Private Equity Investments and the OHADA-States

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I. Introduction

I.1. Investments in Africa

Africa attracts increasing attention from investors. Low returns in the developed countries' bond market and high volatility in the equity market cause investors to head for new shores. Economic growth rates in Africa of more than 5% during the last few years allowed investors to be optimistic.[1] Furthermore, trust in political and macroeconomical stability is increasing, because, throughout the whole continent, most of the economic indicators have improved significantly over the last few years: the debt ratio compared to the gross domestic product (GDP) has dropped from 115% (1990) to 84% (2010); the trade deficit has decreased from -2.7% of the GDP to -1.3%. Even the inflation remained stable at 114% in most of the countries in the 1990's and at 59% from 2000 onwards. Despite regional insecurities, the positive development led to continental European direct investments (FDI) of USD 55 billion in 2010, which is an astronomical figure in comparison with USD 7 billion in 2002.

This **cash inflow** to the African continent also showed impact on the **private equity market**. In the period from 2010 to 2013, private equity investments in the amount of almost USD 7 billion have been undertaken, even though in 2010 overall investments dropped to a much lower level than USD 1 billion. After the financial crisis, the investment activity recovered rather quickly, until a historical record number of USD 3.2 billion was reached in 2013. Considering that in 2002 private equity investments did not yet amount to USD 200 million, the numbers of 2013 are very high, as in the figures for FDI. The numbers of 2014 are still outstanding, but seem to surpass those of 2013.[2]

These numbers do indicate a growing interest in African private equity projects. This is all the more remarkable when considering that the invested amount of about USD 3 billion in 2013 faced private equity fund assets in a total amount of USD 20 billion, of which about USD 5 billion could not be placed to date (so-called "*Dry Powder*"). Although currently there is a big portion of *Dry Powder* available on the private equity market, the proportion of fund assets compared to targeted investments of 0.75 indicates a demand outstripping supply.[3]

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1 The IMF forecast even predicts a growth rate in Africa of 5.5% until 2017, which, however, will have to be adjusted to the collapse in the costs of the raw materials.

2 E&Y, Private Equity roundup Africa 2013, E&Y Global Private Equity Report, 2014. (Available at: http://www.ey.com/GL/en/Industries/Private-Equity/Africa-roundup-2013# (last visited on 5 November 2015)).

3 Estimations of Preqin: https://www.preqin.com/blog/101/5885/africa-private-equity-managers (last visited on 5 November 2015).

I.2. Focus of Investment Activities

If we look at the different regions within Africa separately, a different picture emerges. Apart from a few exceptions, investments concentrate on South Africa, Commonwealth countries and North Africa. 60% of the deals (measured by value) take place in Nigeria and South Africa. Only 13% of the deals take place in West Africa (former Nigeria), with most of these projects relating to Ghana. In line with this, 50% of the African private equity funds are located in South Africa.[4] In relation to the OHADA states, apart from smaller deal reports, there are no further statistics on current investments and realized exits, because only few private equity groups are active in this region. In most cases, the groups involved are small regional funds or global players, who want to be engaged from the start and gain a foothold in the region.

For example, the group Cauris Management, which is located in Togo and in the Ivory Coast, operates a fund with EUR 60 million mainly invested in small businesses in the OHADA states.[5] The group also has successfully invested in exits from earlier investments in the consumer goods sector. British Actis, an important internationally active group with USD 6 billion under its management, recently increased its investment activities in West Africa. Actis used to be a public organization (Common Wealth Development Corporation), which explains its long term experience in investment management in developing countries. Currently, Actis holds participations in Nigeria and Ghana as well as in the Ivory Coast, Senegal and further OHADA states, mainly in the energy and mining industry.[6] ECP Private Equity is yet another internationally active PE group, which was running projects within this region, particularly in the Ivory Coast. Further groups like Abraaj Funds from Dubai and Helios Investment Partners, a split off part of the giant TPG Capital, are at present considering the possibility of starting a subsidiary in Abidjan, Ivory Coast. According to some rumours, a further boost in investment can be expected from African pension funds, which could mobilize up to USD 29 billion.

[4] Avanz Capital, The Private Equity Climate in Africa: Embracing the Lion (2012) (available at: http://www.avanzcapital.com/images/pdf/the-private-equity-climate-in-africa-embracing-the-lion.pdf (last visited on 5 November 2015).

[5] www.caurismanagement.com/investissements-funds.htm (last visited on 5 November 2015).

[6] Energy investments are mainly made through Globeleq.

II. Hurdles

Despite interesting movements in the private equity field, **low level investment activities in the OHADA states,** compared to other regions in Africa, are a direct **result of the existing difficulties in the private equity sectors of the relevant countries**. Challenges exist on different levels. On the one hand, the economic environment limits foreign direct investments and, on the other hand, there are obstacles which are typical for the industry of private equities.

II.1. General Difficulties

General difficulties exist due to a lack of infrastructure and institutions as well as political uncertainty.

All OHADA states lack of sufficient infrastructure or any infrastructure at all. There are a few exceptions, such as Gabon, which, despite having one of the worldwide worst road systems, has a particularly high penetration of mobile telephony with 1.17 phone connections per inhabitant. Some countries are endowed with harbour and railway infrastructures that are better than the ones of comparable countries. However, those infrastructures facilities are most likely to be private-owned and are, to a wide extent, linked to the use of natural resources, and are thus not to be confused with public infrastructures. With the exception of the Ivory Coast, Chad and Mali, OHADA states perform better in public institutions than in infrastructure. Especially Gabon, despite having a past of long-term dictatorship, is now characterized by a low level of regulation, relative political transparency as well as a low crime rate. Political uncertainties, which many of the OHADA states suffer from, are again a limiting factor for foreign investments and, at the same time, often a reason for weak institutions.

It is statistically proved that the absence of structures has an impact on business activities of private investors. The *Global Competitiveness Report 2012-2013* of the World Economic Forum measures the competitiveness of countries based on a broad range of factors including institutions, infrastructure as well as efficiency and innovation sources, whereas countries are divided into categories. The report shows a rather critical image of the OHADA states. With Gabon as an exception, ranked second last, all states fall into the last category, if taken into account in the ranking at all. Also in the World

Bank's ranking for "*Ease of Doing Business*", OHADA states are not doing exceptionally well. Out of 190 states participating in the ranking, not one single OHADA state ranks better than 134. Most of them rank between 150 and 188, which brings them close to the position of states with ongoing internal conflicts such as Afghanistan, Syria and Venezuela.

Source: The World Bank[7]

What do these statistics show? Even if only certain factors have been considered, they mirror the above outlined difficulties regarding infrastructure, institutions and political stability. They basically demonstrate that an investment friendly climate first has to be created before private investors are able to start their business activities without facing major problems. On the other hand, these statistics also demonstrate that there is great potential in the area of infrastructure.

II.2. Difficulties Related to Private Equity

With regard to the OHADA states, difficulties related to private equity have their origin in statistical limitations of the market, availability of targets, level of income and in the investment exit.

Risk, i.e. foreseeability, and return on investment are the main criteria for investments in private equity. The higher the risk, the higher the expected returns must be. In practice, such calculations are based on statistical information. What if no such statistical basis exists? This is exactly the situation which OHADA states are currently facing. Even if we speak of high growth rates, numbers are neither reliable nor detailed enough to allow acceptable prognosis on certain fields. This leads to a lack of understanding of financial risks and, therefore, to difficulties in assessing the discount rate of an investment.

Moreover, the availability of local targets is very limited, because an investor has only companies with a natural growth potential at his disposal. Classical methods for improvement in value of revenue, margin and equity, which are common in private equity, are not applicable to developing countries. Such strategies try to improve revenue with strategic mergers and acquisitions. Margins are regularly raised through vertical integration, which leads to higher profits and, therefore, to a higher overall value of a company. Oftentimes financial engineering generates a higher added value by lowering equity or equity costs or by increasing the debt ratio. This kind of value creation, even if it might be time efficient, does usually not work with developing countries, as has already been mentioned above.

Thus, investors have to put their focus on companies with natural growth potential (*Growth Equity*). Such a growth potential can result from natural economic growth, whereas it is assumed that the revenue of a company should at least grow at the rate of the economic growth. Furthermore, the lowest quotas of service and consumption with regard to the income are compared with the data of other countries, whereby it is assumed that such indicators, in a long term, aim at the international average. If, for example, in a more developed country the ratio of consumption of fast food to the income is 1%, yet in the Central African Republic only 0.1%, it is assumed that in the long term the ratio in the Central African Republic will also be 1%. Hence, the growth potential is x10 because of the low penetration rate of fast food consumption plus natural economic growth. Population growth has to be included in this calculation too, provided that it has not already been considered within the framework of economic growth. It is evident that this growth strategy is only promising in the long term and that not too many existing companies meet the respective criteria. Since private equity groups often keep out of greenfield projects, only a few companies per country and sector remain eligible as potential targets.

With the target companies that are ultimately worth considering, it must be differentiated between companies which are not profitable due to their operative activities but merely due to arbitrage opportunities, on the one hand, and those that actually have real growth potential, on the other hand. If a target

[7] data.worldbank.org/indicator/IC.BUS.EASE.XQ/countries/1W?display=map (last visited on 20 November 2015).

is identified with organic (or regional) growth potential, it also must be of a critical size, so that after the investment the added value still corresponds to the expenses. Even if companies with good substance can be found, the hurdle of due diligence may prevent investments. Obscure accounting methods and contingent liabilities that have not been recognized, particularly with regard to tax payments, cause difficulties in determining the company value. Insecurities that result from such situations are discounted, because they are not acceptable for investors in private equity projects (*limited partners*) and are discounted from the company value. However, a discount which is too high may end up being a deal breaker.

Despite strong economic growth in the last few years, this growth is in most of the OHADA states, with Gabon as an exception, based on a fairly low level with an average GDP per capita under USD 1,000. If a company now wants to participate in such a country's local value adding activities, it needs to be able to count on a certain basic income. The situation is different with projects that are not dependent on purchasing power, e.g. the sector of mining. If such an income basis is not the case, the project's possibilities in growing are limited in the first place, especially in the area of consumer goods. Who wants, for example, supply the Central African Republic with Starbucks Coffee Shops, if each coffee shall cost USD 4 and, at the same time, the annual GDP per capita is less than USD 380?[8] One single coffee per inhabitant per month would then make up 10% of the average yearly income of an average citizen. The issue of basic income has its impact on the whole consumer goods sector. Because property, plant and equipment investments are not distinctly higher (or even lower) in a further developed market, a collocation is usually more promising, unless competitive considerations lead to the breaking of new ground.

[8] See the statistics of the World Bank 2014. Available at: http://data.worldbank.org/indicator/NY.GDP.PCAP.CD (5 November 2015)

However, the biggest hurdle for private equity investments in the OHADA area is still the exit. The typical investment cycle spreads over five years, where at the end, the fund, or also *limited partner*, seeks for liquidity. On less developed OHADA markets, exits over an IPO listed on foreign stock exchanges may only be possible in exceptional cases. Also the possibility of *leveraged buyouts* (LBOs)[9] is limited to a few individual cases, due to the lack of required debt financing. In the end, only a *trade sale*[10] or a *secondary private equity exit*[11] remain realistic exit strategies, especially with regard to multinational groups, which realize their exit strategies through acquisitions. On the missing liquidity of investments follows a discount on investments, or it may even scare potential investors off.

III. Outlook

Given this long list of difficulties, the question arises as to the extent to which a standardisation of law within the OHADA region will lead to improvements of the investment climate in the long term and whether new chances for private equity investments will be created.

Without a doubt, a standardisation of law has its positive impacts. The cross border project provides more stability for private equity investors who see growth potential for a target in different countries. More stability means more foreseeability and, as a consequence, less risk. Accordingly, it is essential to strive for a homogenous jurisdiction. Of particular importance is the reform of corporate law, which came into force in May 2014. The company *Société par actions simplifiée* ("SAS"), which is closely-related to the similar company under French law, is very flexible and gives great freedom to founders in

[9] LBOs means acquisition of a company with small equity investment and big debt ratio. LBOs often happen in the form of MBOs (*Management Buyouts*), whereby the current management buys out the company from the previous owner (in this case a private equity fund) by debt instruments.

[10] *Trade sale* is when a portfolio company is sold to a competing company, a supplier or a buyer (vertical integration).

[11] *Secondary private equity exit* is when a portfolio company is sold to a private equity fund or to a fund of funds. See: Secondary buyouts to PE funds: Broadening horizons, how do private equity investors create value? EY / AVCA, p. 7 (available at http://www.avca-africa.org/wp-content/uploads/2014/04/Broadening-horizons-Africa-value-creation-study_FR0124.pdf (last visited on 5 November 2015).

areas that are of interest for the private equity industry, such as recognition of a shareholder's agreement, issuance of convertible instruments and variable share capital as well as the establishment of foreign subsidiaries. These instruments will make the establishment of legal structures and their cross-border application a lot easier. The flexibility of the SAS is a suitable means to take different interest groups, in particular lenders as well as selling and buying shareholders, into consideration in private equity investments and to structure each deal depending on the involved needs.

A standardization of law can only have direct impacts on the investment climate if, at the same time, the **overall legal conditions** improve. It includes the regulatory environment in the area of financial regulation, concessions and the granting of permits, which remained in the competence of the states. In addition, improvements of infrastructure, political stability and other factors are necessary to attract investors.

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The responsibility for creating such a framework lies with the public sector, i.e. with the relevant states and multinational organizations. Fortunately, considerable effort has been made recently into that direction, in particular by the IFC[12], the AFDB[13] and by initiatives of the industrial countries. The IFC, for example, invested USD 182 million in the African banking sector in 2010 in order to achieve a higher penetration quota for bank services within the population. With its infrastructure funds, the IFC also supports the establishment of better infrastructures within Western Africa, in collaboration with local partners. The support of the mobile infrastructure of Celtel (today Zain) in several OHADA states is an example of such a project. Further initiatives originate from ADB. A step into a similar direction is made by private initiatives with a focus on *social impact*, which aim at improving living conditions and the general business framework.

It follows from the above that OHADA states can only be of interest for private equity on a large scale if a holistic positive environment supported by multilateral initiatives is established. The relevant question is thus the **time frame** in which OHADA states can become attractive for private equity investors, provided the framework conditions have improved.

The future growth of developing countries cannot be predicted and runs to some extent contrary to the development of industrial countries. For example, the growth rate of most of the OHADA states has been stable during the financial crisis of 2009 and after. At the moment, it remains to be seen what influence volatility of raw material prices will have on the economic growth in these countries.

A **comparison with other growing regions, such as Latin America** is only possible to a limited extent, yet brings to light certain similarities. The example of Peru illustrates this. In the past, Peru was captured in a state of civil-war-like conditions. Maoist Sendero Luminoso, who wanted to win over the disadvantaged indigenous people, terrorized the countryside in the years of 1980. At the end of the 1980s, socialist head of state Alan Garcia nationalized the banking system in the middle of the ongoing financial crisis, which lead to a flight of capital and a hyperinflation of almost 3000% by 1989. The country went through a deep recession where the GDP per capita was as low as USD 720. Despite the following Fujimori dictatorship, which lasted for 10 years, and the still existing great social divide, Peru now – i.e. only 25 years later – has a GDP per capita of USD 7,000. With the help of the World Bank, the IFC and the IADB, the country was able to substantially increase its framework conditions within a few years, so that private equity funds are nowadays fighting over the limited amount of existing targets, which has an upward effect on ratings. This does not only include investments in the mining and energy sector, which are attractive for international conglomerates such as Glencore, Shell and the like, but also consumer goods, financial services, business services and telecom. This boom prompted the Carlyle Group to open a new subsidiary in Lima in 2014. The situation is similar in Columbia, where the guerilla conflict is still ongoing, albeit in a different manifestation. In order to avoid running short in comparison to the Carlyle Group, Advent settled a company in Columbia. Baker & McKenzie also opened a branch in both countries to support investors who want to participate in and profit from future growth on the spot.

[12] *International Finance Corporation*, a branch of the World Bank Group.
[13] *African Development Bank Group*.

Apart from Gabon and Equatorial-Guinea, which are rich in oil, as well as the Ivory Coast and Cameroon, all OHADA states have a GDP per capita which is much lower than the GDP per capita of those Latin American countries that are attractive for private equity. Even though the GDP is not the only criterion for comparability, it can be concluded that most of the OHADA states are far from reaching the threshold which is necessary for private equity. This is all the more so if one considers that institutions in OHADA states are extremely weak, which has never been the case in Latin America (especially not in Colombia). Thus, a comparison remains highly questionable. However, the example of Peru does show that the environment can change within a short period of time. Within 20 years, it is possible to lay a foundation that is attracting foreign direct investment (FDI) and, in particular, private equity investors. This fact is nowadays fostered by investors looking for profitable investment opportunities due to low interest rates and weak economic growth on developed markets.

To sum up, private equity cannot yet be seen as a broadly accepted asset class in the OHADA states. This will not change in the near future, as the GDP per capita is far too low and the framework in which private equity can flourish is still missing. Some exceptions can be found in sectors with *social impact* initiatives and support from multinational organizations. The standardization of law process, and in particular the recent corporate law reform, are however an important step in the direction of creating a positive environment for investments. This legal basis must be accompanied by the establishment of stable institutions for law enforcement, banking system, educational opportunities and political stability. Such a positive development will highly depend on the multilateral support and the political will of the relevant countries. If growth were to occur to the described extent, OHADA states could become attractive investment targets within the next 20 years.

let.	letter
LBO	Leveraged Buyout
MBO	Management Buyout
No.	Number
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
p. / pp.	page(s)
para. / paras.	paragraph(s)
PE	Private Equity
RCCM	Registre du commerce et du crédit mobilier
UEMOA	Union Economique et Monétaire Ouest Africaine (Economic Community of West African States)
UK	United Kingdom of Great Britain and Northern Ireland
UN / UNO	United Nations Organisation
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
US	United States of America
USD	United States Dollar(s)
Vol.	Volume
WHO	World Health Organization

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