Title:
Organization for the Harmonization of Business Law in Africa (OHADA), Uniform act relating to general commercial law

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Organization for the Harmonization of Business Law in Africa, Uniform act relating to general commercial law

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Content:
The uniform act relating to general commercial law, adopted on 15 December 2010 pursuant to article 8 of the Treaty on the harmonization of the business law in Africa (Traité relatif à l’harmonisation du droit des affaires en Afrique), can be accessed at the OHADA official website (official French version). The translation has been provided by OHADA.
BOOK VII

COMMERCIAL INTERMEDIARIES

TITLE I: COMMON PROVISIONS

CHAPTER I: DEFINITION AND SCOPE

ARTICLE 169
The commercial intermediary is a natural person or legal entity empowered to act, or means to act, usually and professionally on behalf of another person, merchant or not, in order to conclude a legal act of commercial nature with a third party.

ARTICLE 174
The provisions of this Book shall not apply to officers of corporations, associations or other groups with legal personality, which are legal representatives.

CHAPTER III: LEGAL EFFECTS OF ACTS PERFORMED BY THE INTERMEDIARIES

ARTICLE 180
When the intermediary is acting on behalf of the principal within the limits of his power, and the third party knew or had to know him as an intermediary, his acts shall bind the principal directly to the third party referred to in article 169 above, unless it is clear from the circumstances, notably by reference to a commission or brokerage contract, that the intermediary meant to act only for himself.

ARTICLE 183
When the intermediary acts without a mandate, or beyond his mandate, his acts are not binding either to the principal or the third party referred to in article 169 above.

However, when the behavior of the principal leads the third party to believe, reasonably and in good faith, that the intermediary has the power to act on behalf of the principal, the latter shall not rely on the lack of the intermediate power with respect of the third party.

ARTICLE 184
An act realized by an intermediary who acts, without or beyond his power, may be ratified by the principal.

BOOK VIII

COMMERCIAL SALE
TITLE I: SCOPE AND GENERAL PROVISIONS

CHAPTER II: GENERAL PROVISIONS

ARTICLE 237
A commercial sale shall be subject to the rules of common law with respect to contracts and sale which are not contrary to the provisions of this Book.
Parties are required to comply with the requirements of good faith. They shall not exclude this obligation, nor limit its scope.

ARTICLE 238
When a clause is ambiguous, the will of one party must be construed according to the meaning that a reasonable individual, of the same status as the other party, placed in the same situation, would have deducted from his behavior.
To determine the will of one party, factual circumstances shall be taken into account, in particular the negotiations that took place between the parties, practices established between them, customary practices in the concerned profession.

ARTICLE 239
Parties are bound by customs they have agreed upon and the course of dealing established in their commercial relationship.
Unless otherwise agreed by the parties, they are deemed to have agreed to professional practices of which they had knowledge or ought to have known and which, in trade, are widely known and regularly observed by parties to contracts of the same nature in the line of business concerned.

TITLE II: FORMATION OF THE CONTRACT

ARTICLE 241
A contract is entered into either by the acceptance of an offer, or by behavior of the parties which adequately indicates consent.

ARTICLE 242
The offer shall take effect when it reaches the addressee.
The offer can be revoked if there vocation reaches the addressee before the latter has expressed his acceptance.
However, the offer may not be revoked if it states that, before a deadline for acceptance, it is irrevocable or if the addressee has reasonable grounds to believe that the offer is irrevocable and acted accordingly.
The offer shall end when its rejection reached the offeror.

ARTICLE 243
Silence or inaction cannot alone establish acceptance.

ARTICLE 245
The reply to an offer meant to be an acceptance thereof, but containing additions, limitations or other amendments shall mean rejection of the offer and constitute a counter-offer.
However, the response which is meant to be an acceptance but contains additional or different elements, which do not substantially alter the terms of the offer, shall constitute an acceptance, unless the offeror, without undue delay, disagrees
with such elements. If he fails to do so, the terms of the contract shall be those of the offer with amendments contained in
the acceptance.

TITLE III: OBLIGATIONS OF THE PARTIES

CHAPTER I: OBLIGATIONS OF THE SELLER

Section 1 - Obligation to deliver

ARTICLE 253
The seller must deliver the goods on the date set in the contract or determined according to its provisions. If delivery is scheduled for a specific period, he may deliver any time during that timeframe. Absent such stipulation, the seller shall deliver within a reasonable time after the conclusion of the contract.

Section 2 - Mandatory Compliance

ARTICLE 258
Under penalty of forfeiture for the buyer of the right thereof, the apparent defect of conformity on the day of delivery must be disclosed by the buyer to the seller in the month following the delivery.

ARTICLE 259
The action of the buyer, based on a defect of conformity concealed on the day of delivery, shall lapse after a period of one year commencing on the day where such defect was found or ought to have been found. This latter time limit cannot have the effect of reducing the duration of the contractual warranty eventually consented.

CHAPTER II: OBLIGATIONS OF THE BUYER

ARTICLE 263
Where it is necessary to set the price, the parties may refer to the value habitually assigned to goods sold under comparable circumstances in the same sector at the conclusion of the contract.

ARTICLE 266
The payment of price to the seller shall be made either at the place of his place of business or at the delivery location if payment is made on delivery or if delivery is made against submission of documents.

Section 2- Acceptance of Delivery

ARTICLE 270
The buyer must examine the goods or cause them to be examined within a very short period. Where the sales contract provides for delivery of goods to a carrier, the examination may be delayed until the arrival of these goods at their destination. Where the goods are diverted or forwarded by the buyer without a reasonable opportunity to examine them, and if at the time of the conclusion of the contract, the seller knew or should have known of the possibility of diversion or forwarding, examination may be deferred until the arrival of the goods at their new destination.
TITLE V: NON-EXECUTION AND RESPONSABILITY

CHAPTER I: GENERAL PROVISIONS

ARTICLE 281
Any party to a contract of commercial sale is entitled to petition for its termination before the competent judge for total or partial non-execution of the obligations of the other party. However, the seriousness of the conduct of one party to the contract of commercial sale may justify that the other party unilaterally terminate it at his own risk. The severity of the motive of termination shall be weighed by the competent court at the request of the most diligent party. Irrespective of the seriousness of the conduct, the party who invokes it may be required to comply with a notice period before notifying its unilateral decision to the other party. Absent adequate notice, the author of the termination shall be liable even if the court admits the merits of the termination. The party that imposes or obtains the termination of the contract may seek further damages in compensation of the loss suffered and the loss of profit stemming immediately and directly from the non-execution.

CHAPTER III: NON-EXECUTION OF THE OBLIGATIONS OF THE BUYER

ARTICLE 285- If the buyer does not seem able to pay the full price due to insolvency or cessation of payments or even his delays in the agreed deadlines, the seller may obtain from the competent court ruling expeditiously to defer the execution of his delivery obligations. Such authorization may include the obligation to deposit the goods at his advanced costs.

CHAPTER IV: DAMAGES

ARTICLE 291
Any delay in payment of the price entails compulsory payment of interest calculated at the legal interest rate, without prejudice to possible damages due to other causes. Interest shall accrue from the mailing of the formal notice sent by the seller to the buyer by registered letter with acknowledgement of receipt or by any other equivalent means.

ARTICLE 293
The party which invokes a non-execution of the obligations of the contract shall take all reasonable measures in light of the circumstances to limit losses, or keep his gains. Failing to do so, the defaulting party may request a reduction of damages equal to the amount of losses that could have been avoided and the gain that could have been achieved.

CHAPTER V: EXEMPTION FROM LIABILITY

ARTICLE 294
A party may not be liable for non-execution of one of any of his obligations where he proves that his non-performance was due to an impediment beyond his control, such as an act of a third party or a case of force majeure. A case of force majeure shall be any impediment that is beyond a party’s control and the occurrence or consequences of which no-one could have reasonably foreseen.
Referring Principles:

I.1.1 - Good faith and fair dealing in international trade
I.2.2 - Trade usages

II.1 - Prerequisites and effects of agency
II.3 - Agent acting without or outside his authority
II.4 - Agency by estoppel / apparent authority

IV.2.1 - Contractual consent
IV.2.2 - Silence by offeree
IV.2.4 - Lapse of an offer
IV.2.6 - Modified Acceptance
IV.5.2 - Context-oriented interpretation
IV.6.2 - Subsequent fixing of contract price

V.1.1 - Place of performance
V.1.2 - Time of performance
V.1.4 - Principle of simultaneous performance; right to withhold performance

VI.1 - Termination of contract in case of fundamental non-performance
VI.2 - Deadline for notice of defects
VI.3 - Force majeure

VII.4 - Duty to mitigate
VII.6 - Duty to pay interest