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SUMMARY OF CONTENTS

# OHADA's Uniform Contract Law: Challenge and Failure

Souichirou KOZUKA* and Hiroo SONO**

OHADA (l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires) is an intergovernmental organisation with the purpose of unifying commercial laws. Most of the seventeen member states are countries in Western and Central Africa, many of them belonging to the French law tradition. Having successfully adopted several uniform acts, OHADA embarked on a project to enact the Uniform Contract Act in 2001. The draft, modelled after the Unidroit Principles of International Commercial Contracts, was finalised in 2004, but was never adopted as a Uniform Act. After some debates about the future work of OHADA in the field of contract law, the project on the Uniform Contract Act seems to be virtually abandoned.

One of the strong arguments against the Uniform Contract Act was that the proposed scope of application extended to civil law matters, going beyond the scope of commercial law which is OHADA's mandate. As one empirical study has indicated, the acceptance of OHADA law by local lawyers has not been satisfactory in some member states, which might have been the cause of reluctance toward broadening the scope of the Uniform Contract Act. Another argument against the draft was that it discarded the concept of "*cause*", which was deeply embedded in the thinking of local lawyers who have been trained under the tradition of French law.

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The two arguments that frustrated the adoption of the Uniform Contract Act seem to imply tensions among the leading elites in the society. While some of them are responsive to the most up-to-date developments in the global fora, others prefer to maintain the established framework, succeeded from the Western powers generations ago. Whichever prevails politically, the legal system needs to interact with the general constituents of the society, such as the informal sector economy or traditional society. The true difficulty that OHADA's Uniform Contract Act faced may have been the absence of consensus about what role the modernised legal system should have *vis-à-vis* the society in general. It is easy to see that the issue of reception of law raised here has universal relevance, not limited to Africa.

# Harmonisation of Private Law in the East African Community (EAC)

Hiroo SONO* and Souichirou KOZUKA**

The EAC, consisting of Burundi, Kenya, Rwanda, Tanzania and Uganda, is one of the eight Regional Economic Communities (RECs) that will make up the economic community covering the whole African continent under the auspices of the African Union (AU). It is the only REC that has on its policy agenda harmonisation of private laws. The EAC Treaty which established the EAC declares that one of the objectives of the EAC is to develop policies and programmes aimed at widening and deepening co-operation on legal and judicial affairs. Further, the Common Market Protocol lists approximation of domestic laws in its policy agenda.

These policy agenda in the legal and judicial sector are carried out either in the form of community legislation or approximation of domestic laws. With regard to the former, nine areas of business law have been prioritised. EAC's Sectoral Council on Legal and Judicial Affairs has picked up from among them the laws on intellectual property, contracts, public private partnership, recognition of judgements, business registration and enforcement measures and procedures for collection of debts, and is currently working on drafting community legislation on these subjects. For the approximation agenda, studies are underway regarding corporate law, insolvency law, law on partnership and business name registration law.

Contrary to what we have witnessed elsewhere with respect to OHADA, it seems that harmonisation efforts in the EAC have not been hampered by disagreement over which model to follow: common law, civil law or global uniform law. This is all the more interesting because the EAC has two member states that belong to the civil law tradition. In fact, one of them,

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Rwanda, has recently "converted" to common law to promote economic growth. These swift developments are likely results of a shared conviction among the elites in EAC that harmonisation of private laws are essential for the establishment of a common market and acceleration of economic growth. It is yet to be seen, however, whether and to what extent, these efforts will take root in the general East African society.