



OHADA:
New *Uniform Act*
organising Simplified
Recovery Procedures and
Enforcement Measures

The revised edition of the Uniform Act organizing Simplified Recovery Procedures and Enforcement Measures entered into force on the 16th of February 2024. The amendments made to this cornerstone of the legal framework established by the Organisation for the Harmonisation of Business Law in Africa (OHADA) are significant and offer an opportunity to introduce the text and provide an overview of the new features introduced by its revision.

1. What is the Uniform Act organising Simplified Recovery Procedures and Enforcement Measures?

Adopted in its initial version on the 10th of April 1998, the Uniform Act organising Simplified Recovery Procedures and Enforcement Measures (the Uniform Act) is one of the main texts issued by the Organisation for the Harmonisation of Business Law in Africa (OHADA). It provides creditors with a series of mechanisms to facilitate the quick and effective recovery of their debts.

In so doing, it plays a central role in achieving one of OHADA's objectives: to guarantee the legal and judicial security of investors and businesses in its 17 member States (Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, Democratic Republic of Congo, Senegal, Chad and Togo).

The new version of the text was adopted at the 56th session of the Council of Ministers of the organisation, which ended on the 18th of October 2023, and published in the OHADA Official Journal on the 15th of November 2023. It enters into force on the 16th of February 2024.

2. What are the main mechanisms provided for by the Uniform Act?

The Uniform Act provides for four main mechanisms aimed at simplifying, accelerating and securing the recovery of debts in the OHADA zone.

The injunction to pay (art. 2 to 18). This recovery procedure is available to creditors whose debts arising from a contract, a negotiable instrument or a che-

que are certain, liquid and due. It allows the creditor to obtain, quickly and at a low cost, an enforceable court order requiring the debtor to pay the debt claimed. In the absence of execution, and subject to the debtor's possibility of objecting to the order, the creditor may take enforcement action against the debtor.

The injunction to deliver or return (art. 19 to 27). This recovery procedure is intended for debtors who have an obligation to deliver or return a specific movable property. Like the injunction to pay procedure, the injunction to deliver or return procedure allows the creditor to obtain, quickly and at a low cost, an enforceable court order against the debtor, ordering the debtor to deliver or return the movable property in question.

Provisional measures (art. 54 to 90). These measures make the debtor's assets unavailable when the creditor proves that there are facts that could threaten the recovery of his debt. They can be implemented without an enforceable title and cover all movable assets belonging to the debtor, including his shares and securities or his bank accounts.

Enforcement measures (art. 91 to 334). The Uniform Act provides for a variety of enforcement measures. These allow the creditor to render the debtor's assets unavailable, to have them sold, or to have them assigned to him. These measures can be implemented provided that the creditor has an enforceable title. The debtor's movable property, debts owed to him by third parties, remuneration due from his employer, his shares and securities, as well as his real estate, can thus be subject to enforcement measures.

3. What are the main new features of the revised version of the Uniform Act?

Described as a "major qualitative leap" by the OHADA Permanent Secretary, the revised version of the Uniform Act is full of new features. Nine of the most significant ones are presented below.

Scope and definitions. In a new preliminary chapter, the scope of application of the Uniform Act is now clearly defined: it covers the procedures for injunctions to pay, to deliver or to return, enforcement mea-

asures and provisional measures with the exception of those covered by international treaties, by the national law of each OHADA member State in the context of public debt recovery, and by other OHADA uniform acts (art. 1). The clarification effort is also evident with a new article devoted to definitions (art. 1-1).

Strengthening of the investigative powers of bailiffs and judicial officers (art. 1-3). Bailiffs and enforcement authorities can now obtain a court order requiring public administrations to provide information on a debtor's assets. This significantly increases the chances for the creditor to recover his debt.

Introduction of the electronic form of acts related to provisional and enforcement measures (art. 1-5). Acts drawn up for the purpose of preserving or recovering debts can now be made in electronic form. These acts will have the same legal value as those drawn up on paper.

Harmonisation of acts of bailiffs and judicial officers. A set of mandatory mentions is now provided for acts drawn up by bailiffs and enforcement authorities in application of the Uniform Act. These mentions must appear in the acts on pain of nullity (art. 1-6), it being specified that this nullity is subject to the proof of a grievance (art. 1-16).

Extension of the injunction to pay procedure's scope (art. 2). From now on, in addition to contractual claims and claims relating to negotiable instruments and cheques, claims arising from the endorsement or guarantee of a negotiable instrument or cheque may also be recovered through the injunction to pay procedure.

Improvement of the speed of injunction proce-

dures. Judges must now issue the injunction to pay, deliver or return within three days of being seized (art. 5). The time limits for opposition and appeal in these procedures, initially fifteen and thirty days, have been reduced to ten and fifteen days (art. 10 and 15). The appeal proceedings may not exceed three months from the receipt of the file by the competent court (art. 15).

End of the obligation to first proceed with enforcement measures on movable property before turning to immovable property (art. 28). From now on, the creditor has the choice of the measures likely to ensure the recovery of his debt or the preservation of his rights. The obligation that previously existed to first go through movable property is abolished.

Clarifications concerning States and public legal persons immunity (art. 30 to 30-3). The new Uniform Act now expressly lists the persons benefiting from immunity from enforcement: States, local authorities and public institutions. It also includes various new provisions relating to debts held against public bodies and their recovery.

Extension of the scope of the debtor's assets that may be subject to provisional or enforcement measures. Provisional and enforcement measures may now cover livestock (art. 73-1 et seq., art. 152 et seq.), goods placed in a safe deposit box belonging to a third party, such as a bank (art. 152-16 et seq.) and goodwill (art. 245-1). Electronic money, which is making its entry into the Uniform Act, may also be subject to enforcement measures (art. 153).

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