

Momentous treaty simplifies African law

OHADA, a French acronym for the Organisation for the Harmonisation of Business Law in Africa, was a "momentous" treaty between 16 African countries. This was the view put forward by solicitor Michael Bula at Africa Downunder, who explained its workings to delegates.

"What the OHADA does – in business law and, I think, in terms of mining – is give an assurance to investors," he said. "In other words it's a template, once you know one jurisdiction you know the other 15 and soon to be 16."

"I think you will be impressed that so many African countries have in fact taken this leap – it is a supra-national leap. It is not unlike a mini European Union."

OHADA is a legal tool thought out and designed by and for Africa to serve the purpose of regional integration and economic growth on the continent. The OHADA was established by a treaty signed on October 17, 1993.

Bula explained: "The treaty, in brief, promotes regional integration and economic growth, and importantly for us enhances legal reliability through the harmonisation with business law. It implements uniform business laws and provides an arbitration system, and where it is absolutely revolutionary is that it creates



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institutions.

"It is supra-national: it creates a council of ministers; it creates a common court of justice and arbitration, which acts as an umbrella for all of the 16 countries; it creates a permanent secretariat; and, even more fascinating, a higher regional school of judges.

"The OHADA concept was to create a platform to enact uniform acts, which covered general commercial law; company and commercial interests grouping law; securities law; debt recovery and enforcement law, which in itself is a revolution if any of you have ever tried to enforce judgements and recover debt

in a number of African countries; bankruptcy; and, of course, arbitration, a lot of us know how hard arbitration can be in Africa."

Throughout the member states of the OHADA, the concept is to harmonise and simplify dealing within those jurisdictions. Most of the 16 members are located in north-western Africa, including Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo.

"Out of all those countries Cameroon speaks both French and English officially, Guinea Bissau is a Portuguese-speaking country and Equatorial Guinea is Spanish and French speaking – so it is not just limited to the Francophone countries."

Future member countries include the Democratic Republic of Congo, which will join this year, while Ghana and Nigeria have signalled their intention to establish links with the system.

Membership to the OHADA is open to all African Union countries, provided they are willing to harmonise their laws.

– Michael Cairnduff