

## Common law aids investment

In his presentation "Corporate structures for mining companies in OHADA member countries", Michael Bula of Michael Bula Solicitors explained a treaty which attempts to simplify and unify commercial law in Africa, providing greater security for investors through enhanced legal reliability, as well as promoting regional integration and economic growth.

"It is very ambitious, and very successful," he said. "It is quite unknown in Australia and gets very little media attention, and yet it is a momentous instrument which has really made dealing with the sixteen member countries, and soon the DRC, much easier."

The OHADA (the Organisation for the Harmonisation of Business Law in Africa), formed in 1993, has 16 current member states – mostly in north-western Africa – and it is believed the DRC will become the seventeenth member this year.

Bula stressed that the treaty was unique in Africa's history, and that it was "by no means a French club", containing countries which speak other languages (Cameroon, Guinea-Bissau and Equatorial Guinea).

"It's multi-legal and multi-lingual, so it really has a lot of scope. There are a number of countries which are outside the French zone discussing possible membership."

By ensuring that the same business laws and standards apply over a 16-country jurisdictional space, the treaty makes it easier for investors to approach the region, and aims



Michael Bula

to improve disclosure and security for shareholders and third parties.

Bula focused his presentation on company and commercial interest grouping law, one of eight areas covered by the treaty. He outlined operating rules which aim to make companies and those who operate them more accountable: including the verification of contributions in kind and "specific privileges" through audit, certification of accounts and other procedures.

He said preventive measures were particularly important.

"This is a highly innovative reform. Alert procedures can be initiated by the auditor or shareholder ... management must respond in writing in one month ... and there are sanctions for non-compliance.

"Shareholders themselves may put questions in writing to management twice in the financial year, and shareholders may apply to the court, where justified, to appoint an expert to provide specific management reports."

There are six types of companies allowed by the treaty, structures which Bula said were very different to what mining companies were used to in the common law world.

Though the treaty has been criticised for being neo-colonial, lacking the resources to do enough, and enshrining a French legal system which may be less favourable to investment than the common law system, it has been widely praised for creating common legal institutions, providing an opportunity for African integration into the global economy, enabling members to increase intra-African trade and stimulating foreign investment.

The International Trade Forum has described OHADA as a model for the rest of the world, while others have suggested that if it were widely adopted elsewhere on the continent, African economic and monetary union would become a real possibility.

The current members of OHADA are Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo-Brazzaville, Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo.

– Chris Robinson