

## CÔTE D'IVOIRE<sup>1</sup>

### **I. Overview of Country**

Côte d'Ivoire is a presidential republic with several parties competing for the Presidency. The Government exercises the executive power and Parliament the legislative power. Violence flared in the country during the 2000 uprising that led to the drafting of the new Constitution. Several subsequent rebellions occurred, *de facto* separating the northern part of the country from the southern part.<sup>2</sup> A later crisis emerged in 2010-2011 due to a contested election.<sup>3</sup> The country has been stabilizing since and is focusing on economic growth.<sup>4</sup> The new Constitution, adopted in 2000, does not contain a specific provision guaranteeing the freedom of association; however, Article 11 of the Constitution does guarantee the freedoms of assembly and demonstration.<sup>5</sup>

Côte d'Ivoire is a member of OHADA (Organisation pour l'Harmonisation en Afrique du Droit des Affaires).<sup>6</sup> OHADA's purpose is to harmonize the business law in African countries. OHADA now comprises seventeen member states. OHADA publishes uniform acts, such as the Revised Uniform Act on Commercial Companies and Economic Interest Group adopted on 1 January 2014 (OHADA Commercial Companies Uniform Act),<sup>7</sup> that the member states implement in their respective national legislation. Regarding associations, the law n° 60-315 on associations from 1960 provides the legal framework for the establishment of associations in Côte d'Ivoire.

### **II. Registration Procedures**

#### **A. For-Profit Organizations**

##### **a. Laws**

##### **1. General Registration Rules pursuant to the OHADA Commercial Companies Uniform Act**

A commercial corporation is created by two or more founders who stipulate, by agreement, to allocate assets (either cash or in kind) or industry to an activity in order to share the benefits or to profit from the savings that could result therefrom (article 4 OHADA Commercial Companies Uniform Act). The commercial corporation can exist in varying legal forms, such as the limited liability company or the company limited by shares (article 6(2) OHADA Commercial Companies Uniform Act).

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<sup>1</sup> The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> See e.g., <http://www.presidence.ci/presentation/5/historique-presidence>.

<sup>3</sup> See e.g., Amnesty International, *Amnesty International Report 2014/15*, p. 120, available at: <https://www.amnesty.org/en/documents/poi10/0001/2015/en/>. See generally U.S. & Foreign Commercial Service and U.S. Department of State, *Doing Business in Côte d'Ivoire: 2014 Country Commercial Guide for U.S. Companies*, 2014.

<sup>4</sup> KPMG, *Monitoring African Sovereign Risk – Ivory Coast Snapshot 2013 Quarter 1*, p. 3.

<sup>5</sup> See generally Articles 1 through 22 of the English version of the Constitution of Côte d'Ivoire (Law No. 2000-513 of August 1, 2000): [http://www.wipo.int/wipolex/fr/text.jsp?file\\_id=318109](http://www.wipo.int/wipolex/fr/text.jsp?file_id=318109).

<sup>6</sup> See generally [www.ohada.com](http://www.ohada.com).

<sup>7</sup> The OHADA Commercial Companies Uniform Act was published in the OHADA Official Journal n° Special on 4 February 2014.

The bylaws are either notarized or produced through other forms allowing guarantees of authenticity in the state of the seat of the corporation (article 10 OHADA Commercial Companies Uniform Act). The bylaws contain among other items: 1) the nature of the corporation; 2) the name of the corporation; 3) the scope of the corporation's activity; 4) the corporation's seat; and the 5) the length of time of the activity. The purpose of the corporation must be legal (article 20 OHADA Commercial Companies Uniform Act).

Except in case of joint ventures, every corporation must be registered in the commercial registry (article 97 OHADA Commercial Companies Uniform Act).<sup>8</sup> Every corporation will have legal capacity as from the date of the registration in the commercial registry (article 98 OHADA Commercial Companies Uniform Act).

Once the formalities of the constitution of the corporation have been completed and within a 15-day deadline following the registration, an article is published in an official gazette for legal announcements in the member state where the seat of the corporation resides (article 261 OHADA Commercial Companies Uniform Act). The article, signed by the notary public who has reviewed the corporation agreement or the founding member(s), must contain mentions such as 1) the purpose of the corporation; 2) the duration of the corporation; 3) the amount of cash contributions and contributions in kind; 4) the number of shares issued in consideration of contributions in cash, in-kind contributions, and industry contributions; 5) the surnames, first names, and addresses of the indefinite associates of the social debts (article 262 OHADA Commercial Companies Uniform Act).

## 2. General Deregistration Rules pursuant to the OHADA Commercial Companies Uniform Act

The corporation dissolves upon: 1) the ending of the duration for which it was created; 2) the accomplishment or the extinction of its purpose; 3) the repeal of the corporation agreement; 4) a decision of the partners based on the requirements for amending the bylaws; 5) a judicial decision of anticipatory dissolution, based on a request of a partner for good reason, notably for non-performance of a partner's obligations or in case of dissension amongst partners that impedes the good functioning of the corporation; 6) a judicial decision ordering the liquidation of all of the corporation's assets; 7) any other cause set forth in the bylaws (article 200 OHADA Commercial Companies Uniform Act). One reason that the government can seek the dissolution of a corporation is when the corporation has an illicit purpose (article 20 OHADA Commercial Companies Uniform Act *a contrario*). The dissolution is published by a notice in an official gazette authorized to publish legal notices at the seat of the corporation, by the filing at the commercial register of the documentation deciding or establishing the dissolution, and by the publication of the corporation's entry in the commercial register (article 202 OHADA Commercial Companies Uniform Act).<sup>9</sup>

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<sup>8</sup> Article 36(1) of the OHADA Uniform Act on General Commercial Law dated 15 December 2010 and published in the OHADA Official Journal n° 23 on 15 February 2011 stipulates that the office of the competent court or of the administrative authority will act as the commercial register. In Côte d'Ivoire, the Commercial Court of Abidjan and the *Centre de Promotion des Investissements en Côte d'Ivoire* (CEPICI) share responsibility for the commercial register. See generally <http://cotedivoire.eregulations.org/menu/1?!=fr#smenu3> and article 4(1) of Decree n° 2012-867 dated 6 September 2012 on the creation of a public administrative establishment entitled the Ivorian Investment Promotion Center. "CEPICI's objective is to act as a 'one-stop shop,' providing guidance to foreign investors and reducing the amount of time required for business registration and bureaucratic paperwork. CEPICI assists with registration, incorporation, notary services, and modifying the status of or dissolving a company." U.S. & Foreign Commercial Service and U.S. Department of State, *Doing Business in Côte d'Ivoire: 2014 Country Commercial Guide for U.S. Companies*, p. 7. Available at: [http://buyusainfo.net/docs/x\\_2580640.pdf](http://buyusainfo.net/docs/x_2580640.pdf).

<sup>9</sup> See generally articles 203 et seq. OHADA Commercial Companies Uniform Act.

b. Case Law

Relevant case law that would add to the information above was not located.

B. Not-For Profit Organizations

a. Laws

1. Registration Process for Associations – General Rules

The law n° 60-315 on associations provides the legal framework for the establishment of associations in Côte d'Ivoire. Article 1 of the law n° 60-315 on associations defines associations as the agreement according to which two or more persons join together, in a permanent way, their knowledge or resources for a purpose other than commercial. The law does not require prior authorization to form an association (article 2 of the law n° 60-315 on associations). Newly formed associations must be either designated as “declared associations” (see subsection 2 below) or “associations recognized for the public benefit” (see subsection 3 below). Specific requirements for foreign associations also exist (see subsection 4 below).

The administration and management must be held by persons who enjoy the rights of citizens of Côte d'Ivoire and said members must not have been punished pursuant to specific criminal provisions (article 3 of the law n° 60-315 on associations). Further, article 4 of the law n° 60-315 on associations provides that an association created with an illicit purpose, with a purpose *contra mores*, or whose purpose would notably threaten the national territorial integrity or the republican form of government, incite hatred amongst ethnic groups, or incite citizens to offend the law, is null and void. The prefecture or the administrative district will pronounce the nullity of the association (article 5 of the law n° 60-315 on associations; see generally subsection 5 below).

2. Registration Process for Declared Associations

Each association must send a prior notification to the prefecture or the administrative district where the association has its seat (article 7 of the law n° 60-315 on associations).

The prior notification is drafted, in writing and on free paper, by the founding members (article 8(1) of the law n° 60-315 on associations). The prior notification must indicate the name and the purpose of the association, the seat of its offices and the names, professions and home addresses of those who, under any capacity, are in charge of its administration or management (article 8(2) of the law n° 60-315 on associations). The statement must be true, accurate and sincere; otherwise, the dissolution may be pursued as provided by article 5 (article 8(2) of the law n° 60-315 on associations). Any change in the administration or management or any amendment to the bylaws must be declared in a special registrar in the month of the change (article 10(1) of the law n° 60-315 on associations). This special registrar is available for review by the administrative or judicial authorities each time those authorities so require (article 10(3) of the law n° 60-315 on associations).

The association cannot perform any activity for a two-months' period starting from the filing date of the prior notification (article 9 of the law n° 60-315 on associations).

If a declared association wishes to obtain legal status, the founding members must make it public within a month of the expiration of the deadline set forth in article 9 by inserting the following in the Official Journal of the Côte d'Ivoire, namely an extract of the date of the prior notification, the name and

the purpose of the association, as well as the indication of its seat (article 11 of the law n° 60-315 on associations).<sup>10</sup>

### 3. Registration Process for Associations Recognized for the Public Benefit

Associations can be recognized for the public benefit following decrees adopted by the council of ministers based on reports by the Minister of the Interior (article 14 of the law n° 60-315 on associations). To be recognized as associations for the public benefit, said associations must meet the requirements of declared associations (article 15 of the law n° 60-315 on associations). The request to be recognized for the public benefit must be signed by all the delegates as selected by the general assembly (article 16 of the law n° 60-315 on associations).

Article 17 of the law n° 60-315 on associations lists the documents that are attached to the request to be recognized for the public benefit, namely: 1) a copy of the Official Journal containing the extract of the declaration; 2) a summary indicating the origin, the development and the public interest purpose of the work done by the association; 3) the bylaws in two copies; 4) the list of the association's branches with indication of their seats; 5) the list of the members of the association with mention of their age, their nationality, their profession and their home addresses or, if it is a union of associations, a list of the member-associations of the union with their purpose and seat; 6) the financial account of the previous year; 7) the state of the movable and immovable assets and liabilities; 8) an extract of the general assembly's deliberation requesting the recognition for the public benefit.

Article 18 of the law n° 60-315 on associations stipulates the required information that the bylaws must contain, namely: 1) the name, the purpose, the duration of the association's activities, and the seat of the association; 2) the requirements upon which members can be accepted or expelled; 3) the organizational and functional rules of the association and its branches, the description of the powers granted to those who administer or manage the association as well as the requirements to modify the bylaws and to dissolve the association; 4) the acceptance to inform the prefecture or the administrative circumscription of all changes to the administration or management of the association, within a month; 5) the rules on the devolution of property following the voluntary or statutory dissolution of the association or its dissolution following a decree or a judicial decision.

The association is required to send the request to the Minister of the Interior, which may seek comments from other ministries, the executive of the municipal council or the head of the administrative district, and a report from the prefect (article 19 of the law n° 60-315 on associations).

### 4. Registration Process for Foreign Associations

Specific provisions for foreign associations exist in the law n° 60-315 on associations and in the Presidential Decree n° 93-921 dated 30 December 1993 on the attributions of the members of government and on the guardianship of non-governmental organizations.<sup>11</sup>

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<sup>10</sup> Any regularly declared and published association may, without special authorization, sue, acquire for consideration, possess and administer, outside of state, departmental and communal subsidies the following: (1) membership dues with specific limitations on the amount, *i.e.*, no more than ten thousand Francs; (2) the premises serving as the administration of the association and the gathering of members; (3) the buildings strictly necessary to the accomplishment of the association's purpose (article 12 of the law n° 60-315 on associations).

<sup>11</sup> See generally *Le guide de la liberté associative dans le monde* (Michel Doucin, edit.), La Documentation française (27 April 2007), p. 74-75.

Article 28 of the law n° 60-315 on associations defines foreign associations as groups with the characteristics of an association having their headquarters abroad or, having their seat in Côte d'Ivoire, are nonetheless run by foreigners, maintain foreign nationals as administrators or have a quarter of their membership of foreigners.

Pursuant to article 24 of the law n° 60-315 on associations, no foreign association can be set up or can continue its operations in Côte d'Ivoire without prior authorization by decree of the Minister of the Interior.

Foreign associations cannot have branches in Côte d'Ivoire without express and unique authorization for each of their branches (article 26 of the law n° 60-315 on associations).

Any authorization pursuant to articles 24 or 26 of the law n° 60-315 on associations may be granted on a temporary basis only, be subject to periodic renewal, be subject to specific contingencies, or be revoked by decree at any time (article 27 of the law n° 60-315 on associations). The request for authorization is submitted to the prefect where the association or the branch will be operating (article 30(1) of the law n° 60-315 on associations). For the authorization to be granted, it must contain the name and purpose of the association or of the branch, the address of operation, the names, professions, home addresses and nationality of the foreign members and of those who, in any capacity, are charged of administering or managing the association or branch (article 30(2) of the law n° 60-315 on associations).

The prefects may contact groups or branches within their administrative circumscription to obtain information regarding the seat of the organization to which the group or branch relate to, the true purpose of the group or branch, the nationality of their members, their administrators and officers in fact (article 29 of the law n° 60-315 on associations). Those groups and branches have one month to provide the relevant information (*Id.*).

## 5. Deregistration Process for Associations

If the association is dissolved under articles 3 or 4 of the law n° 60-315 on associations, the property that served the interest of the association may be confiscated or destroyed (article 5 of the law n° 60-315 on associations).<sup>12</sup>

Articles 22-23 of the law n° 60-315 on associations govern the dissolution of the association. Pursuant to article 22 of the law n° 60-315 on associations, if the bylaws do not stipulate the rules regarding the dissolution of the association and the devolution of the assets held by the association in case of dissolution by any way possible, if the general assembly that has voted the voluntary dissolution did not make a decision on that issue, or if the decree pursuant to article 5 did not order the confiscation or the destruction of the goods, the court appoints a trustee at the public prosecutor's request. Within the deadline set by the court, the trustee convenes a general assembly meeting whose sole purpose is to determine the devolution of the assets.

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<sup>12</sup> The administration and management must be held by persons who enjoy the rights of citizens of Côte d'Ivoire and said members must not have been punished under specific criminal provisions (article 3 of the law n° 60-315 on associations). Further, article 4 of the law n° 60-315 on associations provides that an association created with an illicit purpose, with a purpose *contra mores*, or whose purpose would notably threaten the national territorial integrity or the republican form of government, incite hatred amongst ethnic groups, or incite citizens to offend the law is void.

Foreign associations for which the authorization to practice is denied or revoked must immediately cease their operations and liquidate their property within a month of the date of the notification to cease all operations (article 31 of the law n° 60-315 on associations).

b. Case Law

Relevant case law that would add to the information above was not located.

C. Analytical Comparison

The rules governing the registration and deregistration process of for-profit organizations are more modern than the rules governing the same for not-for profit organizations. The prior authorization, notification and dissolution process are more onerous for NPOs than for FPOs.

### III. Tax Laws

A. For-Profit Organizations

a. Laws

Côte d'Ivoire levies several taxes from for profit corporations. For instance, the corporate income tax amount to 35 percent of taxable profit.<sup>13</sup> A business license tax, social security contributions, payroll tax, special tax on equipment, advertising tax, tax on real estate also exist.<sup>14</sup>

A simplified taxation regime exists notably for companies farming land, raising cattle, or hospitality services with an annual turnover, inclusive of all taxes, between 50 million and 150 million Francs. Any company operating in other sectors of the economy can be subject to the simplified taxation regime if its annual turnover, inclusive of all taxes, is between 25 million and 75 million Francs.<sup>15</sup>

In 2012, the Ivorian government adopted an ordinance and a decree for the promotion of foreign investments in Côte d'Ivoire.<sup>16</sup> Economic activities – such as agriculture and agro-industries, extractive industries, transport and distribution of energy, health, tourism, new technologies, and textile – benefit from the advantages set forth in the 2012 Ordinance and the 2012 Decree (see generally article 33 of the 2012 Ordinance).

The 2012 Ordinance and 2012 Decree divide Côte d'Ivoire in three parts (areas A, B and C). Area A covers the district of Abidjan; area B covers any other town with a population over 60,000; and area C covers the towns with a population of less than 60,000, as well as special economic zones as adopted by other decrees (article 50 of the 2012 Decree). The economic advantages offered depends on the area in which the investment is made. For investments in area A, companies are exempt from the corporate income tax, from the tax on non-commercial benefits, or from the tax on agricultural benefits and are also

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<sup>13</sup> See generally <http://cotedivoire.eregulations.org/menu/10?l=fr>. A synthetic tax regime exists next to the normal tax regime. The synthetic tax regime is structured as a set fee system and releases the taxpayer subject to that fee structure from paying the tax on profit, the value added tax and the tax on the trading license. Taxpayers are subject to the synthetic taxation if they are natural persons earning less than 50 million Francs or 25 million Francs, depending on their economic activity.

<sup>14</sup> World Bank, *Doing Business 2015 – Economy Profile Côte d'Ivoire*, p. 64-65.

<sup>15</sup> See generally <http://cotedivoire.eregulations.org/menu/10?l=fr>. Further exceptions exist.

<sup>16</sup> See generally Ordonnance n° 2012-487 du 7 juin 2012 portant code des investissements (“2012 Ordinance”) and Décret n° 2012-1123 du 30 novembre 2012 fixant les modalités d’application de l’ordonnance n° 2012-487 du 7 juin 2012 portant code des investissements (“2012 Decree”).

exempt from payment of any trading license (article 37 of the 2012 Ordinance). These benefits last for five years (article 35 of the 2012 Ordinance).

For investments in area B, companies are exempt from the corporate income tax, from the tax on non-commercial benefits or from the tax on agricultural benefits and from payment of any trading licenses; they have to pay only 20 percent of the normal employer contribution to social security excluding the apprentice tax and the tax on continuing professional education (article 37 of the 2012 Ordinance). These benefits last for eight years (article 35 of the 2012 Ordinance).

For investments in area C, companies are exempt from the corporate income tax, from the tax on non-commercial benefits or from the tax on agricultural benefits, from payment of any trading licenses, real estate tax, additional registration taxes in case of subsequent increase in capital, and have to pay only 10 percent of the normal employer contribution to social security excluding the apprentice tax and the tax on continuing professional education (article 37 of the 2012 Ordinance). These benefits last for 15 years (article 35 of the 2012 Ordinance).

b. Case Law

Relevant case law that would add to the information above was not located.

B. Not-For Profit Organizations

a. Laws

Associations are subject to the value added tax and to local taxes. Associations are not, however, taxed on income or on their estate.<sup>17</sup> Membership dues are limited to 10,000 Francs (art. 12 of the law n° 60-315 on associations).

b. Case Law

Relevant case law that would add to the information above was not located.

C. Analytical Comparison

Not-for profit organizations do not need to pay income tax, whereas their for profit counterparts do.

#### **IV. Financial Transaction Laws**

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Côte d'Ivoire has several ordinances seeking to attract foreign investment.<sup>18</sup> In the latest ordinance from 2012, the Ivorian government offers investors in various industries specific guarantees

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<sup>17</sup> See generally *Le guide de la liberté associative dans le monde* (Michel Doucin, edit.), La Documentation française (27 April 2007), p. 74.

that protects them and their investment, subject to the laws and ordinances of Côte d'Ivoire (articles 5 and 21 *et seq.* of the 2012 Ordinance"). Foreign investors will be treated equally as nationals of Côte d'Ivoire (article 6(1) of the 2012 Ordinance). The state will assist corporations that have suffered from depredations by riots (article 7 of the 2012 Ordinance). There will be no limiting of access to the foreign exchanges when it is necessary to the foreign investors' operations (article 8(1) of the 2012 Ordinance). Article 11 of the 2012 Ordinance protects private property of all assets. Further, no investor may be deprived of its investment property except for a public purpose and under the condition of a just and prior compensation (article 16 of the 2012 Ordinance).

Côte d'Ivoire allows transfers of assets relating to investments subject to the payment of the regular taxes (article 17(1) of the 2012 Ordinance). Exceptions exist (*see generally* article 17(2) of the 2012 Ordinance).

#### ii. Political Contribution Laws

Relevant laws could not be located.

##### b. Case Law

Relevant case law that would add to the information above was not located.

#### B. Not-For Profit Organizations

##### a. Laws

#### i. Foreign Investment/Foreign Funding Laws

Associations recognized of public interest can perform all acts not prohibited by their statutes, but they cannot possess or purchase other real property than those necessary to the pursuit of their purpose. All securities of an association must be registered securities or deposited at the Deposit and Consignment Office (article 21(1) of the law n° 60-315 on associations). Those associations can receive gifts and bequests following an authorization of the prefect, for gifts or bequests under or equal to ten million Francs, or by decree adopted by the council of ministers, for gifts or bequest above ten million Francs (article 21(2) of the law n° 60-315 on associations). Any real property not necessary to the purpose of the association and received as a gift or bequest must be sold according to the terms of the prefectural authorization or the decree adopted by the council of ministers authorizing the acceptance of the gift or bequest; the proceeds of the sale benefit the association (article 21(3) of the law n° 60-315 on associations).<sup>19</sup> The laws do not specify what is needed to gain authorization, the time limits or if there is a redress mechanism if authorization is denied.

#### ii. Political Contribution Laws

Foreign associations are prohibited from exercising any political activity or to receive, accept, solicit, or approve of gifts, donations, subsidies, offers, promises, and any means from a foreign country

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<sup>18</sup> See further *Loi n° 95-620 du 3 août 1995 portant code des investissements; Décret n° 95-712 du 13 septembre 1995 fixant les modalités de la loi n° 95-620 du 3 août 1995 portant code des investissements; Arrêté n° 0121 du 22 décembre 1995 fixant les conditions de recevabilité des déclarations d'investissement et demande d'agrément à l'investissement.*

<sup>19</sup> Associations may purchase for consideration or receive as gifts or bequests woods, forests, and land for afforestation (article 21(4) of the law n° 60-315 on associations).

under penalty of nullity pursuant to article 32 of the law n° 60-315 on associations and other criminal provisions (article 25 of the law n° 60-315 on associations).

b. Case Law

Relevant case law that would add to the information above was not located.

C. Analytical Comparison

Côte d'Ivoire seems very open to foreign investors, as it wants its economy to grow in the aftermath of the various rebellions that occurred in the previous decade or so. As such, Côte d'Ivoire seeks to attract foreign capital and goods to help its economy. Conversely, several limitations on not-for-profit organizations exist, such as the general ban of ownership for non-essential real property.

**V. Auditing/Reporting Requirements**

A. For-Profit Organizations

a. Laws

OHADA legislates the auditing and reporting requirements in the OHADA Commercial Companies Uniform Act and in the Uniform Act regarding the Organization and Harmonization of the Accounting of Corporations adopted on 22 February 2000 (OHADA Accounting Uniform Act).<sup>20</sup> The OHADA Accounting Uniform Act provides the general guidelines companies must follow in terms of accounting and reporting. For instance, article 2 OHADA Accounting Uniform Act subjects corporations organized in accordance with the provisions of commercial law, public, para-public, semi-public entities, cooperatives and, more generally, entities producing market or non-market goods and services, to the extent they exercise, for profit or not-for profit, principally or accessorially, economic activities based on repetitive acts. Those entities performing economic activities below certain thresholds are subject only to *de minimis* rules (articles 11 & 13 OHADA Accounting Uniform Act).

Entities must maintain an accounting system that, together with the principle of prudence, complies with the rules regarding regularity, sincerity, and transparency inherent in holding, controlling, presenting and disclosing the information the entities have processed (article 3 OHADA Accounting Uniform Act).

The fiscal year coincides with the calendar year (article 7(2) OHADA Accounting Uniform Act). At the end of every fiscal year, the manager, the board of directors, or the chief executive officer prepares and approves the summary accounts pursuant to the provisions of the OHADA Accounting Uniform Act (article 137 OHADA Commercial Companies Uniform Act).

For companies limited by shares, one or more auditor(s) shall perform the controls (article 694(1) OHADA Commercial Companies Uniform Act). The auditor issues an opinion stating that the summary financial statements are consistent and fair and fairly represent the operational results for the past fiscal

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<sup>20</sup> The OHADA Accounting Uniform Act was published in the OHADA Official Journal n° 10 on 20 November 2000.

year and the financial position of the company's assets at the end of said fiscal year (article 710 OHADA Commercial Companies Uniform Act ).<sup>21</sup>

b. Case Law

Relevant case law that would add to the information above was not located.

B. Not-For Profit Organizations

a. Laws

Not-for profit organizations might be subject to the OHADA Accounting Uniform Act if they perform accessory economic activities based on repetitive acts (article 2 OHADA Accounting Uniform Act).

b. Case Law

Relevant case law that would add to the information above was not located.

C. Analytical Comparison

Auditing and reporting are required regardless of the purpose of the organization, so long as there is some economic activity based on repetitive acts.

## **VI. Penalties for Non-Compliance**

A. For-Profit Organizations

a. Laws

i. Civil

Pursuant to article 740 OHADA Commercial Companies Uniform Act, managers, individually or jointly, are held liable against the corporation or third parties for any offense to legal or regulatory provisions relating to companies limited by shares, for violations of the corporation's bylaws, or for offenses committed under their supervision. Article 741 OHADA Commercial Companies Uniform Act allows shareholders to sue for their own damages and for any derivative damages caused to the corporation.

ii. Criminal

Article 886 OHADA Commercial Companies Uniform Act prohibits founding members, the president-chief executive officer, the chief executive officer, etc. to issue shares before registration or at any time when the registration had been fraudulently obtained or that the company is improperly constituted. Article 887 OHADA Commercial Companies Uniform Act also punishes other acts related to the registration such as when a person of knowledge willingly falsifies reports to obtain funds from third parties or presents to the notary public falsified documents. Other criminal provisions exist, notably

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<sup>21</sup> See generally articles 711-734 OHADA Commercial Companies Uniform Act on the scope of the auditor's mandate, rights and obligations, liabilities, and exclusion.

in the dissolution process<sup>22</sup> and the auditing and reporting process.<sup>23</sup> Further, the criminal code of Côte d'Ivoire applies to certain circumstances, such as false and misleading statements.<sup>24</sup>

b. Case Law

Relevant case law that would add to the information above was not located.

B. Not-For Profit Organizations

a. Laws

i. Civil

If the association is dissolved under articles 3 or 4 of the law n° 60-315 on associations, the property that served the interest of the association may be confiscated or destroyed (article 5 of the law n° 60-315 on associations).<sup>25</sup>

If a foreign association fails to seek the prefectural authorization, it will be considered null and void, as declared by an ordinance of the Minister of the Interior (article 32 of the law n° 60-315 on associations). The decree or ordinance that withdraws the association's authorization to operate, that denies the foreign association's request to operate, or that declares the foreign association void prescribes all necessary measures for the immediate execution of the decree or ordinance to be immediately executed, for the liquidation and, if appropriate, for the confiscation and destruction of the group's property (article 33 of the law n° 60-315 on associations). It seems that the law does not provide a redress mechanism.

ii. Criminal

Articles 34 and 35 of the law n° 60-315 on associations criminalize certain types of conduct in relation to said law. For instance, article 34(1) of the law n° 60-315 on associations prohibits false

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<sup>22</sup> See generally articles 902-904 OHADA Commercial Companies Uniform Act. Article 902 OHADA Commercial Companies Uniform Act punishes a liquidator who, willfully, notably fails to publish the disposition nominating him liquidator in the manner prescribed by OHADA Commercial Companies Uniform Act. Article 903 OHADA Commercial Companies Uniform Act punishes a liquidator who, following a judicial ruling on the liquidation, has willfully failed to performed in the manner prescribed by OHADA Commercial Companies Uniform Act. Article 904(1) OHADA Commercial Companies Uniform Act punishes a liquidator who, acting in bad faith, used goods from the liquidated corporation against the interests of the liquidated company or its successors, for personal gain or for the gain of a third party corporations in which said liquidator has a direct or indirect interest.

<sup>23</sup> See generally article 111 OHADA Auditing Uniform Act, which punishes individual entrepreneurs and managers who have failed, for each fiscal year, to prepare the inventory and to establish the financial statements and, if applicable, the management report and the social report. That same provision also criminalizes the same persons who prepared and communicated financial statements that do not properly reflect the assets, the financial situation and the yearly profit.

<sup>24</sup> See generally articles 403 et seq. of the law n° 81-640 dated 31 July 1981 on the criminal code, published at the Official Journal n° Special dated 4 January 1981.

<sup>25</sup> The administration and management must be held by persons who enjoy the rights of citizens of Côte d'Ivoire and said members must not have been punished under specific criminal provisions (article 3 of the law n° 60-315 on associations). Further, article 4 of the law n° 60-315 on associations provides that an association created with an illicit purpose, with a purpose *contra mores*, or whose purpose would notably threaten the national territorial integrity or the republican form of government, incite hatred amongst ethnic groups, or incite citizens to offend the law is void.

declaration pursuant to article 8(5) of the law n° 60-315 on associations, among other provisions, and punishes infringers with a fine, which can be doubled if the infringer repeats the same offence.

Similarly, article 34(2) of the law n° 60-315 on associations fines and incarcerates from one to three years members, following a decision dissolving an association, who persisted in continuing the acts of the association or set up again the association. Aiding and abetting those members is equally punishable (34(3) of the law n° 60-315 on associations). Further, the guilty may, under article 34(2-3) of the law n° 60-315 on associations, be sentenced to banishment (or residency ban) for five years at most (34(4) of the law n° 60-315 on associations).

Article 35(1) of the law n° 60-315 on associations punishes those who administer foreign associations and their offices with incarceration from one to five years and fines. Other persons who participate in the functioning of foreign associations and their offices are punished with incarceration from six months to three years and fines (35(2) of the law n° 60-315 on associations). The same punishment shall be imposed on anyone who, as executive member, administrator, or other participant to associations and their branches, acts beyond the scope of the associations' authorization or continues to operate beyond the period set by the authority.

b. Case Law

Relevant case law that would add to the information above was not located.

C. Analytical Comparison

There are many criminal provisions that exist when dealing with not-for profit organizations.

## OVERVIEW

The chart does not fit well with this specific country (Côte d'Ivoire) because the laws are from two different eras. The for-profit organization rules and regulations are modern and anchored in the OHADA multilateral covenants entered into by Ivory Coast. The key is the seamless flow of assets from one jurisdiction to another. Ivory Coast is trying hard to become a major recipient of foreign direct investment and has created laws to that effect. On the other hand, the law on associations presented above was adopted in 1960 with firm governmental controls in mind.