

Draft 7.1.2014

TECHNICAL ASSISTANCE AGREEMENT

between

DFID

hereinafter called "the Technical Assistant"

and

THE DEMOCRATIC REPUBLIC OF CONGO,

hereinafter called "the Beneficiary".

**PROGRAMME IN SUPPORT OF OHADA IMPLEMENTATION IN THE
DRC
(OHADA SUPPORT PROGRAMME)**

ARTICLE 1: PURPOSE OF THE AGREEMENT

- 1.1 The Department for International Development (DFID) is the agency which implements British co-operation. DFID plans to offer Technical Assistance to the Democratic Republic of Congo to implement a programme in support of the implementation of OHADA.
- 1.2 This Programme shall be implemented in accordance with the provisions of the present Agreement and its Annexes.

ARTICLE 2: NATURE OF AGREEMENT AND PARTIES' UNDERTAKINGS

- 2.1 The present Agreement is not an agreement on direct finance. Its purpose is therefore not to fund the Beneficiary for the direct financing of the Programme activities.
- 2.2 DFID undertakes to deploy the necessary human and material resources, according to its internal procedures, with a view to ensuring satisfactory implementation of the Programme governed by the present Agreement.
- 2.3 The Beneficiary, in turn, undertakes to provide political support and institutional co-operation to facilitate efficient implementation of the Programme.

ARTICLE 3: PROGRAMME DURATION

- 3.1 The Programme governed by this Agreement shall cover a minimum continuous term of four years, commencing on signature by whichever Party signs last.

ARTICLE 4: CONTRACTING PARTIES' CONTACT DETAILS

- 4.1 Any communication about the implementation of the Technical Assistance Agreement shall require written form. It shall expressly refer to the Programme in support of implementation of OHADA in the DRC, and be sent to either of the following addresses, as applicable:
 - a) For DFID:
83 Avenue Roi Baudoin, P.O. Box 8049, Kinshasa/Gombe, DRC
 - b) For the Beneficiary:
The Minister of Justice and Human Rights,
Kinshasa, DRC.

ARTICLE 5: ANNEXES

5.1 The following shall be annexed to the present Technical Assistance Agreement and form part thereof:

- the Technical and Administrative Arrangements which introduce the background and determine how the Programme shall be implemented;
- institutional flow chart for the Programme
- and the Programme Terms of Reference (ToR);

ARTICLE 6: ENTRY INTO FORCE

6.1 The Technical Assistance Agreement shall enter into force on the date of signature by whichever of the Parties signs last.

Done in Kinshasa on in two originals

For DFID

For the Government of the DRC

Date:

Date:

ANNEXE I - TECHNICAL AND ADMINISTRATIVE ARRANGEMENTS

I. MOTIVATION FOR THE PROGRAMME

1.1 Since 2009 the Government of the Democratic Republic of Congo (DRC) has been engaged in a thoroughgoing programme of reform of conditions for business. The aim is to help the private sector generate growth and jobs. As part of this Programme, in July 2012 the DRC joined the Organisation for Harmonisation of African Business Law (OHADA). Under the OHADA Treaty, OHADA law entered into force on 12 September 2012, prior to which the country's commercial, accountancy and arbitration law had already been considerably updated, replacing laws dating from the 19th century. Furthermore, by acceding to OHADA, the DRC accepted the Common Court of Justice and Arbitration (CCJA) based in Abidjan, Côte d'Ivoire, as supreme supra-national jurisdiction in matters of the enforcement or interpretation of the Uniform Acts.

1.2 The potential benefits of OHADA in the DRC are immense. If the DRC decided to adopt the OHADA Doing Business indicators as its own level of good practice, its ranking on the Doing Business index would rise 66 places, to just above Egypt. Furthermore, respect for well-administered justice, especially in the form of commercial arbitration, would attract potential foreign investors.

1.3 Since the country's OHADA accession many efforts have been made, backed especially by the European Union's Aidcom Programme and the World Bank, which have respectively supported the Steering Committee for the Reform of the Portfolio of State-Owned Enterprises (COPIREP) and the National OHADA Commission. These backers have conducted a series of operations including the provision of documents, training, studies and lobbying especially:

- preparation and publication of a document on the Harmonisation of Congolese and OHADA Law
- training of about 50 OHADA trainers
- organisation of a training course for magistrates, registrars, bailiffs and attorneys-at-law in Kinshasa and the provinces.

In particular, the National OHADA Commission (CNO) has drawn up and updated an Action Plan for Implementation of OHADA for the Period 2013-17. This outline plan is structured around four "components:"

- Implementation of OHADA law and passing the programmes of legislation necessary to launch OHADA;
- Promotion of OHADA law;
- Functioning of the CNO; and
- Development of the Commercial and Property Loans Register (RCCM).

- 1.4 Furthermore, the Prime Minister passed a decree on 1 November 2012 instituting the One-Stop Shop for Business Start-Ups [Guichet Unique de Création d'entreprises]. This has seen encouraging development, with a managing director and assistant managing director appointed by the Minister of Justice, and allocation of premises for its headquarters. In addition to the actions of other funders and government, in early 2013 DFID conducted a feasibility study for a business registration system aimed at combining business identifiers (the RCCM, the Unique Identifier and the National Identification Number) into a single number based on the RCCM number.

II. PROGRAMME OBJECTIVES

- 2.1 The Programme in support of the implementation of OHADA aims to exploit the main institutional and technical levers so that the DRC can pursue expertise in OHADA law and benefit to the full from using OHADA rules and institutions, especially in terms of cleaning up its business environment, modernising its legal and judicial practices and relieving poverty.
- 2.2 The Programme targets the reinforcement of the technical and material capacities of all involved in OHADA: political decision makers, businesses, magistrates, members of the legal profession and universities. In this regard, special emphasis must be laid on the Programme's impact on the indicators of poverty relief and Doing Business. These include, especially, impact on business start-up formalities, the legal context of performance of contracts, investor protection and access to credit for SMEs and for the vulnerable sections of society.

III. BENEFICIARIES

- 3.1 The Programme will directly benefit the Government of the DRC through the institutions dedicated to OHADA (the CNO, the One-Stop Shop, the Steering Committee for Improving the Business and Investment Environment in the DRC - CPCAI, the Directorate-General of Taxation - DGI, the Directorate-General of Administrative, Judicial, Public Estate and Participation Revenue - DGRAD, the Permanent Council for Accountancy in Congo - CPCC, etc.). It will also directly benefit the judicial system as a whole, the private sector and the organisations of civil society.

IV. PROGRAMME CONTENT

- 4.1 The Programme in support of the implementation of OHADA in the DRC consists of four components, numbered 1 to 4. Each component is subdivided into sub-components, which indicate the action to be taken to implement the component concerned:
- Component 1: One-Stop Shop for Business Formalities
 - Component 2: Institutional and Technical Support
 - Component 3: Public and Professional Awareness
 - Component 4: Cross-cutting Operations of Monitoring and Evaluation.
- 4.2 The Terms of Reference in Annexe II below list the sub-components which are the results expected from the Programme.

V. LOCATION, DURATION AND STAGES OF PROGRAMME

- 5.1** The Programme will Kinshasa-based and prioritise cover of the provinces of Kinshasa, Western Kasai, Equateur, Katanga, Kivu North and Kivu South.
- 5.2** The implementation period is four years. The commencement date will be that of signature of the Technical Assistance Agreement by whichever Contracting Party signs last.
- 5.3** The Programme begins with a three-month launch stage during which the Provider (Programme Head and commissioned experts) will conduct a general review of the OHADA situation in the DRC, as per the Terms of Reference. The Provider will then draw up a launch report with timetable for implementation of the Programme, for validation by the Monitoring Technical Committee and adoption by the Steering Committee under the chairmanship of the Minister of Justice and Human Rights.
- 5.4** A one-year extension would be conceivable, depending on the Provider's performance and the available budget.

VI. PROGRAMME MANAGEMENT

6.1 Institutional flow chart for the programme

- a) The Programme's institutional flow chart appears in Annexe 2. The rest of this section explains this Programme in detail.

6.2 Client and Project Supervisor

- a) DFID will co-operate with the National OHADA Commission (CNO) and the Minister of Justice's representative to contract a qualified consultancy as Provider, to take charge of the execution of the Programme (Flexible Facility – see Programme chart).
- b) The Minister of Justice, as client, will be responsible for the Programme but delegate its implementation to the CNO. The CNO will be responsible for co-ordinating the Programme activities, supported by the Provider consultancy.

6.3 Steering Committee

- a) A Steering Committee will be formed at the start of the Programme, by order of the Minister of Justice. This Committee will be responsible for appraising and validating the Programme's general approach and lines of action.
- b) The Steering Committee meets annually, co-chaired by the Minister of Justice or her representative and DFID. Its members are the Programme stakeholders, including the representatives of the President, Parliament and Prime Minister and of the Ministries of Foreign Affairs, Finance, Trade and SMEs. Its purpose is to set the general

approach and approve the conditions of management of the Programme and execution of the scheduled activities.

- c) The Minister of Justice and DFID will make decisions concerning the Steering Committee jointly. An order of the Minister of Justice, issued at the start of the Programme launch stage, will set up the Steering Committee and specify its membership, rules of procedure and powers.

6.4 Monitoring Technical Committee (CTS)

- a) To ensure regular follow-up and with a view to proper co-ordination of the activities, a Monitoring Technical Committee will be set up, by Departmental Memorandum of the Minister of Justice.
- b) Its members will be at least the following:
- as chair of the Committee, the CNO, which is also Programme Co-Ordinator and represents the Minister of Justice;
 - a DFID technical adviser as co-chair;
 - the Provider;
 - a technical adviser of the Minister of Justice;
 - the presiding judges of the commercial courts of Gombe and Matete (appeal courts, "Tricom" Commercial Court and RCCM);
 - representatives of the Kinshasa One-Stop Shop, CPCAI, the bar associations of Gombe, Matete and Lubumbashi, the notaries, the Federation of Businesses of Congo (FEC), the Banking Industry Association, the University and the CPCC.
- c) The Monitoring Technical Committee will meet at least every three months. Its resolutions will be passed by consensus between the CNO, DFID and the Provider.
- d) The Departmental Memorandum of the Minister of Justice will specify working arrangements for the Monitoring Committee after the Programme launch stage presented above.

6.5 Reports and Monitoring and Evaluation System

- a) The following reports must be produced during execution of the Programme:
- Launch Report;
 - Quarterly reports;
 - Annual reports;
 - Annual financial statements;
 - Programme Closing Report.
- b) An independent system of monitoring and evaluation will be commissioned to assess the programme's performance regularly, in accordance with the institutional flow chart for its implementation.

VII. MODIFICATION, SUSPENSION AND CANCELLATION OF PROGRAMME

7.1 Modification

- a) The Monitoring Technical Committee may modify the timetable or lines of activity in purely technical ways which have no obvious impact on the Programme objectives and results, especially when this effectively adjusts the timetable so that it can be implemented flexibly.
- b) All decisions resulting in fundamental modifications of the Programme's logical framework, duration or management structure must be taken by the Steering Committee, in the form of a written rider.

7.3 Cancellation

Either Party may cancel the Programme at two months' written notice. In addition to cases of force majeure or breach of the terms of this Agreement, DFID may suspend the Programme without notice in case of suspected fraud, corruption, unlawful activity or low return.

Besides, the Technical Assistance Agreement will be declared to have lapsed when no activity has been carried out, or disbursement made, over 12 months after signature of the Technical Assistance Agreement.

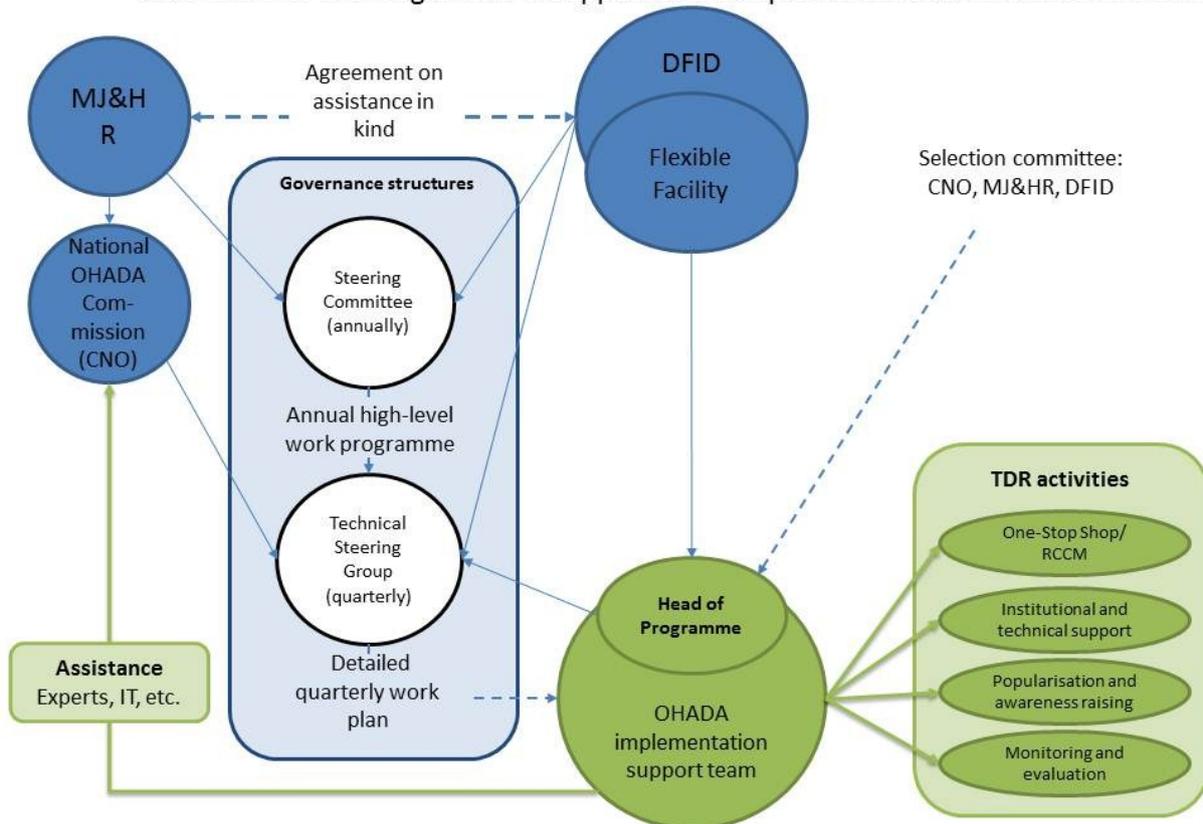
VIII. VISIBILITY

The Beneficiary undertakes formally to highlight the British co-operation (DFID) in the action undertaken in the context of the present Technical Assistance Agreement. The Beneficiary will use all appropriate means to do so, especially posters, newspaper advertisements, sundry written material and publications and speeches, using the 'UKaid' logo which DFID will supply.

* Translator's note: no 7.2.

ANNEXE II: Institutional Flow Chart for the Programme

Flow Chart for the Programme in Support of the Implementation of OHADA in the DRC



ANNEXES III: PROGRAMME TERMS OF REFERENCE

1. Background

- 1.1 Since 2009 the Government of the Democratic Republic of Congo (DRC) has been engaged in a comprehensive programme of reform of business conditions. The aim is to help the private sector to generate growth and jobs. As part of this Programme, in July 2012 the DRC joined the Organisation for Harmonisation of African Business Law (OHADA). Under the OHADA Treaty, OHADA law entered into force on 12 September 2012. By then the country's commercial, accounting and arbitration law had been thoroughly updated, and laws dating from the 19th century replaced. Furthermore, by acceding to OHADA, the DRC accepted the Common Court of Justice and Arbitration (CCJA) based in Abidjan, Côte d'Ivoire, as supreme supra-national jurisdiction.
- 1.2 The potential benefits of OHADA in the DRC are immense. If the DRC decided to adopt the OHADA indicators, used in the OHADA region to measure commercial regulation ("Doing Business") as its level of good practice, its ranking in the Doing Business index would rise 66 places, to just above Egypt. Furthermore, respect for reliable international arbitration would attract potential foreign investors
- 1.3 Since the country's accession to OHADA, many efforts have been made, backed especially by the European Union (Aidcom Programme) and the World Bank, which have respectively supported COPIREP and the National OHADA Commission and conducted a series of operations with them including the supply of documents, courses, studies and lobbying especially:
- preparation and publication of a document on Harmonisation of Congolese Law with OHADA Law
 - training about 50 OHADA trainers
 - organisation of a training course for magistrates, registrars, bailiffs and attorneys-at-law in Kinshasa and the provinces
- In particular, the National OHADA Commission (CNO) has drawn up and updated an Action Plan for Implementation of OHADA for the Period 2013-17. This outline plan is structured around four "components:"
- Implementation of OHADA law and adoption of the series of legal texts necessary to start up OHADA;
 - Promotion of OHADA law;
 - Functioning of the CNO; and
 - Development of the Commercial and Property Loans Register.
- 1.4 Furthermore, the Prime Minister adopted a Decree on 1 November 2012 instituting the One-Stop Shop for Business Start-Ups. This has shown encouraging development, with a managing director and assistant managing director appointed by the Minister of Justice, and premises allocated for its headquarters. In addition to the actions of other funders and government, in early 2013 DFID conducted a feasibility study for a

business registration system aimed at combining business identifiers (the RCCM, Unique Identifier and National Identification Number) into a single number based on the RCCM number.

- 1.5 So the present ToR seek to establish the framework for implementation of a Programme in support of OHADA by DFID. The aim is twofold: to lend support and adopt the new business law; and to improve the business environment by greater legal and judicial security in the commercial field.
- 1.6 These ToR have been drawn up in the light of the conclusions from the experts' report on the RCCM feasibility study, from the OHADA Action Plan prepared by the CNO, from all the initiatives mentioned above, from the specific approaches of the Minister of Justice and from the additional effort to identify other needs, elicited both from the funders already involved in this issue and after discussions with stakeholders (CPCAI, bar associations, FEC and advisers in the Prime Minister's Office).

2. Objectives

- 2.1 The Programme to be implemented aims to exploit the main institutional and technical levers so that the DRC can pursue expertise in OHADA law and benefit to the full from using OHADA rules and institutions, especially in terms of cleaning up its business environment, modernising its legal and judicial practices and relieving poverty.
- 2.2 More specifically, the Programme seeks to reinforce the technical and material capacities of all involved in OHADA, from policymakers within the beneficiary companies to the people actually implementing this new law, who are the magistrates and the various legal and accounting professionals. In this regard, special emphasis must be laid on the Programme's impact on the indicators of action against poverty and Doing Business. These include, especially, the impact on business start-up formalities, the legal context of performance of contracts, investor protection and access to credit for SMEs and for the vulnerable sections of society.

3. Beneficiaries

- 3.1 The Programme will directly benefit the Government of the DRC, the institutions dedicated to OHADA (the One-Stop Shop, CNO, CPCAI, DGI, DGRAD, CPCC, etc.), the members of the judiciary, the private sector and the organisations of civil society. Ultimately this programme will benefit potential and existing businesspeople in the DRC. Thus it will boost economic growth, job creation and poverty relief.

4. Presentation of the Programme and its expected results

- 4.1 The Programme in support of the implementation of OHADA in the DRC consists of four components, numbered I to IV. Each component breaks down into sub-components, which indicate the action to take to implement the component concerned:
 - Component 1, One-Stop Shop for Business Formalities
 - Component 2, Institutional and Technical Support
 - Component 3, Public and Professional Awareness
 - Component 4, Cross-cutting operations of monitoring and evaluation.
- 4.2 The Programme will begin with a three-month launch stage, during which the detailed information will be confirmed and a logical framework devised. Throughout the

Programme duration, the Service Provider must adapt flexibly to opportunities and risks as they materialise.

COMPONENT 1: ONE-STOP SHOP FOR BUSINESS FORMALITIES

- 4.3 This Component will deal with setting up a single counter for business formalities (simplified to “One-Stop Shop” for the purposes of this document). This will handle all the formalities required before, during and after a business start-up in the DRC. It will include the RCCM as required under the OHADA Treaty. Thus this Component may, if necessary, put into practice the recommendations of Improving the Business Registration System in the Democratic Republic of Congo (DRC): Feasibility Report,” which is attached as Annexe 1.*
- 4.4 The amount of the budget described in the annexed report represents a ceiling not to be exceeded. The Service Provider should adopt innovative solutions to reduce costs and make the most of the financial resources.
- 4.5 The preliminary stage of this Programme will allow a transition between the current pilot work on instituting a One-Stop Shop to a wider programme. During this interim, the Service Provider must maintain close contacts with the Minister of Justice, CNO, DFID and other stakeholders to avoid overlap with existing work, confirm requirements and finalise an approach to monitoring, evaluation and the logical framework.
- 4.6 Note that the Permanent Secretariat of OHADA has acquired RCCM software which is available free to each Ratifying State.

COMPONENT 2: TECHNICAL AND INSTITUTIONAL SUPPORT

- 4.7 This Component aims to support the DRC as it strengthens its institutions directly responsible for ensuring the effectiveness and efficiency of OHADA law. Thus it extends to the specific needs of political decision makers such as the Prime Minister’s Office, the Ministries of Justice, Finance and Foreign Affairs, members of Parliament and support bodies such as the CNO, CPCI, CPCC, universities, etc.
- 4.8 The reason for a technical and institutional support component is to help the DRC to equip every OHADA stakeholder with the operational resources necessary to fulfil its task (working conditions, logistics, human resources plus those already provided for the One-Stop Shop in Component 1).
- 4.9 Sub-Component 2.1: computerisation and interconnection of the One-Stop Shop for formalities (reminder - cf. Component 1).
- 4.10 Sub-Component 2.2: technical assistance. The specific actions of government and of the competent national organisations aim to implement OHADA. They include studies, regulatory activities and government communication operations at national and international levels, which receive support from the Programme. Whereas part of this help will come from the Service Provider’s core personnel and from the dedicated human resources described below, in many cases it will require deployment of short-term technical consultants according to need. The Provider must therefore keep a list of qualified persons on whom it can call according to circumstances. Such assistance will comprise support to the following organisations (to be confirmed during the preliminary stage):

* Not seen by translator, so I’m not sure if it really ‘describes’ the budget or just quotes a figure.

- Prime Minister's Office;
- Ministry of Justice;
- Ministry of Finance;
- National Assembly;
- the CNO; and
- CPCC – more specifically for its communication work relating to the entry into force of SYSCOHADA at the end of the official interim period (January 2014)
- Arbitration centres.

4.11 Sub-Component 2.3: human resources. The Service Provider will recruit the following personnel members:

- A principal technical consultant to the Prime Minister;
- Principal legal and IT experts at the disposal of the Minister of Justice if necessary;
- A local expert is placed at the disposal of the CNO to reinforce its capacity to respond to the various technical demands placed on it.
- Others will be decided during the preliminary stage.

4.12 Sub-Component 2.4: Training. In addition to the RCCM-specific training (described in the annexed report), the Service Provider will facilitate the training of public officials to ensure that they understand OHADA and can maximise its implementation. This training will address the following groups (without limitation):

- Members of Parliament, senior officials of the Ministries of Foreign Affairs, Finance, Justice and Trade, and of the Central Bank and all other authorities dealing directly with businesses, to raise their awareness of the institutional, policy and technical issues relating to OHADA;
- an approved OHADA law training institute will train civil servants from the above ministries (legal counsels, directors etc.) in the main technical problems of OHADA;
- ERSUMA and/or other approved training institutes will train the judges, registrars, notaries, bailiffs and public prosecutors so that they master the rules of OHADA law applicable to their activities;
- the 53 trainers of trainers who were trained by ERSUMA in 2012 will be locally recycled; and
- arbitrators, mediators and administrative staff of the arbitration centres.

4.13 Sub-Component 2.5: Documentation. The Service Provider will draw up and handle the distribution of the following documents (in addition to those required for Component 1), in co-operation with the CNO and others:

- A study of disincentives and constraints to access to commercial justice, which may highlight bottlenecks and technical, human and material weaknesses;
- A study of the pros and cons of access to arbitral tribunals and mediation in the DRC;
- A Guide to OHADA Law for DRC uses, covering the main institutional issues and practices of OHADA;
- A compendium of national commercial case law, containing the main precedents of the commercial and main courts since the advent of OHADA, to show how the DRC judiciary has logically understood, construed and applied OHADA rules, including the aspect of comparison with judicial practice elsewhere in the OHADA area;
- A Guide to Judicial Good Practice in the DRC will be made available to members and users of the judicial system.

4.14 Sub-Component 2.6: Renovation/equipment

- The headquarters of the National OHADA Commission (CNO) will be upgraded, renewed, furnished and equipped with computers.
- CPCC will be equipped and refurbished.
- The Commercial Courts of Kinshasa, Western Kasaï, Katanga, Equateur and Kivu will receive computer equipment and their stocks of documents will be developed and equipped.
- The Kinshasa arbitration centres will have an updated and equipped documentation room.
- New arbitration centres will be opened in Western Kasaï, Katanga, Equateur and Kivu, if the reports on access to commercial justice and arbitration, described in les Sub-Component 2.5 suggest that these are necessary. N.B: these centres should be housed in existing buildings, to minimise costs.

COMPONENT 3: Public and Professional Awareness

4.15 Supplementing the activities of Component 1, Component 3 will ensure that members of the private sector and the business support services on which they rely (e.g. lawyers, auditors, accountants and banks etc.) are fully aware of and understand OHADA and use their potential to promote private sector development, economic growth and poverty relief.

4.16 Sub-Component 3.1: raising awareness of OHADA.

- Inform members of the private sector and the business support services on which they rely (e.g. lawyers, auditors, accountants and banks etc.) about OHADA and how to profit from it. Note that the DRC is a big country with widely scattered population. The Service Provider must therefore be able to offer innovative solutions having a major impact, which achieve this objective cost-effectively.

4.17 Sub-Component 3.2: support for the activities of the CNO in raising awareness

- Redesign the CNO website and use it to publish documents publicising OHADA law and the practical courses available to legal practitioners, to businesses and professional organisations working to promote SMEs and micro-enterprises.

4.18 Sub-Component 3.3: SYSCOHADA

- Support the CPCC in its communication initiatives leading up to entry into force of SYSCOHADA at the end of the official interim (January 2014).

4.19 Sub-Component 3.4: support for universities and vocational training institutions

- Develop the documentation centres of the universities and relevant vocational training colleges and equip them with the necessary documents.
- Revise the curricula of the relevant universities (faculties of law and economics) and vocational training colleges (business and accounting schools); add teaching and research on OHADA law.

- Consolidate the degree of Master of Business Laws and Account Audit¹, and assess the impact of the master's degree on employment creation and provision of trustworthy local expertise to businesses and government departments; and
 - Train tutors in universities and business schools on location (OHADA accountancy law, company law and arbitration law).
- 4.20 Sub-Component 3.5: Support the market development component of the private sector development programme of DFID DRC. DFID DRC has contracted the Adam Smith International (ASI) to run a programme (M4P) on Making Markets Work for the Poor. ASI will work directly with the private sector to help to relieve poverty and boost economic growth by business start-ups, creating jobs and increasing poor people's incomes, especially those of women and young people. Full implementation of OHADA will confer potential advantages on the beneficiaries of this programme. To help ASI to enable the beneficiaries to exploit the advantages of OHADA, the Service Provider must be able to supply short-term technical expertise to ASI on a drawdown basis. The Provider must also work with ASI to ensure that their awareness raising activities are useful to the beneficiaries of the ASI programme.

COMPONENT 4: MONITORING AND EVALUATION

- 4.21 The OHADA roll-out has the potential for multiple positive and beneficial impacts on the Congolese private sector. In the long term, it can facilitate economic development and action against poverty. It is imperative that the Service Provider implement a monitoring and evaluation strategy capable of measuring and tracking these impacts and, where applicable, breaking them down into impacts on men and women.
- 4.22 Specifically, the implementation of OHADA is expected to have a direct and positive impact on the following Doing Business indicators:
- Ease of doing business
 - Business start-ups
 - reducing business start-up time to three days
 - Investor protection
 - Insolvency problem solving
 - Performance of contracts
 - Obtaining loans.
- 4.23 More generally, implementing OHADA has the potential to:
- reduce corruption
 - encourage businesses to 'go official'
 - enhance commercial and business justice and arbitration between companies and government
 - increase business confidence
 - encourage business start-ups
 - encourage existing businesses to expand
 - stimulate domestic and foreign investment in the DRC

¹ A university business law and account audit curriculum is being implemented with EU Aidcom support at master's level. The related feasibility study has been completed and Aidcom is going to help with the launch in academic year 2013-14. This will include equipping the university library which will host the course. However, Aidcom comes to an end in June 2014. Apparently no extension of the OHADA aspect is planned. Therefore the DFID Programme might take over the baton, to get this university education established, as it is in all the other Member States. The DRC will depend on this if it is to create the best possible local human resources in business law and auditing.

- stimulate job creation
- and widen access to credit.

- 4.24 The Service Provider must adopt a monitoring and evaluation strategy able to track and measure the above impacts at regular intervals. Furthermore, this must be a strategy able to learn the lessons of what does and does not work, to guide adjustments to the Programme and target these impacts better. This will entail an understanding of the process of change affecting players within the system and the ability to monitor that process closely and frequently.
- 4.25 Moreover, several external factors beyond the Provider's control will influence the success of this Programme. They include: continued political will at high level; co-operation between civil servants at various levels of seniority in a variety of institutions and places; logistical issues; the ability of the private sector to seize the opportunities of OHADA, etc. As stated in Article 6, the Steering Committee will review progress at regular intervals and authorise the continuation, realignment, suspension or cessation of activities under the Programme, as appropriate. To assist it in this role, the Service Provider will report to the Steering Committee frequently on the progress made in terms of results, and modify the intermediate processes and stages.
- 4.26 Finally, the Programme must pass on the lessons learned, to inform decisions on future planning in the DRC, in the OHADA region and at large. The Service Provider will undertake an overall assessment, both mid-term and at the end of the Programme.

5. Programme duration and stages

- 5.1 The period of implementation is four years. This includes a three-month launch stage during which the Provider, through its backstopping/operational support structure, the Head of Mission and other principal experts will mobilise as follows:
- to link up with all stakeholders and analyse the situation, taking account of the achievements of DFID or other funders in the time interval between publication of the ToR and the launch of the assignment;
 - to act on any general, sectoral, local or international data apt to entail adjustments to the ToR or to the Programme and Action Plan;
 - to fine-tune the needs, activities and means of implementation;
 - to draw up a detailed, quantified operational timetable for at least the first year of the Programme;
 - to make all necessary arrangements to start/finish the deployment of long-term experts, and identify assignments to entrust to short-term experts and define their profiles;
 - and to deploy the technical and support staff.
- 5.2 At the end of this stage, a launch report must be written and submitted to a meeting of the Steering Committee, after approval by the national point of contact, who will be the Minister of Justice or her designated representative.
- 5.3 The planned launch date will be in May 2014.
- 5.4 A one-year extension would be conceivable, depending on the Provider's performance and on the available budget.
- 5.5 Conforming to the method of management described in Section 6 below, the Steering Committee will regularly evaluate the progress of the Programme and, if it finds this insufficient, reserves the right to terminate all or part of the Programme.

6. Programme Management

Client and Project Supervisor

- 6.1 DFID will recruit a consultancy on behalf of the Government of the DRC led by Mr Matata, Prime Minister. The Programme will be answerable to the Minister of Justice, as Client, who will delegate its implementation to the National OHADA Commission (CNO). CNO will be responsible for co-ordinating the Programme activities, with the support of the consultant Provider.
- 6.2 In view of the involvement of government authorities at high level in the Programme, its success will depend on ensuring co-operation between the authorities, whose practices and habits it will call into question.
- 6.3 The Programme will be administered to the highest standards of governance, which apply to any intervention by DFID. Furthermore, an open competitive procedure must apply to the selection of providers to supply equipment and documentation and to the recruitment of short-term experts and high-level legal and IT advisers to the Programme. The procedure must be held under the auspices of a selection committee consisting of the representatives of DFID, CNO and the consultant Provider. The selection committee will work on the basis of consensus when making its decisions.

Steering Committee (COPIL)

- 6.4 A steering committee will be formed under the co-chairmanship of the Minister of Justice or her representative and DFID. Its members will be the Programme's stakeholders, including representatives of the President, Parliament, the Prime Minister and the Ministries of Foreign Affairs, Finance, Trade and SMEs. Its remit will be to determine the general approach and approve the conditions of management of the Programme and execution of the programmed activities (cf. annexed institutional flow chart for the Programme).
- 6.5 The Minister of Justice and DFID will make joint decisions concerning the Steering Committee. An order of the Minister of Justice, given at the start of the Programme's launch stage, will set up the Steering Committee and specify its membership, rules of procedure and powers, especially validation of annual reports of execution, interim reports, monitoring and evaluation reports, annual action plans and annual budgets.
- 6.6 The Steering Committee meets annually. The Provider submits an annual activity progress report to each meeting for validation by the Committee. If the results fall short, the Steering Committee will be entitled to suspend all or part of a Component and to cancel or reallocate resources granted to the Components or Sub-Components.

Monitoring Technical Committee (CTS)

- 6.7 By Departmental Memorandum of the Minister of Justice, a Monitoring Technical Committee will be formed to ensure regular monitoring and with a remit for co-ordination of activities.
- 6.8 Its members will be at least:
 - the CNO, as Programme Co-Ordinator and representative of the Minister of Justice, which will chair the Committee;

- a DFID technical adviser, as co-chair;
 - the Provider;
 - a technical adviser to the Minister of Justice;
 - the presiding judges of the commercial courts of Gombe and Matete (appeal courts, “Tricom” and RCCM); and
 - the representatives of the One-Stop Shop in Kinshasa, the CPCAI, the bar associations of Gombe, Matete and Lubumbashi, the notaries, FEC, the Banking Industry Association, the university and the CPCC.
- 6.9 The Monitoring Technical Committee will meet at least quarterly. Its decisions must be passed by consensus between the CNO, DFID and the Provider.
- 6.10 The Departmental Memorandum of the Minister of Justice will specify how the Monitoring Committee is to operate at the end of the Programme launch stage presented above.

Reporting

6.11 The following reports must be produced during execution of the Programme:

- Launch report
- Quarterly reports
- Annual reports
- Annual financial statements
- Programme closing report.

6.12 Specific reports will also be issued, such as the mid-term and M&E reports, or by extraordinary request of the Steering Committee.

7. Provider’s profile

7.1 The Provider for the present assignment must be a consultancy or group of consultancies specialising in business law, commercial governance and/or institutional support, which has gained confirmed experience in implementing multi-year projects/programmes in developing countries, especially in the OHADA region.

7.2 It must be capable of mobilising international and national experts in the long, medium and short terms. These must be among the most experienced in OHADA and business arbitration law, adult education methods, NTIC applied to integrated institutional management systems and monitoring and evaluation of development programmes.

7.3 As far as possible, the Provider must favour the employment of local experts and support staff, to ensure a genuine transfer of expertise.

7.4 The Provider must also prove that it is fit to:

- provide a stable, high-performance and dynamic back-stopping system for the administrative and financial monitoring of the programmes funded by the development partners, especially DFID;
- deploy a team of technical experts full or part-time throughout the Programme duration (namely four years);
- co-operate closely with the MJ&HR, the CNO and all stakeholders in the Programme;

- work in French, the Programme's official working language, but be able if necessary to write statements and reports in English, especially for DFID;
- have a sound knowledge of the private sector in Congo and the CEEAC region;
- and show operational flexibility to adapt to the changes likely to arise in stated needs of the main Beneficiary, which is the Government of Congo, prompting adjustments in the activity timetable.

8. Human resources allocated to the Programme

8.1 A team of long, medium and short-term technical assistant will be commissioned to run the Programme. The organisational flow-chart below* should be taken as a guide. The tenderer may adjust it, in line with its approach to the assignment.

a) Programme Head:

8.2 *Qualifications and skills:*

- The Programme Head is a Principal Expert in law, economics or management. He/she is wholly familiar with the problems of the development of the African private sector;
- Must have at least a BAC+5 university education in law, economics, management or equivalent;
- Must prove at least fifteen (15) years' post-university professional experience;
- Must prove confirmed experience in private sector development, especially in Africa;
- Must be familiar with the practices and management procedures of programmes funded by finance providers (DFID, EU and World Bank);
- Must have perfect command of French and be able to work fluently in English.

8.3 *Specific professional experience:*

- Must have an adequate knowledge of OHADA law;
- Major pluses would be at least 5 (five) years' international experience working in a developing country, and proven experience as a responsible principal expert on at least two programmes of at least two years' duration;
- Must have a firm grounding in financial and business management and sufficient diplomatic skills.

b) Principal expert legal adviser (part-time):

8.4 The principal expert legal adviser is a high-level business legal specialist with a thorough knowledge of OHADA law, institutions and practice.

8.5 With at least 15 years' professional experience, the expert legal adviser must have worked in at least three OHADA Member States and have performed long or short-term assignments for this purpose on funders' behalf in the field of support for the implementation of OHADA law and cleaning up business conditions.

8.6 The expert legal adviser must also prove a sound knowledge of the preparation, management and monitoring of technical studies.

* Translator's note: not seen, unless it was a copy of Annexe 2.

- 8.7 He/she must prove sound operational knowledge in the field of arbitration practice and setting up/developing arbitration institutions.
- 8.8 The expert legal adviser will be responsible for supervision and technical validation of all kinds of work relating to the Programme's legal aspects, especially: training activities, the studies envisaged under Sub-Component 2.5, professional publications and set-ups/development/monitoring of arbitration centres.
- 8.9 The expert legal adviser reports directly to the Programme Head and sits on the Steering Committee as a high-level adviser. This may lead to the expert legal adviser preparing opinions and technical documents on behalf, and at the request, of the CNO and assisting it in its work of drafting or reforming OHADA law.
- 8.10 The expert legal adviser is deployed as a medium-term expert, which means part-time. He/she will intervene throughout the Programme as needed, for the number of days determined by the Provider.
- c) Principal IT expert (part-time)**
- 8.11 The senior IT expert is a computer engineer who can prove complete expertise in the OHADA RCCM system and the various processing solutions of complex information systems.
- 8.12 He/she must have worked in at least three OHADA countries and contributed to the set-up or reform of RCCM-related facilities.
- 8.13 With evidence of at least eight years' post-university experience, the Principal IT expert will be especially responsible for supporting the Programme Head in implementing Component I - One-Stop Shops.
- d) Junior expert in charge of training (long-term)**
- 8.14 The junior expert will be a local lawyer educated to at least BAC+4 level in law, with a preference for business law.
- 8.15 He/she must be able to prove at least three years' experience on a co-operation programme, preferably in the DRC, having held a staff position and been involved in organising training sessions and/or field missions.
- 8.16 It would be a big advantage to have a knowledge of adult education methods.
- 8.17 The junior expert in charge of training will act in support of the Programme Head and short-term expert trainers, especially in planning, preparing, implementing and monitoring the training activities scheduled throughout the Programme.
- e) Short-term experts (trainers, IT, design, drafters of public information documents, etc.)**
- 8.18 A pool of senior and junior international or national experts will be deployed as short-term experts on specific or one-off assignments.
- 8.19 These experts will intervene especially to contribute to the activities of the One Stop Shop aspect, the training, studies, audits, drafting of legal guides, compilation of the compendium of commercial legal precedents and special expert appraisals, such as monitoring and evaluation of the Programme, serving as expert advisers to Parliament, the Prime Minister's Office and the CNO.

