

OHADA:

Entry into force of the new uniform act on organisation of simplified procedures for debt recovery and enforcement procedures.



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Introduction

A revised Uniform Act on the organisation of simplified debt recovery procedures and enforcement procedures was adopted by OHADA on 18 October 2023 (“**Revised Uniform Act**”). The Revised Uniform Code brings a series of improvements to creditors to ensure a better recovery process of their debts.

The Revised Uniform Act entered into force on 16 February 2024.

Major change introduced by the Revised Uniform Act

The Revised Uniform Act introduced a long-awaited clarification as regards the immunity from execution of legal persons under public law (*personnes morales de droit public*). It shall be recalled that the initial Uniform Act did not specify to whom such immunity from execution could be applied to, creating serious concerns along private investors. The scope of the immunity was determined through case law of the *Cour Commune de Justice et d’Arbitrage*.

The Revised Uniform Act clarifies the scope of the immunity from execution and lists¹ the entities to whom such immunity should be applied to. These public bodies are: (i) the State (*l’Etat*), (ii) the territorial authorities (*collectivités territoriales*) and the public establishments (*établissements publics*)².

This long-awaited reform will definitely further improve the legal environment in the OHADA region.

To be also noted that it is now clearly mentioned under the Revised Uniform Act that public entities are allowed to waive such immunity from execution. Such feature will definitely be welcomed by practitioners especially sponsors and lenders active in the infrastructure market.

Other noteworthy changes introduced by the Revised Uniform Act

Throughout the Revised Uniform Code, the drafters have clarified and fleshed out existing rules so as to reduce certain ambiguities.

- (I) **Clarification of the scope:** a new preliminary chapter has been introduced in which the scope of application of the Revised Uniform Act has been clearly defined. The Revised Uniform Act shall cover procedures for injunctions to pay, to deliver or to restate, enforcement measures and preventive measures, except for (i) those covered by international conventions (including the conventions related to the seizure of aircrafts and

¹ To be noted that this list shall not be construed as a restrictive list.

² Article 30 of the Revised Uniform Act, to be noted however that this list shall not

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vessels), (ii) by the local law of each OHADA Member countries in the context of the recovery of public debts and (iii) by any other OHADA Uniform Act³.

- (II) **Electronic form:** the electronic form has been introduced for documents relating to preventive and enforcement measures⁴. Such new measure promotes the digitization of procedures in the region.
- (III) **Improvement of the injunction proceedings:** the Revised Uniform Act has also improved the efficiency of injunction proceedings, by reducing the time required to issue injunctions, file objections and appeals. The competent courts will now have to issue an injunction for payment, delivery or restitution within **three** days following the submission of the request⁵. The deadlines for filing objections and appeals in these proceedings, which were originally fifteen and thirty days, have been reduced to ten **days** and **fifteen** days respectively.⁶
- (IV) **Choice of assets:** the obligation to proceed with enforcement measures on movable assets first before considering immovable assets has been lifted. Creditors are now given a choice of measures to ensure the recovery of their claims and to secure their rights.⁷

How can I find out more ?



For further details on the reform and its impact, please feel free to contact your usual Trinity lawyer, and particularly the contact listed below.

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³ Article 1 of the Revised Uniform Act.

⁴ Article 1-5 of the Revised Uniform Act.

⁵ Article 5 of the Revised Uniform Act.

⁶ Articles 10 and 15 of the Revised Uniform Act.

⁷ Article 28 of the Revised Uniform Act.