities

Source: Study reports

These draft acts were examined during technical meetings comprising representatives of the ECOWAS Commission and the consultants who produced the draft acts. Since 2015, the process of harmonizing business law has broken down. None of the draft acts have been adopted by the ECOWAS statutory bodies.

Significant challenges arose during this stage. Some stakeholders preferred that where there were differences between the provisions of the OHADA and non-OHADA regimes, harmonisation could be effected through the adoption of the OHADA rules. Others did not agree with this approach and proposed approaches that would not be seen to be a wholesale adoption of the OHADA rules. At the same time, there was the recognition that because the OHADA regime also applied to other African countries, any changes to the OHADA provisions within the ECOWAS space would result in conflicting commitments for OHADA countries in ECOWAS under the harmonised ECOWAS regime and the OHADA regime.

From the preliminary consultations of the experts with the ECOWAS officials, it is evident that there is enthusiasm on the part of ECOWAS officials to resume work on the harmonisation of business laws in the ECOWAS space. They were supportive of the objectives of the technical assistance to FEWACCI through the ICR facility including the preparation of the study. Thus, through the initiative of FEWACCI, the interest in the business law harmonization process in ECOWAS has been rejuvenated.

The technical assistance mission provides an opportunity to identify gaps and challenges that had stymied the business law harmonization process and to make recommendations to facilitate completion of the process with the active participation of the private sector with FEWACCI playing a leading role.

The failure to complete the harmonization process through the adoption and implementation of binding supplementary acts can be

attributed to various factors including:

- lack of political will to break down the psychological barriers created by idiosyncratic attachment to either the common law or civil law systems
- inability to agree on an effective methodology for dealing with the differences between the common law and the civil law systems - some of which have been characterised by stakeholders as largely semantic in nature or devoid of legal substance
- reluctance to commit to new norms or obligations because they are unknown to the customs and usages of one's jurisdiction
- non participation of Member states in the process during the early stages
- non participation of ECOWAS Parliament in the review and consideration of the draft supplementary acts; a new role of the Parliament under recently adopted regulations.
- lack of a structured institutional framework which brings together key stakeholders to ensure coordination and monitoring of the harmonization process
- human resource constraints at the ECOWAS Commission
- general implementation bottlenecks within the ECOWAS system as a whole which is perceived not to be able to follow through on recommendations made to ECOWAS institutions.
- consensus decision making process of the ECOWAS Commission which makes it difficult to agree on recommendations and facilitates the blocking of measures by interest groups
- the lack of a system for adopting community wide rules that are automatically binding on all ECOWAS member states
- lack of leadership to follow up on implementation issues due in part to tensions and personnel changes in some departments of ECOWAS

The process of business law harmonization may have been flawed to the extent the private sector operators were not more involved in the earlier studies and activities to ensure that their needs and interests were taken into account in the drafting of the supplementary acts. The current mission seeks to remedy this by adopting a participative and inclusive approach, which will involve all stakeholders, including the private sector in order to ensure a successful business law harmonization process.

### 3. Business law harmonization in ECOWAS region: issues and challenges for the private sector

This chapter aims to highlight the convergent and divergent positions in the different legal systems in West Africa. The stakeholders will be invited to agree on a harmonized document that takes into account the specificities of each legal regime. The divergences will be submitted to negotiations between the stakeholders.

#### 3.1. Definition and methodology

##### 3.1.1. Definition

Harmonization of the laws of different countries generally refers to the replacement in varying degrees, of the existing national laws with common rules. It is necessary to provide greater legal certainty and reduce transaction costs typically associated with operating under diverse legal systems.

However, harmonization may be opposed by parties who fear that replacing the existing local law with new rules common to a group of countries may mean losing the benefit of the expertise achieved in one's own system and having to learn a new set of rules. Time and effort will then have to be exerted again to become initiated and competent, after an initial period of risk and uncertainty. Moreover, there may be concerns that the change will mean abandoning a system often rooted in a long tradition and replacing it with new rules that may seem to be much less adapted to the local culture and environment.

To deal with these obstacles linked to the weight of existing local traditions, proponents of harmonization often take care to identify the local features that will be affected if common rules come to replace them and efforts are made to draft new rules that will not

clash too strongly with the old ones, in order to facilitate the acceptance of the reform and enhance its chances of successful implementation. The mission finds this to be a reasonable approach and adopts it as the preferred methodology for the harmonisation of business laws in ECOWAS.

### 3.1.2. Methodology

All the anglophone countries in ECOWAS operate individual national laws based on the common law and are each surrounded by francophone countries operating under the integrated OHADA regime. This geographical proximity suggests an option to harmonise the business laws in ECOWAS through the introduction of OHADA laws in the anglophone countries.

However, a key question to be addressed in the harmonisation process is whether the introduction and adoption of OHADA laws in anglophone countries should be wholesale and with or without modifications.

In general harmonisation processes are different and can take many forms at the domestic and international levels. For example harmonization could be effected through the revision of national code, the development of an international code, or the adoption of uniform principles as exemplified by the UNIDROIT Principles on Contract Law. A more radical approach is “uniformization” which seeks to eliminate differences between national laws by replacing them with a unique and identical text for all the States involved in the legal integration process.

Harmonisation is less radical than uniformization and involves changing the domestic laws of countries that are not similar in order to make them all coherent or update them for reform. While respecting the peculiarities of the different national systems, harmonization provides the opportunity to reduce the differences in selected areas. This can take the form of rules adopted by an international organization which can be recommended to member states for adoption.

Harmonisation within the context of ECOWAS would require the development of a common set of rules by ECOWAS which aims at reducing the differences between the national systems using the OHADA and common law systems without necessarily eliminating all the rules of a particular system.

Some stakeholders suggested proceeding with a minimalist approach where provisions that are common to both OHADA and non-OHADA countries would be the foundation of the new harmonized regional rules. Proponents of this view recognized the possibility that provisions found in the common law but not the civil law, and vice versa, could be incorporated into the harmonized rules where they do not conflict with established rules under either legal system and would promote efficiency and effectiveness in the implementation of the law.

It was also suggested that harmonisation should include areas where there are no existing or well developed national laws but where harmonisation through the adoption of common regional norms would facilitate trade, such as e-commerce.

## 3.2. The OHADA legal regime

### 3.2.1. Objective

L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires OHADA) was established under a treaty adopted in Port-Louis, Mauritius on October 17, 1993. It currently has 17 Member States, namely Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal and Togo. More than half of the membership of OHADA (9 States) comprises ECOWAS countries.

OHADA's main objective is the harmonisation of business laws in the Member States through the development and adoption of simple, modern and common rules for their economies; the establishment of appropriate judicial procedures, and the promotion of arbitration for the settlement of contractual disputes.

### 3.2.2. Uniform Laws

Uniform Acts have been adopted by OHADA in the areas listed in the table below.



**Table 3: OHADA uniform Acts**

	Area	Effective from:
1	General Commercial Law	January 1, 1998
2	Company Law	January, 1, 1998
3	Securities Law	January 1, 1998
4	Debt Recovery and Enforcement Law	July 10, 1998
5	Recovery Procedures and Measures of Execution	August 31, 1998
6	Bankruptcy	January 1, 1999
7	Arbitration	June 11, 1999
8	Accounting	January 1, 2002
9	Law regulating contract for the carriage of goods by road	January, 2004
10	Cooperative Societies	May 15, 2011
11	Insolvency	December 24, 2015
12	Mediation	March 15, 2018

A draft Uniform Act on Labour Law has been developed and will be finalized upon completion of sub-regional consultations within the CEMAC zone. Other normative areas being considered for harmonisation pursuant to a decision of the Council of Ministers in 2013 include factoring, leasing, franchising, sub-contracting, joint ventures, public-private partnerships, conflict of laws and public circulation of documents.

Under Article 10 of the OHADA Treaty, the Uniforms Acts are directly applicable and binding on member states. The Uniform Acts prevail in the event of conflicts with the provisions of any domestic laws of member-states.

Institutions created for the administration of the OHADA include the Council of Ministers and the Common Court of Justice and Arbitration. The OHADA Common Court of Justice and Arbitration based in Abidjan, has power to interpret the provisions of the OHADA Treaty and the OHADA uniform Acts.

French has been designated as the main working language of OHADA under Article 42 of the OHADA Treaty.

### 3.2.3. Analysis

Under the methodology recommended above, harmonisation will first involve a comparison of the current OHADA Uniform Acts with the laws of non-OHADA countries to identify areas of convergence or common approach.

However, the laws that have been developed by OHADA do not include some areas covered by the business laws of the non-OHADA countries such as:

- banking
- consumer rights
- competition
- investment
- carriage of goods by sea and air
- intellectual property
- security of business premises for local and foreign nationals

For these areas in the laws of the non-OHADA countries not covered by the OHADA regime, harmonized regional rules would need to be developed. This should be less contentious as there is less likely to be divergences between OHADA rules and the laws of anglophone countries to the extent OHADA is yet to develop laws in those areas. New rules will also need to be developed for areas not addressed currently under either the business laws of the OHADA or non-OHADA countries.

In addition, it is necessary to provide an appropriate interface between the key institutions in ECOWAS and the OHADA regime. Thus, regarding implementation of the harmonized acts, adjustments to the roles of the ECOWAS Council of Ministers and the OHADA Council of Ministers may be necessary. Similarly, complementary roles for the OHADA Common Court of Justice and Arbitration and the ECOWAS Court of Justice will need to be worked out. The ECOWAS Council of Ministers is authorised by the powers delegated to it by the Authority to issue directives on matters concerning coordination and harmonisation of economic integration policies.

By way of appeal, the OHADA Court of Justice and Arbitration is empowered to rule on decisions pronounced by the appellate courts of Contracting States in all business issues raising questions pertaining to the application of the Uniform Acts. The OHADA Council of Ministers in consultation with the Court of Justice and Arbitration adopts the Uniform Acts and makes regulations regarding their implementation.

It is expected that all the key institutions in OHADA and ECOWAS will continue to play their traditional roles even in a harmonised business law regime. However, an option to ensure complementarity is to create a Special Tribunal to adjudicate disputes arising under the business laws harmonised in the ECOWAS space.

This new institution will play a role analogous to the role of the Free Trade Commission established under the North American Free Trade Agreement (NAFTA) to oversee the implementation of the NAFTA and settle disputes that may arise regarding interpretation or application, in addition to hearing any other matter that may affect the functioning of the NAFTA agreement.

Such a Special Tribunal could be composed of judges and staff from the OHADA Court of Justice and Arbitration and the ECOWAS Court of Justice. The Special Tribunal may rotate its venue for hearing cases between Abuja and Abidjan depending on the availability of financial resources.

In this context, both the ECOWAS Council of Ministers and the OHADA Council of Ministers will need to discuss and agree on the rules of procedure, including composition and mandate for the Special Tribunal and work to ensure that the terms of their agreement are reflected in supplementary regulations they approve in their respective jurisdictions in ECOWAS and OHADA.

### **3.3. Laws of the non-OHADA countries based on the common law**

The reports prepared in 2007 by consultants recruited by ECOWAS for the initial business law harmonisation provide summaries of the business laws of each of the anglophone non-OHADA countries as described below.

#### **3.3.1. Gambia**

The report issued in 2007 by the consultants on Gambia comprised 13 Chapters corresponding to categories of business laws further divided into sections dealing with about 28 specific laws applicable in The Gambia. The general categories of laws were identified as general commercial law; business associations; investment and securities law; dispute settlement; accounting; carriage of goods; bankruptcy and insolvency; banking and insurance; employment / labour law; consumer rights; intellectual property; competition; and landlord and tenant law.

The report noted that there were no consumer protection or landlord and tenant laws and that a bill on competition law was being considered but had not been adopted. Since 2007, Gambia has passed legislation covering bankruptcy and collateral laws, commercial and company laws, land and building laws, intellectual property, information and communications, and competition.

#### **3.3.2. Ghana**

The report issued in 2007 by the consultants on Ghana provided a comprehensive compilation and summary of the business and commercial laws in Ghana in 14 chapters corresponding to the following: general commercial law; banking and insurance; dispute resolution mechanisms; consumer rights; competition; investment law; securities law; carriage of goods by road, rail, sea and air; business associations including companies, partnerships; business entities; accounting standards; bankruptcy and insolvency; employment / labour law; intellectual property; landlord and tenant law as it relates to security of business premises for local and foreign nationals. The report listed 45 statutes described in the report.

Since 2007, Ghana has passed legislation covering banking and securities laws, tax laws, trade laws, land and building laws,

intellectual property, and dispute resolution.

### 3.3.3. Liberia

The report issued in 2007 by the consultants on Liberia comprised 9 chapters corresponding to the following categories of business laws: general commercial law; business associations; investment and securities laws; dispute settlement mechanism; bankruptcy and insolvency; banking; insurance; intellectual property and labour law.

The report noted that Liberian commercial law was relatively limited and underdeveloped, leading to a heavily reliance on the common laws of England and the United States.

Since 2007, Liberia has passed legislation covering bankruptcy and collateral laws, commercial and company laws, insolvency laws, and labour laws, and intellectual property.

### 3.3.4. Nigeria

The report issued in 2007 by the consultants on Nigeria comprised 10 chapters corresponding to the following categories of business laws: law of business associations; recovery and enforcement measures; securities and other collaterals; general commercial law; bankruptcy and insolvency; arbitration and dispute settlement; carriage of goods; banking; insurance law; and intellectual property.

The report noted that Nigerian law in the area of competition was still evolving while consumer protection was the subject of reform by the Nigerian law reform commission. The report cautioned on the need to examine relevant rules in the States of the given the legislative competence of the state governments in making business laws.

Since 2007, Nigeria has passed legislation covering banking and credit laws, bankruptcy and collateral laws, commercial and companies law, labour laws, securities laws, and trade and customs laws, and intellectual property.

### 3.3.5. Sierra Leone

The report issued in 2007 by the consultants on Sierra Leone was divided into 11 chapters corresponding to the following categories: general commercial law; business associations; investment and securities; carriage of goods by sea; bankruptcy and insolvency; banking and insurance; employment / labour; intellectual property / copyright; landlord and tenant; consumer protection; and dispute resolution.

The report noted that between the year 2000 and 2007 a number of old laws relating to business associations, investment and securities, banking and insurance had been repealed and replaced with new ones. Fresh bills relating to bankruptcy and insolvency, consumer protection, accounting standards and alternative dispute resolution were being considered by the Parliament at the time of writing the report. Most of those bills were drafted since 2004/5, largely revised in 2005/6 and a few others drafted since 2006 and revised in 2007. The report noted however that while insolvency law was still evolving, competition law is yet to evolve in Sierra-Leone. This explains why there were no chapters in the report relating to competition and accounting standards laws.

Since 2007, Sierra Leone has passed legislation covering banking and credit laws, bankruptcy and collateral laws, commercial and company laws, labor laws, telecommunications, intellectual property, bankruptcy, and procurement.

### 3.3.6. Cape Verde

The report of the consultants in 2007 focused on the business laws of the five anglophone non-OHADA member States and did not include a review the laws of Cape Verde, a Portuguese speaking non-OHADA member State.

A former colony of Portugal, the legal system of Cape Verde is based on the civil laws of the Portugal. In this respect it differs from the laws of most of the OHADA countries which draw on civil laws traced to France.

Cape Verde has passed business laws covering areas such as banking and credit laws; bankruptcy and collateral laws,

commercial and company laws, insolvency, labor laws, land and building laws, securities laws and intellectual property.

### 3.4. Comparative analysis of the OHADA legal regime and the laws of non OHADA countries

A comparative analysis of the laws of the non-OHADA countries and the OHADA regime made the following findings with respect to certain categories of laws.

#### 3.4.1. Hire Purchase and Conditional Purchase

- The hire-purchase and conditional purchase laws in the non-OHADA countries seek to protect consumers and are supplemented by the principles of common law.
- The Uniform Act on General Commercial Law under OHADA does not expressly cover contracts of hire-purchase although all commercial operators and agents are required to be registered. However, many such agents invariably engage in some form of hire-purchase or conditional sale contracts.
- Significant divergence of approach can be observed in the area of general merchants and security interests on account of a special registration process under the OHADA laws.

#### 3.4.2. Company Law

- The existence in the OHADA States of a Uniform Act on Commercial Companies and Economic Interest Groups, which apart from incorporated companies, covers partnerships and joint ventures.
- The basic forms of commercial entities and regulation regime under the Uniform Act are comparable to those found in the laws of non OHADA member States of the ECOWAS although some differences exist.
- The existence in English speaking member states of legislation and regulations on companies and related commercial entities which share fundamental characteristics particularly in relation to the:
  - division between management powers and ownership;
  - importance of Articles in prescribing management powers and shareholder rights;
  - internal management rule in favour of third parties;
  - prohibition or regulation of transactions involving a conflict of interest;
  - requirement of audited accounts at annual general meetings;
  - liability of management for corporate wrongs and a limited provision for derivative action by minority shareholders;
  - provision for minimum capital base; and
  - prohibition of financial assistance for the purchase of own shares.

#### 3.4.3. Security of Tenure

- The existence of fairly good provisions in both OHADA and Common Law regimes on the relationship between lessor and lessee on matters relating to the acquisition of premises for business purposes.
- The relationship between the lessor and lessee is essentially contractual in nature and is governed therefore by the parties' agreements and stipulations arising from the law.
- The rules governing the rents payable by a lessee to lessor relating to acquisition of premises are basically the same in both the OHADA and common law regimes.
- The types of rent payable however in the common law regime are broader than the stipulations provided in the OHADA regime
- The absence of a legislative provision in the common law regime conferring the right to renew a lease on the lessee upon

the expiration of an existing (current) lease with respect to a leased premise subject to the stipulated conditions by law.

- The absence of specific legislative provisions in the OHADA regime on criminalizing certain conducts of a lessor relating to particular breaches of lease agreement.

### 3.4.4. Employment and Labour

- The absence of a Uniform Act or any harmonized legal instrument on labour and employment matters in the OHADA regime;
- The existence of old and scattered pieces of legislation dealing with employment and labour matters in the non-OHADA States requiring revision for substantial compliance with the international labour standards and ILO Treaty obligations of Member States;
- Employment law is essentially about the law of contract that sets out the rights and obligations of the employer and the employee. A closer analysis of the laws relating to employment in Nigeria, Ghana, Sierra Leone, Liberia and The Gambia reveals that employment is essentially governed by common law principles of master and servant relationships, contract, tort and custom.
- The laws in non-OHADA deal with matters including the methods or tests being utilized by the Court in determining the existence of a contract of employment; and the categories of work that a young person, disabled person and women can be employed to do.
- The terms of employment relationship may be agreed upon by the parties, some may be incorporated subsequently, may be specified in a collective agreement between a trade union and employers, may be taken from statutes, conduct of the parties or custom.
- Enabling laws in the non- OHADA States require the establishment of employment centres and mechanisms for the determination of wages payable, for the regulation of the terms and conditions of employment of workers, for the proper facilitation of a harmonious and peaceful co-existence between governments, employers and labour unions, for the administration of labour laws and for the adjustment of wages.
- Employment being essentially contractual in nature, the parties to it are entitled to some rights and are subject to some obligations as may be stated under the contract or determined by the Courts where there is no express term to that effect.

### 3.4.5. Sale of Goods

- The law on sale of goods in the non-OHADA Countries is of common law origin. The statutes governing the sale of goods are mainly based on the old English Sale of Goods Act 1893. However, the application of these statutes is not exclusive as the common law is also applicable as long as it does not conflict with the statute.
- In OHADA states, sale of goods is part of general commercial law found in Book V of the OHADA Uniform Act on General Commercial Law.
- The subject matter of sales is limited to chattels personal and some defined products of the soil. This is the same with OHADA countries except that the OHADA Uniform Act applies only to goods bought by traders.
- That the most significant legal instrument operative in the field of international sales is the United Nations Convention on Contracts for the International Sale of Goods (CISG)
- That the origin of CISG is to be found in the work of the United Nations Commission on International Trade Law (UNCITRAL), a United Nations worldwide representative body with a mandate to promote the progressive harmonization and unification of the law of international trade.
- The CISG is the product of the work of a team of experts drawn from all the regions of the world with the mandate to harmonize the rules that govern contracts of sale of goods that reflect common law and civil law principles without necessarily adopting the doctrines of either system. It offers a good basis for the development of a harmonized law of contracts in ECOWAS.

### 3.4.6. Commercial Contracts

- In the non-OHADA states, there are no statutes or codes that regulate contractual transactions. In the typical common law tradition, contract law is judge- made law and exists and applies on the basis of binding legal precedents developed

over the years. The nine OHADA States are of civil law ancestry whose general contract law is essentially derived from the French civil and commercial codes.

- Unlike common law, civil law consists mainly of written rules or codes enacted by Parliaments. These codes provide a fresh start in all the parts of the law with which they deal. In other words, they are not conceived as resting upon a presupposed and still surviving common law, but as standing upon their own foundations. So unlike countries with common law traditions, civil law tradition does not recognise or apply the rules of precedent, which creates an obligation for lower courts to comply with the decisions of higher court. All courts must base their decisions upon some enactment.
- Not only do the commercial laws of 5 non OHADA States have a common legal ancestry, the contents of the subject, save for some individual municipal statutes, are strikingly also similar to the extent that academics and practitioners in these countries can conveniently use texts from any one of these countries with little or no difficulty.
- The concept of commercial contract in both the common law countries and the civil law countries of the OHADA states are the same even if the approach may be different. For example, the concept of offer and acceptance, consideration, mistake, misrepresentation (vice de consentement) are common to both systems.
- Due to the importance of contract law in commerce or business, the International Institute for the Unification of Private Law (UNIDROIT) was set up in 1926 as an auxiliary organ of the League of Nations and later the United Nations with a mandate to develop legislative instruments that will contribute to private and commercial law reform at the global level.
- In the field of contract law UNIDROIT has completed the principles of International Commercial Contracts. The principles were the product of a Working Group of international scholars, judges (including Samuel K. Date-Bah, Justice of the Supreme Court of Ghana) drawn from all five continents and representing the legal, economic and political systems as well as different cultural background.
- The UNIDROIT principles can be classified as neither common law nor civil law but rather as a comparative process of contract law principles of the main legal systems of the world and the adoption of the UNIDROIT principles meets the needs of this exercise. The principles can be utilized as a common basis in the development of a harmonized regime on commercial laws in ECOWAS.

### 3.5. Challenges in doing business in ECOWAS region

In general, doing business in ECOWAS region is challenging. According to the World Bank's Doing Business 2020 report, the ECOWAS economies are ranked in the bottom 100 out of the 190 economies considered in the analysis. Togo, ranked 97, occupied the best position in terms of improving the business environment. The rest of the region's economies ranked between 110 and 175. In terms of ease of doing business, most economies scored just above average as showed in the following table 3:

**Table 4: Ranking of sub-Saharan African economies**

Economy	Ranking (1-190) DB2020	Doing business facility (0-100)	
		DB2019	DB2020
Benin	149	51.7	52.4
Burkina Faso	151	51.3	51.4
Cabo Verde	137	54.0	55.0
Côte d'Ivoire	110	58.3	60.7
Gambia	155	47.8	50.3
Ghana	118	60.4	60.0
Guinea	156	49.3	49.4
Guinea-Bissau	174	43.2	43.2
Liberia	175	43.5	43.2
Mali	148	53.1	52.9
Niger	132	52.3	56.8
Nigeria	131	53.4	56.9

Senegal	123	54.4	59.3
Sierra Leone	163	47.2	47.5
Togo	97	55.3	62.3

Source: *Doing Business database*

The Doing business 2020 ranking captures several important dimensions of the regulatory environment as it applies to local firms. They are: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority, paying taxes, trading across borders, enforcing contracts and resolving insolvency.

During the consultations the stakeholders expressed concerns about the difficulties they face doing business in the region. These problems can be categorized as follows:

### Trading across borders

- Lack of implementation of regional protocols such as the ETLS
- Complex, non-transparent or lengthy customs procedures which involve delays, add costs, and involve requests for certificates of origin where they are not required or the acquisition of duplicate certificates of origin in a different language
- Import and export restrictions and limits placed on imports through bans or quotas
- Cumbersome documentation process for importation
- Bribery, corruption in customs procedures, roadblocks, unauthorized checkpoints and road harassment
- Lack of information about regional customs and trade provisions
- Need to deal with not only customs officials, but also security personnel, immigration officers, and public agencies tasked with ensuring food safety, agricultural health, and/or quality standards
- Lack of transparent visa procedures where passports and ID cards can be rejected

### Getting credit and payment system

- Limited access to credit
- Costly financing
- Use of electronic payment services possible in some areas, but they are costs still high
- Factors limiting money transfers: costs of electronic services; limited availability of electronic terminals; interoperability (if electronic payment systems are to be adopted more broadly, cards or mobile phones must be usable not only with their own systems or mobile networks but also with other systems not covered by the “parent” system; regulatory barriers (difficult for a service provider in one country to extend to other countries)
- Lack of formal money transfer channels, forcing merchants to travel with large sums of cash
- Cost of cross-border payments and money transfers: where financial instruments and institutions are absent poor traders have to incur the often-high costs of exchanging currencies at the border; carrying cash exposes traders to the risk of theft and predatory behaviour by officials.

### Enforcing contracts

- Lack of effective and efficient trade dispute settlement mechanisms, including differences in the procedures and institutions for arbitration
- Uncertainties in the application of the rules regarding the formation and enforcement of contracts due to the differences in the civil or common law orientation of ECOWAS member States.

### Market development

- Lack of regulatory framework on the emerging field of e-commerce to address e-transaction procedures and signatures, personal data protection, cybersecurity and consumer protection
- Lack of harmonized technical, product and safety standards and difficulties meeting product standards Adjusting to the official and informal technical, product and safety requirements often adds to costs for producers and consumers
- Introduction of new products and services based on innovative uses of technology limited perhaps due to the lack of

interoperability of new products and services

### **Protectionism and Intellectual property**

- Protectionism in the procurement policies of governments
- Difficulties registering and operating companies in other ECOWAS countries as company rules are defined by national laws
- Restrictions on participation of non-nationals in the retail trade
- Restrictions on ownership of companies forcing non-nationals to set up joint ventures with nationals
- Lack of intellectual property rights protection especially for the creative industries and trade in services

### **Infrastructure**

- High costs of moving goods by road or rail (costs of transportation and logistics: determined by components such as availability and quality of logistics services, market structures and degree of competition that they allow, transportation fleets, and regulatory environments)
- Physical infrastructure (for example hazardous roads, lack of capacity ports and airports, and railways hampered by decaying networks)
- Lack of security and highway thefts, robberies along the trade routes

## **3.6. Articulation and coherence with recent development**

### **3.6.1. Economic and legal changes**

This intervention takes place in a context marked by rapid economic changes at the international, continental, regional and national levels. These changes must be taken into account in the process of harmonizing business law with a view to reflecting the current needs of the region. The socio-economic dynamics will undoubtedly lead to updating the results of the studies carried out during the period 2007-2015. The new dynamics of international trade with the exponential development of digital technology and its corollaries in E-commerce, electronic financial transactions, etc. call for an assessment of these emerging areas for inclusion in the fields of business law harmonization.

The draft supplementary acts that were developed were based on national laws some, which have now become quite obsolete given the dynamism and changes in laws that have occurred within the past decade. It will be necessary therefore to review those draft supplementary acts to ensure that they are relevant and adapted to the current legal environment in the ECOWAS member States.

The intervention takes place during the Covid-19 pandemic which has significantly slowed down economic activities in the region. Supplementary trade rules and regulations are needed to reinvigorate the economies and promote growth in sectors that have been impacted adversely by the pandemic.

### **3.6.2. Regional economic integration instruments**

At the regional level, the changes relate to the establishment of economic integration instruments such as the Trade Liberalization Scheme to stimulate intra-regional trade, rules of origin and various protocols related to the free movement of people and goods. In addition, the Common External Tariff and the new customs code are important instruments that impact business law with third countries.

### **3.6.3. African Continental Free Trade Agreement (AfCFTA) and ECOWAS business law harmonisation**

The African Continental Free Trade Area (AfCFTA) is a framework agreement, which covers trade in goods and services, investment, intellectual property rights and competition policy. The AfCFTA brings together 55 African countries with a combined population of 1.2 billion people and a combined GDP of more than US\$2.5 trillion. The Agreement entered into force on 30 May 2019, after 22 countries deposited instruments of ratification with the African Union Commission (AUC).

The establishment of the AfCFTA underscores the need for the harmonization of trade rules and regulations of African countries. The AfCFTA seeks to create a single market for goods and services, facilitated by the movement of persons in order to deepen the



economic integration of the African continent. It also aims at promoting industrial development through diversification and regional value chain development, agricultural development and food security.

In furtherance of these objectives, the AfCFTA requires State Parties to progressively eliminate tariffs and non-tariff barriers to trade in goods; progressively liberalise trade in services; cooperate on investment, intellectual property rights and competition policy; cooperate on all trade-related matters; and also cooperate on custom matters and the implementation of trade facilitation measures. The business law harmonization process in ECOWAS is very relevant and key to the realization of these fundamental objectives of the AfCFTA. Harmonization of business laws in the ECOWAS space would contribute to the deepening of the integration process in Africa and promote trade in Africa by providing greater certainty for investors and reducing transaction costs.

The process of harmonization in ECOWAS is reflected not only in the efforts to draft harmonized business laws as exemplified by the goals of this technical mission. More broadly, it includes strategies by ECOWAS for the adoption of a common regional position in the AfCFTA.

ECOWAS is one of the regional economic communities recognized by the African Union. Under the AfCFTA, higher levels of regional integration among members of customs unions will prevail over the level of integration in the AfCFTA in the event of a conflict between the two levels of integration. As a Customs Union, ECOWAS has been facilitating and coordinating the market access offers of its Member States with respect to the negotiations on trade in goods and services to ensure a collective and harmonized regional approach.

90% tariff liberalization has been adopted in the AfCFTA as the level of ambition for trade in goods for both developing countries (DCs) and least developed countries (LDCs). Of the remaining 10%, 7% may be designated as sensitive products and 3% excluded from liberalisation. Developing countries are required to liberalize tariffs over 10 years; and LDCs over 13 years, with the exception of 6 countries (the G-6), which have been granted a special concession to liberalize over 15 years. In accordance with its mandate, ECOWAS continues to engage with its Member States to finalize a common and harmonized regional market access offer for trade in goods under the AfCFTA.

While the Protocol on Trade in Services sets out principles for enhanced continental market access and services sector liberalisation, services trade liberalisation will only occur in practice when individual countries schedule specific commitments on specific sectors. Under the Protocol, each State Party must provide a schedule of specific commitments. In July 2018, the Assembly of the Africa Union adopted five priority sectors on which initial commitments should be made:

- Business services
- Communication services
- Financial services
- Tourism and travel
- Transport

The State and non-state Parties to the AfCFTA are now in the process of negotiating trade in services based on the Protocol on trade in services. To date, the AfCFTA Secretariat has received 33 initial offers, including initial offers from 12 State Parties/Non-State Parties and two (2) Regional Economic Communities (RECs).

At the 5th Meeting of the AfCFTA Council of Ministers of Trade held on 3 May 2021, Ministers requested the 21 State Parties and non-State Parties that are yet to submit their initial services offers to urgently do so before the end of June 2021 in order to conclude negotiations in the five (5) priority services sectors. In addition, the Council of Ministers requested State Parties and non-State Parties/Customs Unions to undertake commitments in all five (5)-priority services sectors.

The ECOWAS Commission has been mandated to coordinate positions taken by Member States and consolidate their offers into a regional submission. The ECOWAS Commission is working on aligning the initial Consolidated Schedule of Offers, which was submitted to the African Union in December 2020, into a newly agreed format at the negotiations. This new format satisfies the prerequisites of completeness, transparency and progressive liberalization, all principles authorized by the Guidelines to negotiating trade in services.

Accordingly, the ECOWAS Commission has been organizing bilateral consultations with Member States with the view to aligning the initial Consolidated Schedule of Offers with the agreed format and ensure accuracy and compliance with the modalities.

### 3.7. Dialogue Private-Public

### 3.7.1. Private sector actors

Private sector actors in the ECOWAS region are very diversified. They are structured around several organizations or associations in the countries and at the regional level. As part of the implementation of the provisions of Article 3 (paragraph c, d and e) of the Revised Treaty, the ECOWAS Commission has worked to revitalize Business Associations in the Region (RBA) to prepare businessmen and business women to be capable and able to develop business partnerships between themselves on the one hand and the wider world on the other. These are:

- Federation of West Africa Chambers of Commerce and Industry (FEWACCI)
- Federation of Entrepreneurs and Business Women of ECOWAS (FEBWE)
- Federation of West Africa Manufacturers Associations (FEWAMA)
- Federation of West Africa Employers (FOPAO)
- NEPAD Business Group West Africa
- Association of West African Investment Promotion Agencies (WAIPA)

There are also thematic sectorial Regional Business Associations working in specific sectors such as:

- West African Bankers Association (WABA)
- West African Insurers Consultative Association (WAICA)
- West African Road Transporters Association (WATRA)
- Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest (ROPPA)
- Export Actors Forum (EAF) – A regional aggregation of exporters
- West African Tourism Union (WATU)
- Borderless Alliance (BA) – A multi-interest NGO for the promotion of free movement in ECOWAS

In addition, there are organisations of foreign entrepreneurs and investors in the countries. These include EUROCHAM whose mission is to:

- Be a source of information for investment and business creation
- Facilitate the development of the activities of companies from European countries
- Inform on the axes of development of the European cooperation, on the opportunities of investments, purchase of products and services, calls for tenders
- Promote industrial and commercial exchanges between Europe and the host country
- Contribute to the improvement of the business climate and the use of good practices
- Contribute to the economic integration of the sub-region, UEMOA and ECOWAS, in terms of trade and free movement of goods and services and sustainable development.

It would be pretentious in this report to provide an exhaustive list of all existing private sector organizations and present their activities. This report focuses on the Chambers of Commerce and Industry and FEWACCI, which is the beneficiary of this support.

### 3.7.2. The Federation of West African Chambers of Commerce and Industry (FEWACCI)

Each country in the ECOWAS region has a chamber of commerce and industry whose mission in general is to represent and defend the interests of its members with the public authorities. They contribute to the promotion and development of businesses by providing promoters with all the necessary assistance. They submit to the relevant national authorities the wishes, suggestions or proposals on common problems of their members. Their opinions are often sought on policies and decisions in various areas of the economy, including trade, industry, customs, taxes, labor, etc.

The Chambers of Commerce and Industry are all members of the Federation of West African Chambers of Commerce and Industry (FEWACCI). This organization was established in 1976 by the Presidents of the National Chambers of Commerce and Industry of

ECOWAS Member States to support regional economic integration and to make the voice of the private sector heard. An umbrella organization of national chambers of commerce, FEWACCI was established as a consultative platform to provide private sector views and proposals on all ECOWAS actions and decisions that contribute to regional economic integration.

The mission of FEWACCI is to:

- Promote the development of all productive economic activities including trade, industry, transport, finance, agriculture and mining;
- Promote the creation of a dynamic business sector in ECOWAS Member States in an environment conducive to fair competition through the adoption of harmonised investment laws and rules as well as good faith and fair practices.

This mission contributes to the achievement of the main objective of FEWACCI, which is to enhance the participation of private sector actors in the promotion and deepening of regional economic integration.

FEWACCI provides business support services and serves as the voice of the business community to influence ECOWAS and member states on all matters relating to business growth and fair competition, including the formulation of the position of ECOWAS member states in international trade negotiation fora.

With reference to the decision of the Authorities of the Heads of State and Government creating FEWACCI as ECOWAS Federation of Chambers of Commerce with observer status to ECOWAS meetings, the ECOWAS Commission has signed a cooperation agreement with FEWACCI, which is located in its headquarters, with a view to providing views and proposals from the private sector on all actions and decisions of the Commission that contribute to regional economic integration.

FEWACCI and its members, through their missions and large coverage and representation in all ECOWAS countries, have the appropriate organizational structure, and strategic strengths for coordinating and facilitating a structured public-private dialogue in the field of harmonization of business law in the ECOWAS region. The close administrative relationship between the Chambers of Commerce and Industry and the Ministries, particularly those in charge of trade, industry and the private sector, is also an important advantage. In addition, their grouping into a regional federation, FEWACCI, which implements relevant activities with the ECOWAS agenda and other strategic partners should contribute successfully to public-private dialogue at all levels. To this end, each Chamber of commerce and industry will have to designate a focal point for the implementation and monitoring of the business harmonization law promotion.

Despite its active role in the promotion of the private sector, FEWACCI does not have all the necessary capacities to fully accomplish the mission assigned to it by the Heads of State and Government of ECOWAS. As other private sector organisations in the region, FEWACCI faces many challenges, which limit its impact on the regional economic integration and the sustainability of the organization. The major weaknesses identified for the private sector organizations in the ECOWAS region are the following:

- Lack of a clear mission and the roles and responsibilities of members and bodies are sometimes ambiguous
- Lack of a well articulated strategy and vision
- Lack of human and financial resources as well as adequate equipment to implement activity programs
- Portfolio of services insufficiently adapted to clients' needs
- Lack of a mechanism for monitoring activities that can demonstrate the impact on private sector development.

### 3.7.3. Public sector actors

At national level, many Ministries and public organs are involved in the promotion of the private sector, given the fact that this sector is cross cutting. In some countries, there are ministries whose responsibilities are specifically dedicated to private sector development. In other countries this mission is assigned to the Ministry responsible for trade or industry or SMEs, etc. There are also specialized institutions which contribute to the promotion of private sector, including agencies in charge of exportation, investment, etc. Concerning the public-private sector dialogue in the area of the harmonization of business law, the Ministry of Justice would have to play also a major role.

At regional level, the Member States of ECOWAS have recognized the crucial role of the private sector in their quest to achieve rapid economic growth and development. They consider the private sector to be the main actor in the conduct of regional, continental and international trade in the production and distribution of goods and services. The department in charge of the private sector of the ECOWAS Commission leads the implementation of the ECOWAS Strategic Framework for private sector and enterprise promotion.

During the field mission, some stakeholders commented that the Private Sector Directorate of the ECOWAS Commission should

become more involved in the activities of other technical directorates that deal with issues impacting the private sector. These include, among others, trade, customs, free movement, etc. In its current state, the Private Sector Directorate does not have sufficient human resources to meet this need and, moreover, to carry out its activities provided for in the development strategies of the sector.

### 3.7.4. Status of Public-Private Dialogue mechanisms

The ECOWAS Commission has demonstrated its preparedness to work with Regional Business Association (RBA) to deal with various obstacles to the free movement of goods, persons and capital. The goal is to create a more favorable environment for the private sector by strengthening the public-private dialogue and professionalize business support services.

The region has also initiated the setting up of an ECOWAS Business Council (EBC) which will be the apex of the private sector and governance structure of ECOWAS. It would have the mandate to: (i) represent, negotiate and speak for the region's private sector in key regional, continental or international forums, (ii) advise ECOWAS decision-making bodies and act to promote issues affecting the conduct of business, investment, and the competitiveness in the region and (iii) provide an advocacy platform for the private sector in the region and beyond. The statute of the EBC defining the initial structure, composition and functions was adopted by the Council of Ministers in December 2014. This status is under revision in order to take into account the emerging issues like AfCTA, COVID-19 as well as the difficulties with the composition and selection criteria of the EBC, etc. to enable its effective establishment and operationalization. ECOWAS Business Council is not operational yet.

Under the ongoing West Africa Competitiveness Programme (WACOMP), UNIDO's activities include the setting up of a regional Public Private Partnership (PPP) network and online platform. This activity, which is part of the regional component of WACOMP, will contribute to improve the climate for business at national and regional levels. The PPP network and online platform will allow to share best practices, connect key stakeholders and share and monitor key data on past, ongoing and future regional PPPs. The implementation of this activity is underway. UNIDO is subcontracting the set-up of the online platform to a provider to set-up such a platform based on the design developed by UNIDO. The operational management of the platform will be handed over to a regional PPP unit ensuring sustainability of the network and online platform.

## 4. Recommendations/strategy to promote the business law harmonization process in ECOWAS region

### 4.1. Vision

FEWACCI's strategy for the promotion of the business law harmonization in the ECOWAS region is aligned with its mission to promote the creation of a dynamic business sector in ECOWAS Member States in an environment conducive to fair competition through the adoption of harmonised investment laws and rules as well as good faith and fair practices

As a sectorial strategy, the promotion of the business law harmonization will have to be taken into account in the prospective studies of FEWACCI, in its vision, strategy and global action plan to support the private sector when these instruments are developed.

Through this sectorial strategy, FEWACCI aims at strengthening its contribution to the regional integration agenda of ECOWAS, in particular Article 3 of the ECOWAS Revised Treaty aimed at "the promotion of joint ventures by private sector enterprises and other economic operators;[and] the adoption of measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises." FEWACCI's goals are also relevant in the context of the ECOWAS Vision which includes "an integrated region within which the population enjoy free movement...and engage in economic activities and live in dignity."

On this basis, FEWACCI's vision within the framework of the business law harmonization in the ECOWAS region is to: "Make business law harmonization a lever to carry out ambitious reforms and use the uniform legal provisions to promote value chains and improve the level of trade at regional and continental level with a view to inclusive growth for the well-being of the West African population".

This vision is fostered by the adoption in the region of new instruments such as the investment code and by the needs linked to the increase in cross-border trade as well as the commitment of ECOWAS and its members to the implementation of the AfCTA.

### 4.2. Objectives

The objective of the strategy is to align the various ECOWAS business regulatory regimes in a harmonized regulatory environment that ensures the security and predictability of business transactions in a single economic space.

Specifically, the strategy aims to:

- Ensure the involvement of the private sector in the business law harmonisation process
- Reduce obstacles to doing business and improve the performance of ECOWAS economies in this area;
- Facilitate advocacy for the mobilization of all stakeholders, including the private sector and the political level for the promotion and implementation of the harmonization of business law in the ECOWAS region;
- Contribute to the implementation of commitments made by ECOWAS States within the framework of economic integration instruments, in particular those aimed at improving business;
- Promote the reforms necessary for the implementation of the AfCTA and allow the private sector to take advantage of the opportunities offered by this agreement and mitigate its possible negative impacts;
- Provide a framework for dialogue on business law with a view to continuously improving the legal environment for business.

### 4.3. Axes of intervention

The strategy to promote the business law harmonization will be based on the following axes:

Axis 1: Governance of the harmonization of business law

Axis 2: Support to the identification, drafting and adoption of supplementary acts to improve business regulation

Axis 3: Improving the technical capacities of private sector actors on business law harmonisation

Axis 4: Monitoring the implementation of the uniform acts

Axis 5: Strengthening the appropriation of the business law harmonisation through improved communication strategy

Specific activities under each axis are presented in section 4.13

## 4.4. Thematic areas for drafting harmonized acts

To respond effectively and in a holistic manner to the needs of the private sector disclosed during the consultations would require harmonizing business laws in many areas including: rules of origin, customs documentation and procedures; border policing and security operations; financing and credit facilities; electronic commerce; payment systems; technical and quality standards; hire purchase and conditional purchase; general commercial law; contracts and sale of goods; banking and insurance; dispute resolution mechanisms; consumer rights; competition; investment law; securities law; carriage of goods by road, rail, sea and air; business associations including companies, partnerships; business entities; accounting standards; employment / labour law; intellectual property; and security of tenure law as it relates to foreign residents.

While all the concerns of the stakeholders should be addressed to improve the trading environment in the region, proceeding to harmonise rules in all these areas at the same time would be impractical given the limited human and financial resources available. In accordance with the Terms of reference of the mission, this mission proposes to begin with two or three draft acts based on an assessment of the needs and priorities of the private sector, and then to work on additional draft acts on an incremental basis in the future.

For the reasons noted below, the mission has determined that company law, electronic commerce; and contracts on the sale of goods constitute priority areas and will proceed therefore, to prepare draft acts in these areas. This is without prejudice to the experts working on two draft acts instead of three depending on the progress that can be made given the limited duration of the mission.

### 4.4.1. Company law

Although ECOWAS protocols guarantee the right of establishment, ECOWAS nationals who seek to exercise that right in another ECOWAS country must comply with the laws of the host state on registration and operation of business associations. Stakeholders have complained about the difficulties posed by the lack of a common approach in the ECOWAS region in the area of company law. The adoption of a harmonized regional instrument on company law would respond to the needs of the private sector and facilitate the implementation of the relevant ECOWAS protocols.

### 4.4.2. E-commerce

E-commerce eliminates traditional barriers to trade and provides opportunities including the reduction of transaction costs, delivery of goods and services remotely and money payment and transfer solutions such as mobile banking. The use of e-commerce platforms enables sellers to reach more customers who also benefit from the greater options and increased convenience of accessing and comparing more products from a broader range of firms. Technological developments can also contribute to shorter clearance times and transit periods through customs and single window environments, enabling traders to submit regulatory documents at a single location. Although ECOWAS has adopted measures on personal data protection and cybersecurity, member States are yet to ratify and implement them. However, some individual member States have adopted national laws addressing aspects of e-commerce.

The adoption of harmonized regional rules on e-commerce, focusing on electronic transactions such as money transfer and payments, taxation, cybersecurity and consumer protection would facilitate trade and deepen the process of regional integration in ECOWAS. It would promote more efficient provision and greater access to financial services to facilitate cross-border trade. Integrating regional financial markets in this manner can be an important mechanism to allow greater scale in the provision of financial services, to lower the costs of financial services, increase competition and increase access to finance.

### 4.4.3. Contracts on the sale of goods

The law of contracts is fundamental to the negotiations and enforcement of the rights and obligations linked to business transactions. Stakeholders have complained about uncertainties in the application of the rules regarding the formation and enforcement of contracts on the sale of goods due to the differences in the civil or common law orientation of ECOWAS member States. The adoption of common regional rules on contracts on the sale of goods would provide greater certainty and clarity to the rights and obligations of parties under legal arrangements between parties who come from different ECOWAS member States.

## 4.5. Proposed Draft Harmonized Act on Company Law

### 4.5.1. Existing ECOWAS Draft Supplementary Acts on Company Law

The ECOWAS Draft Supplementary Act/2008/ on Common Principles of Company law and Related Commercial Entities, which was prepared in 2008 contains provisions dealing with the following matters:

- Formation of a company (capacity; membership; types of companies; memorandum of association; articles of association)
- Registration (effect of registration; powers of the registered company)
- Management powers (the board of directors; the general meeting; liability for acts of organs; presumption of regularity)
- Authorised minimum share capital (increase in capital; reduction in capital; objection by creditor; confirmation order)
- Meetings and proceedings of companies (statutory, annual and extraordinary general meeting; notice; proxies; persons entitled to notice; court ordered meeting; voting; quorum; resolutions; minutes of proceedings)
- Directors duties and powers of management (number of directors; eligibility to be a director; removal of directors; mode of exercising management powers; restriction on loans to directors; payment for loss of office; directors to disclose certain compensation; register of directors' shareholding; directors' interests in contracts; duties of directors)
- Suits against the company (protection of shareholders; procedure for bringing a derivative action; approval by majority cannot condone wrong; personal and representative action; unfairly prejudicial and oppressive conduct; nature of relief by court)
- Principles of corporate governance
- Winding up of companies by the court (commencement; effect of a winding up order; official receivers and liquidators; powers of the liquidator; committee of inspection; powers where no committee of inspection is appointed; public examination of promoters and directors; dissolution of company)
- Voluntary winding up (statutory declaration of solvency; power to appoint liquidators; power to fill vacancy in office of liquidator; liquidator to call creditors' meeting on insolvency; final meeting and dissolution; books and accounts during members' voluntary winding-up)
- Effect of winding up on antecedent and other transactions (fraudulent preference; liabilities and rights of certain fraudulently preferred persons; avoidance of attachments on winding-up subject to supervision of the court; effect of floating charge; disclaimer of onerous property; restriction of rights of creditor)
- Offences antecedent to or in the course of winding up (offences by officers of company in liquidation; falsification of books; fraud by officers of companies in liquidation; liability where proper accounts not kept; responsibility for fraudulent trading; power of court to assess damages against delinquent directors)
- Supplementary provisions as to winding up (disqualifications for appointment as liquidator; corrupt inducement affecting appointment as liquidator; notification that a company is in liquidation; exemption from stamp duty; disposal of property of company; information as to pending liquidations and disposal of unclaimed assets; resolutions passed at adjourned meetings of creditors).

### 4.5.2. The Companies and Allied Matters Act of Nigeria

Since 2007 when the Draft Supplementary Act on Company Law was prepared, the most significant national legislation to be adopted in ECOWAS is Nigeria's Companies and Allied Matters Act of 2020 (CAMA 2020). The statute contains comprehensive rules dealing with the following matters:

- Formation of companies (types of companies; memorandum of association; capacity and powers of companies)
- Re-registration of companies
- Foreign companies
- Liability for acts of the company
- Membership of the company
- Disclosure of persons with significant control

- Share capital, shares and nature of shares (issue of shares; allotment; payments; classes; certificates; transfer and transmission)
- Transactions by company in respect of its own shares debentures (fixed and floating charges; debenture trust deeds; preferential payments register of charges and debenture holders; realisation of security)
- Meetings and proceedings of companies (general meeting, extraordinary general meeting; notice of meetings; voting)
- Directors (appointment; removal; remuneration; disclosure of interests; property transactions; liability; particulars of directors to be registered and notified to the commission; restrictions on use or disclosure of director=s addresses)
- Secretaries (qualification; register of secretaries)
- Financial statements and audit accounting records (form and content of company, individual and group financial statements; directors= reports; procedure on completion of financial statements; modified financial statements; publication of financial statements)
- Audit (appointment of auditors; exemption from audit requirement; qualification of auditors; removal of auditors; liability of auditors for negligence; false statements to auditors; annual returns (by different types of companies; time for completion and delivery of annual return)
- Administration of companies (appointment of administrator; by court; by company or directors out of court; special cases; effect of administration; process of administration; functions of administrator; cessation of administration; replacement of administrator)
- Receivers and managers (appointment of receivers and managers; duties, powers and liabilities of receivers and managers; procedure after appointment; accounts by receiver or manager; duty as to returns)
- Winding-up of companies (modes of winding-up; contributories; winding-up by the court (jurisdiction; petition for winding-up and its effects; commencement of winding-up; consequences of winding-up order; official receivers; liquidators; committee of inspection, special manager; general powers of court; enforcement of and appeals from orders)
- Voluntary winding-up resolutions for and commencement of voluntary winding-up (declaration of solvency; member=s voluntary winding-up; creditor=s voluntary winding-up; winding-up subject to supervision of court)
- Provisions applicable to every mode of winding-up (effect of winding-up and administration on antecedent and other transactions; offences antecedent to or in course of winding-up; prosecution of delinquent officers and members of a company; supplementary powers of court; returns by officers of court)
- Nature of limited liability partnership (incorporation; partners and their relations; extent and limitation of liability of limited liability partnership and partners; contributions; financial disclosures; assignment and transfer of partnership rights; investigation; foreign limited liability partnership; winding-up and dissolution)
- The limited partnership (nature of limited partnership; registration of limited partnership and incidental matters;)
- Business names (establishment of business names registry; appointment and functions of head of office and other officers; registration of business names; removal of business name from register)
- Incorporated trustees (registration; changes in registered particulars of incorporated trustees; council, powers, income and property; suspension of trustees, appointment of interim managers, etc; common seal and contract; accounts and annual returns power to direct transfer of credit in dormant bank; merger and dissolution).

### 4.5.3. New developments in ECOWAS

Since 2007 when the Draft Supplementary Act was prepared, ECOWAS has adopted protocols, rules and regulations relevant to company law including: (i) the Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment; (ii) the Supplementary Act adopting Community Competition Rules and the Modalities of their Application within ECOWAS; and (iii) the ECOWAS Investment Code.

Under the Protocol on the Rights of Establishment:

- a citizen who is a national of the Member State is guaranteed the rights to settle or establish in another Member State other than his home State of Origin, and to have access to economic activities, to carry out these activities as well as set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals.
- the right of establishment includes the creation and management of enterprises and companies subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals.



- companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where however, only the statutory headquarters of the company are established in a Member State, activities of such a company should have effective and sustained links with the economy of the Member State
- assets and capital invested by ECOWAS citizens who are not nationals of the Member State of establishment, having been duly authorised, should not be subjected to any act of confiscation or expropriation on a discriminatory basis.

The Supplementary Act on Competition Rules in relevant part:

- prohibits agreements and concerted practices in restraint of trade
- prohibits mergers, takeovers, joint ventures where the restraint, market share in the ECOWAS Common Market results in a abuse of dominant market resulting in substantial reduction of competition
- provides that for public enterprise and enterprises to which Member States grant special or exclusive rights, the Member States should neither enact nor maintain measures contrary to the Supplementary Act

Under the ECOWAS Investment Code:

- each Member State in admitting an investment into its territory is required to follow the parameters of the investment policy in force at the time the investment is made and in accordance with its national laws and regulations.
- each Member State is required to accord investors full rights of entry and establishment to all natural and legal persons engaged in cross-border business, based on the principle of national treatment with the aim of promoting free flows of investment within the region and in accordance with the West Africa Common Industrial Policy.
- the admission and regulation of investment in any Member State is subject to the following conditions: (a) investments shall be subject to the laws and regulations of the Host State; (b) the benefits of the Code would apply to any investment by the investor in any Member State which is duly approved by the competent authority in accordance with the laws and regulations of the host State(s) ; and (c) once a Member State admits an investment it shall provide in accordance with its laws and regulations all necessary permits related to such investment.

#### 4.5.4. New developments in the OHADA regime

Since 2007 OHADA has adopted the following Uniform Acts: (i) Cooperative Societies (effective May 15, 2011); (ii) Insolvency (effective December 24, 2015): and (iii) Mediation (effective March 15, 2018). Only the first two laws relevant in the context of company law.

Under the Uniform Act of Cooperatives, a cooperative society is defined as an autonomous grouping of persons, voluntarily united to fulfill their common economic, social and cultural aspirations and needs through a jointly-owned and managed and where power is exercised democratically and according to cooperative principles.

Essentially, the primary difference between commercial and cooperative societies is that the former aim to maximize profit.

The Uniform Act of Cooperatives provides general rules on cooperatives covering the following issues:

- Formation of cooperatives (definition of cooperatives and cooperative basis; membership, including withdrawal and termination; articles of association and rules of procedure; and registration of cooperatives)
- Operations of cooperatives (powers of officers; general meeting; annual summary financial statements, allocation of earnings; procedures for preventive control)
- Civil liability of cooperative officers (individual lawsuits; derivative lawsuits)
- Types of cooperatives, including unions, federations, confederations and networks
- Conversion of cooperatives
- Mergers and Split-offs
- Dissolution and liquidation of cooperatives

The Uniform Act of Cooperatives also provides special provisions applicable to different types of cooperatives covering the following issues:

- Simplified cooperatives (formation; operations; mergers and acquisitions; dissolution of simplified cooperatives)

- Cooperative with board of directors (formation; administration and management of the cooperative with a board of directors; general meeting; dissolution of cooperatives with a board of directors; liability; share capital including types and rights to shares)

The Uniform Act on Insolvency replaces the previous one enacted in 1998 and has significantly modernised and simplified the law taking into account international legal practices. The most significant changes include:

- the definition of key concepts in order to facilitate the implementation of the Uniform Act
- the creation of a conciliation procedure for companies which face difficulties but are not yet insolvent
- the implementation of simplified bankruptcy proceedings for small companies
- new mandatory deadlines in order to speed up proceedings;
- the definition of a comprehensive legal framework for bankruptcy administrators and experts
- a new privilege for cash contributions granted to companies while they were facing difficulties
- a clarification of the ranking of creditors' rights
- a new cross-border insolvency regime based on the UNCITRAL Model Law

#### 4.5.5. Responding to the changes in the legal landscape with respect of company law

The previous sections of this Study have described changes in the company law related rules in non-OHADA countries, ECOWAS and the OHADA regime. With the notable exception of the changes in Nigeria's Companies and Allied Matters Act of 2020 (CAMA 2020), the changes noted with respect to the ECOWAS instruments and the OHADA regime do not deviate significantly from the ECOWAS Draft Supplementary Act on Company Law prepared in 2008 to warrant revisions to the Draft Act.

##### **Changes Introduced in CAMA 2020**

The substantive changes effected by CAMA 2020 are as follows:

- A single person can form and incorporate a private company by complying with the requirements for private companies (this will enable small scale entrepreneur to exercise absolute control and authority over the operation and management of their businesses)
- A foreign company intending to carry on business in Nigeria without fulfilling the requirement of the law regarding incorporation in-country can file an application for an exemption directly to the Minister of Trade (and no longer to the President through the Council of Ministers as was the case under the old law)
- Where an exempted foreign company fails to provide an annual report to the Commission, the company will be liable to a penalty for every year of default where currently no penalty is stipulated
- CAMA 2020 amends previous law to provide extensive rules governing and regulating limited liability companies. Under the repealed Act, partnerships were not considered a body corporate with separate legal entity, and thus the liability of such partnerships were not recognised under Nigerian law.
- There is a significant reduction of registration fees by the new rule which provides that the total fees payable to the Commission in connection with the filing, registration or release of a charge shall not exceed 0.35% of the value of the charge or such other amount as the Minister may specify
- The chairman of a public company is prevented from acting as the chief executive officer (CEO) of the same company
- Every public company must now have a minimum of three independent directors
- No person can be a director of more than five public companies at the same time
- Where is no longer a concept of authorised share capita. This has been replaced by a requirement that companies must have at least the minimum issued share capital required by CAMA 2020 (NGN 100,000.00 for private companies and NGN2,000,000.00 for public companies) and must ensure that at least 25% of this issued share capital is paid up
- CAMA 2020 requires all companies -public or private - to first offer newly issued shares to their existing shareholders, in proportion to their existing holdings
- Public companies are required to have a company secretary, even though this requirement has been dispensed with for private companies

- The use of company seals is now optional for all companies
- All companies must keep a new register called a “Register of Director Residential Addresses” which must contain the usual residential address of the company’s directors. However, the information is considered to be protected information and there are restrictions regarding its use.
- The threshold for determining the substantial shareholders of a public company has been reduced from 10% to 5%.
- A new register called “Register of Persons with Significant Control” has to be maintained by all companies. A person has significant control of a company where that person directly or indirectly holds at least 5% of the shares, interest or voting rights in the company, or has the right to appoint or remove a majority of the directors in the company.
- The compensation of managers of the company must now be disclosed to members of the company as part of the ordinary business to be transacted at the annual general meeting.
- Private companies can hold their annual general meetings electronically, but this does not apply to public companies who absent a special dispensation must continue to hold their general meetings physically.
- Every public company must now include a statement relating to “changes in equity” in its financial statements
- Every public company must display its audited accounts on its website
- An audit committee is now required to consist of five members, made up of three shareholders and two non-executive directors. All members of the audit committee must be financially literate.
- Companies are now required to publish their list of unclaimed dividends in two national newspapers
- A company may not undertake a “major asset transaction unless its shareholders have approved the transaction. A major asset transaction means a transaction or series of related transactions which include: (a) any purchase or other acquisition outside the usual course of the company’s business; and (b) the sale or transfer of the company’s property or other rights which on the date of the relevant transaction, is valued at 50% or more of the book value of the company’s assets based on the company’s most recently compiled balance sheet
- Two or more associations with similar aims and objects may merge under terms and conditions as the Corporate and Affairs Commission may prescribe by regulation.

Consistent with the strategy of the mission to propose draft harmonized acts that reflect the dynamism of the national and regional rules in ECOWAS, the Draft Supplementary Act has been revised to incorporate the new changes in CAMA 2020 that are found not to conflict with the existing rules of the OHADA regime. The revised draft supplementary act is attached to this Study as Annex 1.

## 4.6. Proposed Draft Harmonized Act on E-Commerce

### 4.6.1. Regional frameworks

#### ECOWAS

The ECOWAS recognizes ICT as a priority for its regional integration programs. ECOWAS embarked on the process of cyber law harmonization in member countries with the objective to provide a harmonized legal framework to promote the development of electronic transactions, also to foster the ability of enterprises in the member countries to compete in the digital economy.

In order to establish a harmonized legal framework to regulate electronic transactions within the member States, the ECOWAS has developed two Supplementary Acts on e-transactions A/SA.2/01/10, and on personal data protection A/SA.1/01/10,6 as well as the Directive C/DIR/1/08/11 of 19 August 2011 on fighting cybercrime.

Under the Supplementary Act on e- transactions, the signatories are required to address four issues:

- Regulation of electronic commerce;
- Establishment of rules on electronic advertising;
- Establishment of a legal regime for electronic contracts;
- Definition of security rules for electronic transactions.

Under the Supplementary Act on personal data protection, the signatories undertook to implement the following strategies:

- Outline a legal framework for the protection of personal data;
- Set standards for the processing of personal data;
- Establish an institutional base;
- Define the rights of interested parties;
- Clarify the obligations of those responsible for personal data processing.

The Directive on fighting cybercrime places emphasis on the following areas:

- Adaptation of substantive and procedural criminal law by ECOWAS Member States to address the phenomenon of cybercrime
- Definition of specific offences inherently related to traditional crimes, such as theft, fraud, possession of stolen goods and blackmail, based on the harm or injury that would be caused through the use of the Internet
- Legal classification of offences committed through use of the Internet, and appropriate sanctions for those offences, based on the severity of the harm or injury caused
- Promotion of legal cooperation in order to harmonize legal and justice systems

Some Member States have already incorporated this community legislation into domestic law, whereas others are still in the process of doing so.

The ECOWAS framework addresses the areas of e-transactions, data protection and cybercrime. Beyond these areas for which a regional framework is available, other issues such as consumer protection, online regulation and domain regulation should be considered since they affect e-commerce development. At the ECOWAS level, the process of harmonization should continue by (i) including other areas such as consumer protection; and (ii) considering all areas i.e. e-money, online administration and new issues arising from cloud computing.

## UEMOA

UEMOA Regulation No. 15/2002/CM/ WAEMU dedicates a large number of its provisions to defining a legal framework with respect to evidence for electronic signatures, but also specifically deals with the legal regulation of electronic payment procedures. Concerning personal data protection, some regulations, or at least incentives, are scattered throughout the directives of the UEMOA telecommunications package. Therefore to achieve the overall objective of securing electronic payments in a way that conforms to the various documents, the following steps need to be taken:

- recognition of electronic evidence with respect to all electronic instruments and electronic payment methods in the UEMOA zone; and
- regulation of bank cards, electronic instruments and electronic payment methods.

The current ICT legal framework of the UEMOA is for the most part based on the following five legal texts:

- Regulation No. 15/2002/CM/UEMOA on payment methods within Member States of the West African Economic and Monetary Union;
- Directive No. 01/2006/SP of 31 July 2006 of the Central Bank of West African States (BCEAO) on the issuing of e-money and on electronic money institutions;
- Directive No. 01/2006/CM/UEMOA on harmonization of control and regulation policies for the telecommunications sector;
- The annex of Directive No. 02/2006/CM/UEMOA on the harmonization of regimes applicable to network operators and service providers; and
- Directive No. 04/2006/CM/UEMOA on universal service and network performance obligations.

## OHADA

There is no specific Uniform Act in the OHADA regime that regulates e-commerce. However, in recent reforms, the OHADA has taken certain aspects of ICT into account, such as the dematerialization of formalities carried out at the Trade and Personal Property Credit Register, regulated in the Uniform Act on General Commercial Law.

## 4.6.2. National laws

As described below, half of ECOWAS States have adopted legislation related to the ECOWAS Supplementary Act on Electronic Transactions. The remaining countries have designed draft legislation, except for Guinea and Sierra Leone, both of which have still not developed a strategy in relation to electronic transactions. Four States have adopted laws on cybercrime while six have developed draft legislation. The majority of States have taken some steps towards the implementation of the Supplementary Act on Personal Data Protection. Six have legislation on data protection and another four have developed draft laws.

With regard to consumer protection online, six Member States have regulated the consumer protection area. Three have drafted laws that are yet to be adopted. Regulation of online content is the area that has received the least attention by ECOWAS countries in the law harmonization process. Only three Member States have regulation in this area. Otherwise, neither legislation nor draft legislation have been formulated elsewhere within the ECOWAS region.

Although many of the countries have adopted some form of laws on e-commerce, in most cases their legal frameworks still need to be expanded upon and/or updated and implemented.

### **BENIN**

Benin has adopted Act No. 2017-20 of 13 June (the Digital Code) covering electronic transactions, data protection and privacy, and online consumer protection. Another law, Act No. 2011-10 of 25 August 2011 on combating corruption and related offences addresses cybercrime.

### **BURKINA FASO**

Burkina Faso has adopted Law No. 61-2008/AN, 27 November 2008 on the general standards of network and electronic communication services; Law No. 045-2009/AN on the regulation of electronic services and transactions; and Law No. 010-2004/NA on the protection of personal data. Draft legislation on cybercrime has been developed and there is no law on consumer protection.

### **CAPE VERDE**

Cape Verde has a comprehensive legal framework recognizing the validity of electronic commerce, the use of electronic signatures and electronic invoices and the operation of a public key infrastructure:

- Decree-Laws No. 33/200740 and 18/2007 regulate electronic commerce in general as well as the use of electronic signatures; granting them legal recognition as well as providing for their accreditation and use in e-procurement;
- Decree-Law No. 42/2006 defines the legal regime applicable to electronic invoices, while Regulatory Decree No. 4/2007 establishes the conditions and requirements for the use of electronic invoices;
- Decree-Law No. 44/2009 establishes a Public Key Infrastructure for Cabo Verde (ICP-CV) and delegates powers to the accreditation authority to become the Root Certification Entity ECR-CV).

With respect to computer crime and cyber security, there are provisions in the Penal Code, which create a number of offences that refer to the use of computers in their commission. Cabo Verde has both a general data protection law which was amended in 2013 as well as a sectoral law addressing data protection issues in the telecommunications sector.

Cape Verde's consumer protection law does not contain provisions specifically addressing Internet-based commerce. There are also no specific rules regarding online content.

### **CÔTE D'IVOIRE**

Cote d'Ivoire has adopted Law No. 2013-546 of 30 July 2013 on e-transactions, Law No. 2013-451 of 19 June 2013 on cybercrime in the ECOWAS zone; and Law No. 2013-450 of 19 June 2013 on the protection of personal data.

Online content is regulated by Law No. 2004-644 of 14 December 2004 on the legal regime pertaining to Audiovisual Communication and Law No. 2004-643 of 14 December 2004, on the legal regime pertaining to the print media.

### **GAMBIA**

In 2009, the Gambia adopted the Information and Communications Act (ICA) which focuses on electronic records, electronic signatures, electronic transactions, e-government services and the regulation of certification services. It also establishes a series of

offences relating to the use of computers . The ICA does not establish a comprehensive regime for the processing of personal data. In April 2014 the Gambia adopted the Consumer Protection Act.

## **GHANA**

Ghana adopted the Electronic Transactions Act (ETA), which is a comprehensive measure designed to remove barriers to the use of electronic communications; create legal certainty; promote electronic government services and ensure a secure environment.

The provisions of the ETA on electronic transactions recognize the legal validity, enforceability and admissibility of electronic messages. Other parts of the ETA address issues of criminal procedure in cybercrime investigations and establish cyber offences.

Under the ETA, consumer protection rules include restrictions on unsolicited communications, as well as specific rules prohibiting the disclosure of customer data by financial institutions detailing those holding electronic payment instruments. These rules are backed by criminal sanctions. The ETA includes provisions imposing obligations on suppliers engaged in electronic transactions. The supplier is required to make available to the consumer on the applicable electronic platform certain information concerning the supplier themselves (e.g. physical address), the goods and services being offered (e.g. full price), the conditions of supply (e.g. returns policy) and the procedure in the event of a dispute, which should include subscription to an 'alternative dispute resolution code'. The process by which a consumer enters into a transaction and the how the transaction is performed is also regulated.

It was not until 2012 that Ghana adopted a stand-alone Data Protection Act (DPA). The DPA imposes obligations upon data controllers and grants certain rights to data subjects.

## **GUINEA**

No specific legal framework exists in Guinea that addresses challenges and other issues brought by ICTs.

## **GUINEA-BISSAU**

Draft legislation on electronic transactions is being developed in Guinea-Bissau. The country's Penal Code and Code on Criminal Procedure date back to 1993, but no computer- specific provisions have been adopted.

The constitution recognizes a right to privacy. However, no other laws or regulatory agencies exists. Guinea-Bissau adopted a decree in 2012 on consumer protection.

## **LIBERIA**

An 'Electronic Transactions Law' (ETL) to facilitate electronic transactions was adopted in 2002. The ETL contains a provision giving consumers special rights with respect to electronic transactions. There is no law specifically addressing cybercrime issues.

While Liberia does not have any data protection laws, it does have a Freedom of Information Act 2010 which grants access rights to information in the possession of public authorities and private bodies performing public functions

## **MALI**

The relevant cyberlaws in Mali are:

- Act No. 2016-12 of 6 May 2016 on electronic transactions, trade and services covering electronic transactions and cybercrime.
- Act No. 2013-015 of 21 May 2013 on personal data protection covers data protection and privacy

## **NIGER**

The relevant cyberlaws in Niger are:

- Act No. 2019-03 of 30 April 2019 on electronic transactions also covers cybercrime.
- Act No. 2017-28 of 3 May 2017 on personal data protection as amended in 2019.
- Act No. 2019-33 of 3 July on cybercrime
- Act No. 2019-50 of 30 October 2019 on consumer protection violations and the corresponding penalties

## NIGERIA

There is currently a bill pending before Parliament on e-transactions, which was first placed before the National Assembly in 2011. Over the years, numerous attempts have been made to amend the law to address the threat of cybercrime and the need for cyber security.

The Nigerian constitution grants citizens a right of privacy. However, to date the only statutory protections for personal data are found in the Freedom of Information Act 2011. There is a Consumer Protection (Amendment) Bill currently before Parliament that would establish consumer rights applicable to an electronic commerce environment.

## SENEGAL

Senegal has adopted Law No. 2008-08 of 25 January 2008 on e-transactions; Law No. 2008-11 of 25 January 2008 on cybercrime; and Law No. 2008-12 of 25 January 2008 on the protection of personal data

There is no one specific legal text on consumer protection.

## SIERRA LEONE

Sierra Leone does not have any general legislation addressing cyberspace-related issues, electronic transactions or computer crime or cybersecurity.

## TOGO

Togo has not adopted specific cyber legislation, but has developed draft laws on cybercrime, personal data protection, and consumer protection.

### 4.6.3. Responding to gaps in the regional E-Commerce strategy

The survey of the regional and national frameworks has disclosed the existence of cyber laws in some ECOWAS Member States covering aspects of e-commerce including electronic transactions, computer crime and cyber security, data protection and privacy, consumer protection, online content and domain name regulation. However, the three regional instruments that are part of the ECOWAS framework have not been uniformly transposed into national laws, are underenforced and do not take into consideration many of the emerging features of the digital ecosystem.

Few of the national laws are informed by the results of the pioneering efforts of UNCITRAL with regard to the development of international instruments on e-commerce. For an effective regional strategy on e-commerce, it is desirable to develop a draft harmonized supplementary act that builds on the existing regional framework and incorporates relevant principles of the key UNCITRAL instruments that respond to the dynamism in the e-commerce ecosystem:

- UNCITRAL Model Law on Electronic Commerce, adopted in 1998
- UNCITRAL MODEL Law on Electronic Signatures, adopted in 2001
- United Nations Convention on the Use of Electronic Communications in International Contracts

This consideration has been taken into account in the drafting of the proposed harmonized act on e-commerce.

A very critical area that must also be incorporated in an e-commerce framework to facilitate regional trading is a functioning payments system. That would respond to the complaints and frustrations expressed by the private sector during the stakeholder consultations about difficulties with regard to access to funds or transfers of funds when transacting business in another ECOWAS Member States, including the costs of cross-border payments and money transfers.

Most electronic transactions are paid for in cash on delivery because of the very limited penetration of formal banking systems in many ECOWAS economies, uneven patterns of electronic money usage across ECOWAS countries and the unpopularity of systems for paying for goods in advance on delivery, which in many cases is attributable to mistrust on the part of online buyers.

ECOWAS started work on a regional payments and settlement system in 2015. The aim is to establish a multilateral mechanism whereby national currencies will be used for the payment and settlement of intra-Community transactions. The key policymakers in this context include the ECOWAS Commission, the Community Central Banks and the West African Monetary Agency. The work is on-going and no date has been set regarding the completion and finalization of a payment systems in the region.

However, given the critical nature of the payments and settlement and also the reality that many of the transactions will be effected electronically, it is expedient while waiting for the completion and operationalization of a regional framework to include in the proposed e-commerce laws, a section on payments and settlements system drawing on the experiences of other countries or model laws that are available.

The mission has sought to respond to the void by incorporating relevant principles reflecting international best practice. The key instrument that has been used in developing the section on payments systems in the draft harmonised act on e-commerce is the EU Directive of 2015 on Payment Services in the Internal Market, Directive (EU) 2015/2366. The draft supplementary act on E-commerce is attached to this Study as Annex 2.

## 4.7. Coordination, implementation and monitoring of the business law harmonization in ECOWAS region

The coordination and monitoring of the process of harmonization of business law in ECOWAS region will include the following organs and tools

### 4.7.1. Technical Committee

#### Mission

- Facilitate and ensure the interface with stakeholders: Private sector, ECOWAS, Member States, etc.
- Develop and implement the annual work plan and budget for the harmonization of business law
- Monitor the implementation of the recommendations of the consultations, in particular the public-private dialogue platform
- Coordinate and organize the work of the thematic technical groups
- Mobilize actors for a synergy of action in the process of harmonization of business law
- Build the capacities of actors for optimal participation in the process
- Contribute to the resolution of differences that may arise during the process of harmonization of business law
- Implement the communication plan and organize advocacy
- Contribute to the mobilization of financial resources, including from development partners
- Approve draft act and transmit it to ECOWAS relevant bodies for adoption

#### Composition

The Technical Committee will be chaired by the Focal person of the public sector of the country which holds the presidency of ECOWAS. The Focal point for the ECOWAS Commission will be the Directorate of Legal Affairs. The Executive Directorate of FEWACCI will be the regional Focal point for the private sector.

Members will include:

- Technical Departments of the ECOWAS Commission, in particular the Directorate of the Private Sector, Department of Trade, Department of Customs, Department of Free Movement, etc.
- UEMOA Commission
- Focal persons for the public sector: Ministries of justice in the ECOWAS member States
- National Focal persons for the private sector: Chambers of commerce and industry in the ECOWAS member States
- Relevant technical institutions of the private sector
- Members of the working groups (Consultants and experts from academia and legal practice, experts from the sector as needed (public agencies, companies), specialised institutions (OHADA, Court of Justice, AfCFTA))
- Any other stakeholders as appropriate



## 4.7.2. Ad hoc Technical working groups

The Technical committee can create ad hoc Technical working groups in priority areas like: E-commerce, Company law, Contract on the sale of goods, etc. The ad hoc technical working groups will be dissolved after the completion of their mission.

### Mission

The key mission of the Ad hoc Technical working group is to prepare the draft acts/decisions in its area. The draft acts will be submitted to the relevant ECOWAS bodies through the Technical Committee.

### Composition

- Co-Chairs: Directorate legal affairs ECOWAS and Relevant sectorial private sector associations
- Participants: Consultants and experts from academia and legal practice, experts from the sector (public agencies, companies), specialised institutions (OHADA, Court of Justice, AfCFTA).

## 4.7.3. National focal points

The implementation of the technical committee's activities requires the designation in each of the member states, of:

- One focal point from the public sector: Ministry of justice;
- One focal point from the private sector: Chamber of commerce and industry.

The focal points will be networked with a view to creating a partnership and exchanging experiences and good practices.

The mission of the national focal points will essentially be to support the implementation of the technical committee's work plan in the country, to serve as an interface between the regional technical committee and the national actors, to coordinate activities at national level, to collect the data necessary for the monitoring and evaluation of the business law harmonization process in the ECOWAS region.

## 4.7.4. ECOWAS Court of Justice

The role of the ECOWAS Court of Justice is to interpret the provisions of the harmonized acts. The ECOWAS Court of Justice, whose judgments are binding on the Member States has competence to deal with disputes referred to it by Member States or the Authority where such disputes arise between the Member States or between one or more Member States and the institutions of the Community on the interpretation or application of the provisions of the Treaty. The ECOWAS court of justice will work in complementarity with the OHADA Secretariat.

An option to ensure complementarity is to create a Special Tribunal to adjudicate disputes arising under the business laws harmonized in the ECOWAS space.

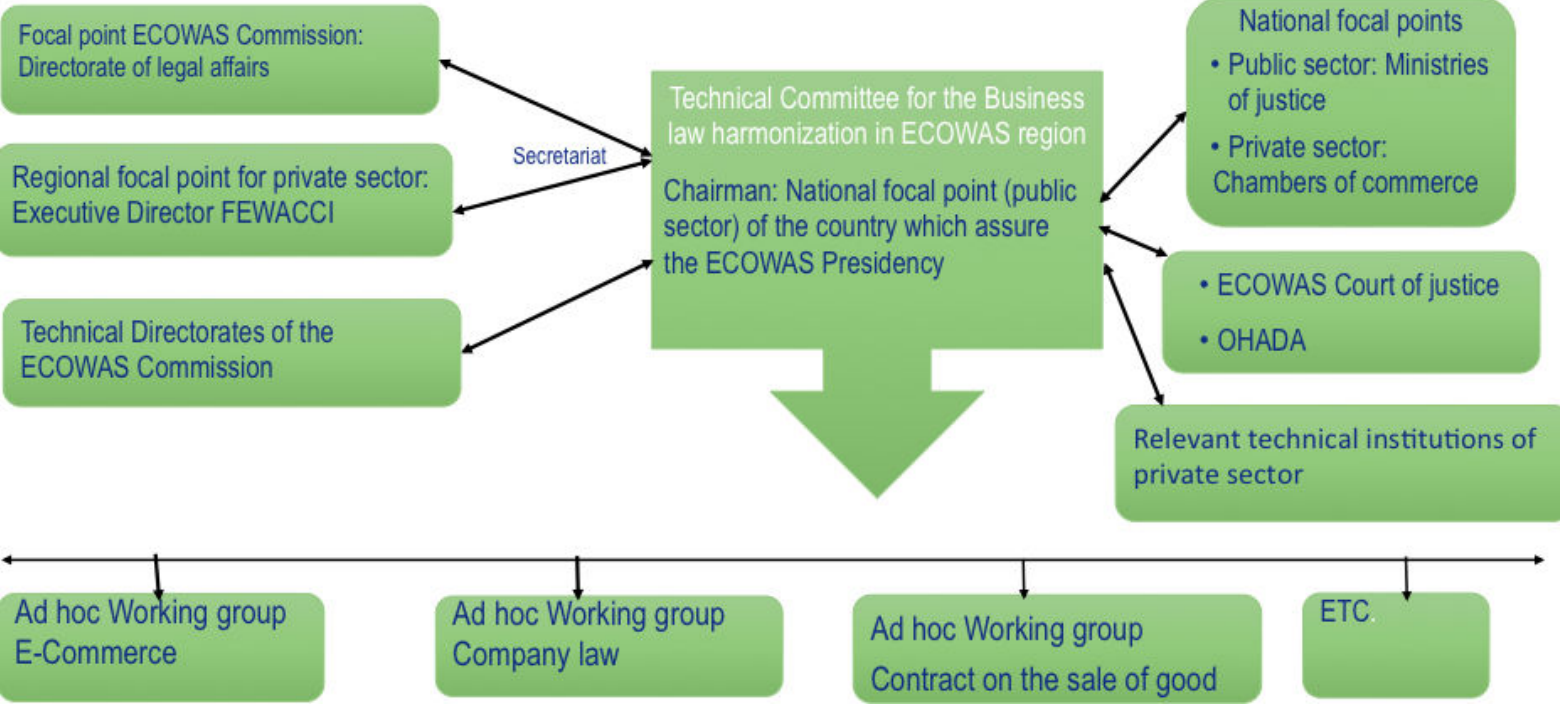
## 4.7.5. Monitoring and impact indicators

Systematic monitoring of the implementation, results and impact of the business law harmonization process in the ECOWAS region will be based on following key instruments:

- Indicators of achievement of results and impacts validated by the appropriate bodies and based on standardized and regularly compiled data.
- Dashboards that will provide the status of implementation, identify the obstacles to the development of harmonized acts and their implementation, and made recommendation to improve the process
- Database to provide accurate information to the stakeholders

The indicators will be identified according to the priority areas selected and the acts adopted. At the start of the project, the impact measurement can be linked to the results of performance studies on regional integration and to performance studies of ranking organizations on competitiveness such as doing business. Specific impact studies may be initiated in subsequent phases depending on the resources available.

### Institutional framework for the coordination of the harmonization of business law



## 4.8. Platform for public-private dialogue on the business law harmonization in ECOWAS region

The analysis in the session 4.7.3 pointed out that there is no operational public-private dialogue mechanism at the regional level to which dialogue in the field of harmonization of business law could be linked. This linkage will be achieved when the initiatives underway on the establishment of a public-private dialogue, including the ECOWAS Business Council, are operationalized. It will then be easy to turn the platform proposed in this report into a thematic platform that will operate under the global platform for public-private dialogue.

The mission and bodies of the DPP platform on the business law harmonisation are as follows:

### Mission

- Build mutual trust and bring together points of view on issues related to the harmonization of business law in the ECOWAS region
- Conduct joint analyzes of challenges and priorities in the field of harmonization of business law
- Provide guidance on policies and reforms in the area of business law that will create a more favorable environment for the development of the private sector
- Develop advocacy on business law harmonisation
- Approve reports submitted by the Technical Committee
- Review the implementation process and address any challenges

### Composition

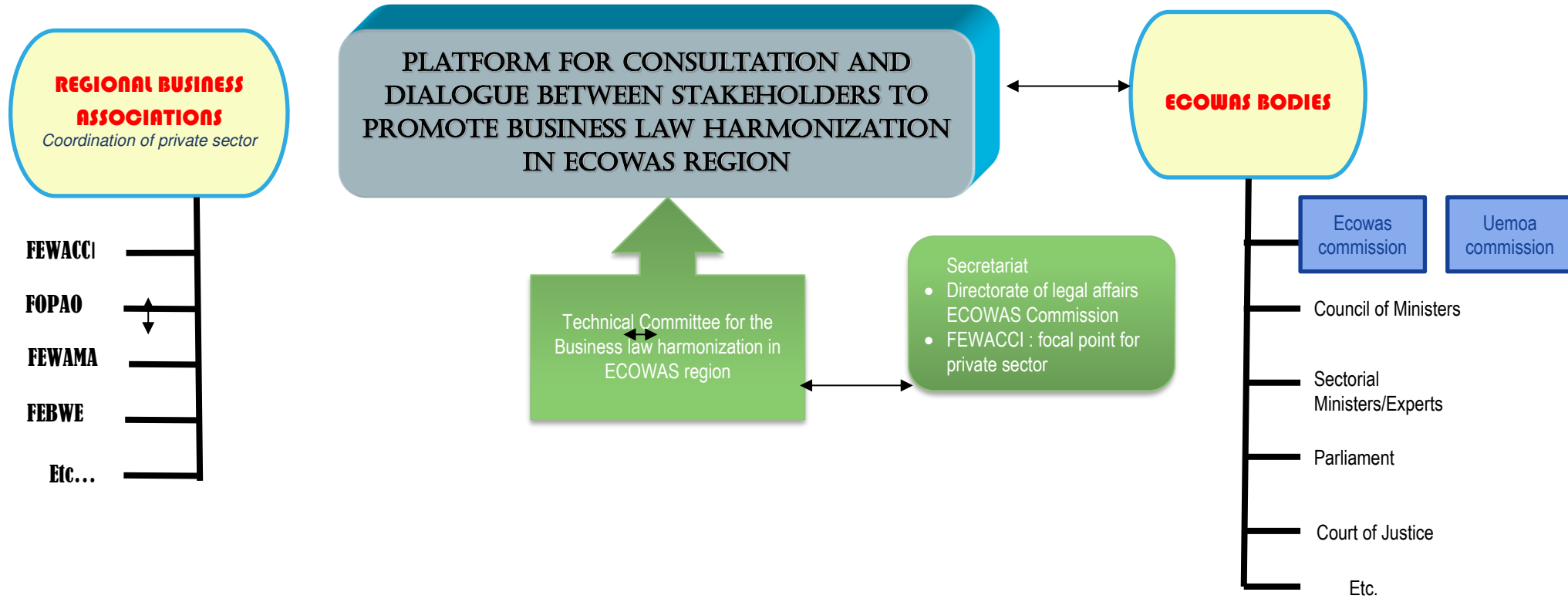
- Co-Chairs: Minister of justice and Head of a Regional Business Association (private sector apex when this become operational)
- Members:
  - ECOWAS bodies and related institutions: ECOWAS Commission, sectoral Ministers/Experts, Council of Ministers, Parliament, Court of justice
  - Public bodies: sectoral Ministers and experts, public agencies
  - Private sector associations
  - UEMOA Commission
- Facilitators: Civil society, technical partners

The regional focal points (FEWACCI and Directorate of Legal Affairs) of the Technical Committee on the business law harmonization will act as the secretary of the DPP platform.

The ECOWAS and UEMOA Commissions coordinate their regional integration agendas through the ECOWAS-UEMOA Joint Secretariat. The legal integration is a key point in the agenda of the Joint Secretariat. This coordination framework will contribute to the business law harmonization.

The overview of the DPP mechanism is presented below:

## Public-private dialogue on the business law harmonization



## 4.9. Greater involvement of private sector in the decision-making process

The decision-making process in ECOWAS can be broadly categorized into 7 key steps. This process may change slightly depending on the nature and area of intervention. The adoption of additional acts within the framework of the harmonization of business law will follow this process.

The private sector will have to play an increasing role in the decision-making process of ECOWAS through its contribution at each stage of this process. To this end, the capacities and statutes of FEWACCI should be strengthened in order to enable it to accomplish its mission, which include providing private sector views and proposals on all ECOWAS actions and decisions that contribute to regional economic integration.

The description of the key decision-making steps and recommendations to ensure a greater involvement of private sector in this process is as follow:

Step 1: The decision-making process generally begins with a study phase, which can be entrusted to consultants or focal points in each of the ECOWAS countries and / or at the regional level. The methodology adopted is based on a participatory and inclusive approach that involves consultations with the relevant stakeholders. A technical working group or project team is set up to ensure the smooth running of the study and to verify whether the report complies with the Terms of Reference and reflects consultations with stakeholders.

Recommendation: FEWACCI will ensure that the private sector is effectively consulted at the level of technical working groups.

Step 2: Depending on the importance of the topic, the management of the ECOWAS Commission may review the report and the proposed acts and approve their submission for validation by the experts.

Recommendation: FEWACCI, which works in close collaboration with the ECOWAS Commission, will ensure through lobbying that the interests of the private sector are taken into account in the proposed acts.

Stage 3: The reports and acts are submitted for validation by the experts of the Member States. These experts come mostly from ministries or government institutions.

Recommendation: The private sector associations will have to participate in the regional meeting. Otherwise, the private sector will have to contribute to the national consultations in order to give its position, which will be taken by the representative of the country at the regional meeting.

Step 4: The meeting of experts is followed by that of sector ministers who must approve the reports and proposed acts.

Recommendation: Ensure the participation of FEWACCI top management to the ministerial meeting, at least as observer.

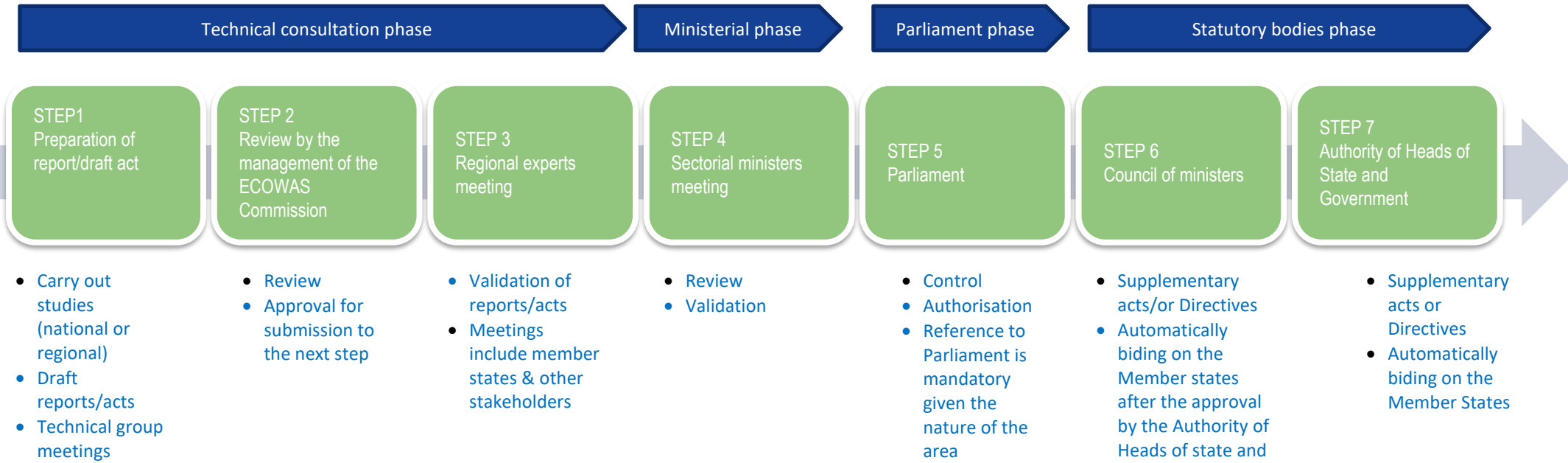
Step 5: Parliament is consulted and gives its opinion of non-authorization. The referral of the Parliament during this phase is mandatory given the nature of the area, which has to do with the adoption or review of the community Acts relating to economic and monetary, private sector and promotion of investments.

Recommendation: The parliament will verify, before giving its approval, whether the private sector has been consulted

Step 6 and 7: These two phases concern the adoption of acts by the Council of Ministers and the Authority of Heads of State and Government, which are the statutory organs of ECOWAS. For the acts to be directly binding on the member states, they must necessarily be adopted and signed by the Heads of State and Government.

Recommendation: Private sector is not formally a member of the statutory organs of ECOWAS. However, he could influence decisions through lobbying at the political level.

## Process of decision making at ECOWAS



Ensure the participation of private sector to each step. In particular, the parliament will verify, before giving its approval, whether the private sector has been consulted



## 4.10. Communication strategy

In order to ensure the successful promotion of the business law harmonization with the inclusive involvement of the private sector, there is need that FEWACCI implements a communication strategy with a focus on the external communication.

### 4.10.1. Objectives

#### Overall objective

To empower a greater proportion of the stakeholders, including the private sector, to effectively understand and participate meaningfully in the business law harmonization process and the effective implementation of harmonized acts in order to improve the business climate in the region.

#### Specific objectives

- To increase awareness and ensure understanding of the relevance and impact of the business law harmonization among range of target audiences, including private sector and policy influencers through external communication
- To ensure visibility of activities undertaken par FEWACCI to promote the business law harmonisation

### 4.10.2. Expected results

- Greater interest, advocacy and engagement of the stakeholders in the business law harmonization
- Greater awareness of the role of the private sector in the business law harmonization process
- Broader contributions to business law harmonization
- More constructive deliberations leading to positive decisions and consensus
- Effective and efficient circulation of, access to information

### 4.10.3. Targeted groups

The strategy will concentrate on outreach to decision makers and those affected by the business law harmonisation. These include:

- Public Sector: Ministries, Agencies
- ECOWAS and UEMOA officials across key institutions: Commissions, Parliaments, Courts of Justice, Statutory bodies, ECOWAS national Units
- Private Sector organizations: Chambers of Commerce, Employers, Associations, etc. and Companies
- Civil Society Organizations
- Media
- Academicians and researchers
- Relevant technical institutions: OHADA
- International influencers: African Commission on International Law (AUCIL), United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law (UNIDROIT), etc.

### 4.10.4. Key messages

The business law harmonization was hampered by lack of political will to break down the psychological barriers created by idiosyncratic attachment to either the common law or civil law systems. There is also the reluctance to commit to new norms or obligations because they are unknown to the customs and usages of one's jurisdiction. In addition, the lack of involvement of all stakeholders, including the private sector contributed to the failure to complete the harmonization process.

The messages will aim to remove these obstacles and counter the psychological barriers. Key messages for advocacy will include:

- The benefit for all stakeholders, the relevance to the AfCFTA, and show proof through good practices and key

achievement in the area of legal integration in Africa and around the world.

- Business Law Harmonization has potential to improve the investment climate in the ECOWAS region.
- The private sector needs to be involved in business law harmonization processes for better-informed decision-making.
- The recommended PPD-Platform can be a solution for relevant stakeholders to meet regularly and work jointly on business law harmonization efforts.
- The private sector needs to be effectively involved and heard in the steps 1-5 of the ECOWAS decision making process.
- Harmonisation efforts of the business law should include areas where there are no existing or well developed national laws but where harmonisation through the adoption of common regional norms would facilitate trade, such as e-commerce.

#### 4.10.5.Channels

The strategy proposes a number of channels that could be prioritized based on adaptability and value-for-money criteria that can be used by a wide range of target audiences.

- Media training/briefings to improve understanding of business law harmonization amongst a small group of journalists (broadcast and print/ online), and designed to build contacts
- Increased media engagement with national and regional media
- A business law harmonization website, liaison with relevant partners to ensure reciprocal links and, where appropriate, shared content; gradual increase in online feedback mechanisms to encourage dialogue with key audiences
- Social media
- Focus on meetings and briefings supported by e-updates via newsletters, trainings, etc.
- Increased policy influence through advocacy
- Database management system

#### 4.11. Building actor's capacity

Major requirements to carry out the process of business law harmonization include human resources and skills for FEWACCI Secretariat. To meet the need, it is recommended to recruit a long-term Technical Assistant whose mission and activities will be specified through the terms of reference. The role of the Technical Assistant will be to support the contribution of private sector to the promotion of the business law harmonization, particularly the action plan of FEWACCI in this area. The Technical Assistant will facilitate coordination, monitoring of the business law harmonization process. The Technical Assistant should ensure that the interest of the private sector is taken into account in the process. In particular, activities of the technical assistant will include:

- Support the contribution of the private sector to the coordination, implementation and monitoring of the business law harmonisation in ECOWAS region, including Public-Private dialogue and the establishment of indicators, dashboards and data base
- Strengthen the capacity of the stakeholders
- Implement the communication strategies and plan

The Technical Assistant will work under FEWACCI Secretariat in collaboration with all relevant technical Directorates of the ECOWAS Commission.

Appropriate skills are key for the functioning of the business law harmonization. Therefore, capacity building will also include training of the stakeholders. The Technical Assistant will identify key gaps that exist in the current knowledge for the running of the business harmonization process. The Technical Assistant will prepare, based on this assessment, training modules, customised to address identified gaps targeting key areas. Training should be delivered through appropriate means and channels, including meetings, E-course/E-learning, as well as Training of Trainers approaches, giving practical advice, sharing experiences and best practices.

The target group will include relevant private sector organisations including FEWACCI and its members, mainly the focal



points on the business law harmonization.

The Technical Assistant on the business law harmonization will complete the support provide to FEWACCI under the West Africa Competitiveness Programme (WACOMP).

## 4.12. Sustainability

The sustainability of the business law harmonization process in ECOWAS region will be sought through:

- Ensuring involvement of the private sector in the process. The role of the private sector is crucial. The private sector is expected to provide information on its challenges; real needs and priority areas to guide the harmonization to improve business and investment climate in the region. Therefore, the private sector should be involved at all stages of the process.
- Establishment and effective functioning of a coordination and monitoring mechanism
- Ensuring leadership and ownership through the public-private dialogue mechanism and close collaboration between private sector and the ECOWAS Commission
- Ensuring multi-stakeholder participation and consultation: Foster a high degree of participation and engaging stakeholders from both public and private sector
- Avoiding duplication and maximizing on existing mechanism and instruments
- Adopting a long-term approach: support the promotion of law harmonization process
- Access to information through the development of a data base

## 4.13. Action plan for the implementation of the business law harmonization and the implication of private sector

### Axis 1: Governance of the harmonization of business law

Reference	Activities	Period
A1.1	Presentation of the report and related documents to FEWACCI's governing bodies	From the end of the mission
A.1.2	Presentation of the report to the Management of the ECOWAS Commission to seek leadership engagement and ensure high-level ownership	After approval by FEWACCI's bodies
A.1.3	Preparation and signing of texts establishing the coordination and monitoring mechanism for the business law harmonization process in the ECOWAS region	Quarter 1 of implementation
A.1.4	Appointment of members of the technical committee for the harmonization of business law in the ECOWAS region	Quarter 2
A.1.5	Identification/confirmation of the national focal points	Quarter 2
A.1.6	Installation of the Technical Committee and launch of its activities	Quarter 2
A.1.7	Fundraising / mobilization for the implementation of activities	Quarter 3
A.1.8	Adoption of the work plan of the Technical Committee and priority area for harmonisation	Quarter 2
A.1.9	Recruitment of the FEWACCI Technical Assistant to support the harmonization of business law in the ECOWAS region	Upon financial resources mobilisation
A.1.10	Establishment of partnership with specialized institutions including OHADA	Quarter 3

**Axis 2: Support to the identification, drafting and adoption of supplementary acts to improve business regulation**

Reference	Activities	Period
A.2.1	Setting up of an ad hoc working group in the identified priority sector with the support of technical assistants, consultants and experts from academia and legal practice. This activity will focus preliminary on the Company Law and E-commerce which are the two priority sectors identified in this report.	Quarter 3
A.2.2	Development by the working groups of the initial drafts of the laws in identified priority sectors	Quarter 3
A.2.3	Review of the initial draft laws by the Technical Committee involving technical stakeholders: ECOWAS relevant departments, UEMOA representatives; private sector network; members of the working groups	Quarter 3
A.2.4	Consultations with ECOWAS member states on revisions to the initial draft laws as a result of the joint evaluation (private sector to participate)	Quarter 4
A.2.5	Sensitization of key decision makers on the content of the initial draft laws	Quarter 4
A.2.6	Advocacy and follow up by FEWACCI and the private sector network on each step of ECOWAS decision-making on business law harmonisation	Quarter 4
A.2.7	Finalization of the revised draft laws by the ECOWAS legal department to incorporate feedback	Quarter 4
A.2.8	Initiation by the ECOWAS legal department of the relevant processes in ECOWAS for the adoption of binding instruments	Quarter 5
A.2.9	Consultations with ECOWAS Parliament on the proposed draft laws (private sector to participate)	Quarter 5
A.2.10	Validation of proposed draft laws by the ECOWAS Council of Ministers (private sector to participate as may be required)	Quarter 6
A.2.11	Adoption of proposed draft laws by ECOWAS as binding instruments	Quarter 6

**Axis 3: Improving the technical capacities of private sector actors on business law harmonisation**

Reference	Activities	Period
A.3.1	Identification of knowledge gap on the harmonization of business law at the level of the private sector and other key stakeholders	Quarter 7
A.3.2	Developing training tools	Quarter 7
A.3.3	Delivering training and capacity building activities for key stakeholders, including the private sector	Quarter 7
A.3.4	Facilitating intra-regional and international exchange on good practices of Trade intelligence for West Africa	Quarter 8
A.3.5	Promoting training through E-course/E-learning, as well as Training of Trainers approaches	Quarter 8
A.3.6	Establishment in the short term of a directory of all legislative and regulatory acts related to business law and establishment in the medium term of a comprehensive information system in this area	Quarter 4 and Quarter 12

**Axis 4: Monitoring the implementation of the uniform acts**

Reference	Activities	Period
A4.1	Identification of monitoring indicators for the implementation of acts	Quarter 9
A.4.2	Establishment of a computerised database	Quarter 10
A.4.3	Development of data collection tools, guidelines and procedure manual, including quality control process	Quarter 10
A.4.4	Establishment of partnership with existing institutions for data collection	Quarter 11
A.4.5	Data gathering, analysis, development and update Dashboard, production and dissemination of reports	Quarter 11
A.4.6	Organization of meetings / events to present various reports to generate dialogues, advocacy, recommendations and decisions	Quarter 12

**Axis 5: Strengthening the appropriation of the business law harmonisation through improved communication strategy**

Reference	Activities	Period
A.5.1	Design and production of information tools	Quarter 1
A.5.2	Sensitization of the general public on the business law harmonisation	Quarter 2
A.5.3	Capacity building for journalists	Whole implementation period
A.5.4	Media coverage of events related to the harmonization of business law	Whole implementation period
A.5.5	Awareness raising with the private sector on business law harmonisation	Whole implementation period
A.5.6	Organisation of biannual dialogue between the private sector and public sector to review the implementation process and address any challenges	Biannual
A.5.7	Capacity building of civil society organizations or any other similar organizations in order to significantly improve their contributions to the observation of good governance practices and transparency in harmonized business law	Quarter 6
A.5.8	Development of cooperation with various networks and information platforms to support the harmonization of business law in West Africa	Quarter 6
A.5.9	Organization of advocacy by the private sector during high-level regional meetings	Quarter 6

The action plan covers a period of three years and is based on the assumptions that interest in the business harmonization process by the public and private sectors remains high, is supported by adequate funding and is led by persons strongly committed to the objective of business law harmonization in the ECOWAS region.

## Abbreviations

<b>ACP</b>	Africa Caribbean Pacific
<b>AfCFTA</b>	African Continental Free Trade Area
<b>CAMA</b>	Nigeria's Companies and Allied Matters Act
<b>CET</b>	Common External Tariff
<b>ECOWAS</b>	Economic Community of West Africa States
<b>EDF</b>	European Development Fund
<b>EU</b>	European Union
<b>FEBWE</b>	Federation of Entrepreneurs and Business Women of ECOWAS
<b>FEWAMA</b>	Federation of West Africa Manufacturers Association
<b>FEWACCI</b>	Federation of West Africa Chamber of Commerce and Industry
<b>FOPAO</b>	Fédération des organisations patronales de l'Afrique
<b>FEBWE</b>	Federation of Entrepreneurs and Business Women of ECOWAS
<b>FEWAMA</b>	Federation of West Africa Manufacturers Association
<b>ICR</b>	Investment Climate Reform
<b>MS</b>	Member State
<b>RBA</b>	Regional Business Associations
<b>OACPS</b>	Organisation of African, Caribbean and Pacific States
<b>OHADA</b>	Organisation pour l'harmonisation en Afrique du droit des affaires
<b>PPP</b>	Public-Private Partnership
<b>UEMOA</b>	Union Economique et Monétaire Ouest Africaine West African Economic and Monetary Union
<b>UNIDO</b>	United Nation Industrial Development Organisation
<b>ITC</b>	International Trade Centre

## Tables

<b>Table 1</b>	Areas covered in the national studies carried out in 2007
<b>Table 2</b>	Existing draft supplementary acts
<b>Table 3</b>	OHADA uniform Acts
<b>Table 4</b>	Ranking of sub-Saharan African economies

## List of persons

List of persons the experts have met

N°	Name	Title	Institution
<b>PROJECT TEAM</b>			
1	Selatou Kayodé-Anglade	Contact person for the project/ICR Facility	Expertise France
2	Susanne Reichenbach	Contact person for the project/ICR Facility	GIZ
3	Akadiri Aminou	Executive Director	FEWACCI
4	Uchenna Iwuchukwu	Intern, Programme Assistant	FEWACCI
<b>STAKEHOLDERS</b>			
5	Peter Oluonye	Principal Programme Officer Investment Promotion Services	Private Sector/ECOWAS
6	Yaouza Ouro Sama,	Principal Programme Officer	Competition Institut in the Gambia Former staff, Directorate of Legal affairs/ECOWAS
7	Daniel Lago	Director	Directorate of Legal Affairs/ECOWAS
8	Sacko Seydou	Principal Programme Officer Competition & informal trade	Directorate Trade/ECOWAS
9	Alfred Braimah	Auditor General	ECOWAS
10	Jerome BOA	Director	Directorate External Relations
11	Moustapha Gnankambary	Advisor Trade Policy-AfCFTA	GIZ
12	Inga Stefanowicz	Project manager	EUD Abuja
13	Frank Isioma Okafor	EUD Abuja	EUD Abuja
14	Aka Kouame	Coordinator ECOWAS Quality component /WACOMP	UNIDO
15	Brikena KECO UKELLI	WACOMP	UNIDO
16	MEHEFOLO, Kamara	WACOMP	UNIDO
17	SCHAETZ, Mathias	WACOMP	UNIDO
18	Deji ADEKUNLE	Academic	Nigerian Institute of Advanced Legal Studies
19	LADAN Muhammed Tawfiq Ladan	Academic	Nigerian Institute of Advanced Legal Studies
20	Miyoba Lubemba	Programme officer/WACOMP	ITC
21	Natasha Aniekwu	Programme officer/WACOMP	ITC
22	Yared Befecadu	Programme officer/WACOMP	ITC
23	Richard Eke-Metoho	Programme officer/WACOMP	ITC
24	Traore		Chamber of commerce Burkina
25	Abdoul-Kader Ali Yacouba		Chamber of commerce Niger
26	Rippel, Barbara	Head of Program/Trade Facilitation	GIZ
27	Kolawole Sofola	Acting Director	Trade Directorate/ECOWAS
28	Salifou TIEMTORE	Director	Directorate Customs Union and Taxation/ECOWAS

29	Tony ELUMELU	Acting Director	Directorate private sector/ECOWAS
30	Namalguebzanga Christian KAFANDO	Programme officer/Regional component WACOMP	ECOWAS
31	Desire PATALE	Directeur de l'Information et de l'intelligence économiques	Chamber of commerce Togo
32	Cheikh Tidiane DIEYE	Director	ENDA CACID
33	Sarata CONATEH		Chamber of commerce Gambia
34	Frederick Adu-Amoakoh		Chamber of commerce Ghana
35	Raymond Adjakpa	General Secretariat	Chamber of commerce Benin
36	Salami Amzat	General Secretariat	Ministry of commerce and Industry Benin
37	Roland Riboux	General Director	Societe Fludor Benin
38	Benoit DANDJINO	Chargé de mission	Societe Fludor Benin
39	Gilson Bruno Sanches		Chamber of commerce Cape Verde
40	Ousmane Diallo	Director research	ECOWAS Court of Justice

## List of documents

ECOWAS Treaty
West Africa Common Industry Policy (WACIP)
WACIP Implementation Strategy 2015 - 2020
Private sector Strategy
ECOWAS Investment Policy
Draft ECOWAS Vision 2050
Aperçu sur la Facilité d'assistance technique pour améliorer le climat des affaires et celui de l'investissement par le biais d'un dialogue structuré
WEBSITE ICR Facility
WEBSITE FEWACCI
MOU ECOWAS-FEWACCI
List of business Association in West Africa
Study reports on law harmonisation in Nigeria, Liberia, Sierra Leone, Gambia, Ghana
Supplementary act on the uniform rules on carriage of goods by road
Supplementary act on the uniform rules on carriage of goods by sea
Supplementary act on the uniform rules on carriage of goods by air
Supplementary act on the uniform rules on the copyright
Supplementary act on the uniform rules on the designs
Supplementary act on the uniform rules on patents
Supplementary act on the uniform rules on the trademarks
Supplementary act on security of tenure for local and foreign nationals relating to business premises in ECOWAS
Supplementary act on the principles of commercial contracts
Supplementary act on the uniform rules on the sale of goods
Supplementary act on the community rules on the establishment of the ECOWAS accounting standards agency
Supplementary act on the uniform rules on insurance
Supplementary act on the employment/labour matters in ECOWAS
Supplementary act on common principles of company law and related commercial entities
ECOWAS Trade Liberalization Scheme
Customs Union code
ECOWAS Trade Liberalization Scheme
Investment policy and code
Competition policy
ETLS Data base
ECOWAS projects and programmes_ RIP 11th EDF
ECOWAS Organogram