

# Togo Guide



Doing **business** and **investing** in **Togo**  
within the framework of **OHADA** legislation



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# Editorial

**T**he compilation of this guide is just one of the initiatives launched by the Conseil National du Patronat du Togo designed to aid in the reconstruction of triggers to revive the Togolese economy and to contribute to the emergence of a more dynamic private sector.

It aims to provide information on the institutional, legal and judicial environment for economic activity and investment in the Togolese Republic. This approach represents a vital tool in improving the business climate and, ultimately, in combating poverty and corruption as well as reviving the national economy.

Our hope is that this guide will provide an answer to the numerous questions posed by national and foreign economic operators, helping them to understand the overall business environment in our country.

We have aimed to make this document both practical and educational, in order to facilitate and simplify the procedure for any potential investor looking to establish a business in the formal sector and to demonstrate to international investors the extent to which Togo allows investments to be made in a favourable legal and institutionally stable environment, thanks, specifically, to the implementation of the OHADA's uniform acts. Priority is therefore given to OHAD institutions and legislation in this guide.

As a true reflection of the business environment in Togo, this guide is complemented by a web site that allows any investor to enter the process under the best possible conditions: [www.investir-au-togo.tg](http://www.investir-au-togo.tg). It is designed to provide a concrete response to the concerns of directors, entrepreneurs and investors. For this reason, instruments including official and tax-related forms, contact details for the relevant authorities, banking and financial institutions as well as practical recommendations, will enable potential investors to better understand the wide range of possible solutions for overcoming the difficulties that are inherent to any planned establishment or development in Togo.

With the advent of the United Nations Millennium Development Goals and the imminent implementation of the IMF's Poverty Reduction Strategy Papers, the Togolese private sector intends to form part of the process to create a strong and competitive national economy, which is rooted in a philosophy of fair and common distribution of wealth created by the joint efforts of various social partners. In the context of a globalised economy, Togolese economic operators would like to contribute to a national economic recovery and to be in a position to be involved in sub-regional and worldwide cooperation. This guide has therefore been produced at exactly the right time to enable us to achieve our objectives.

The Conseil National du Patronat du Togo invites the Togolese government, national social partners and all external technical and financial partners to rise to this challenge.

**Kossivi Demanya NAKU**

**President of the Conseil National du Patronat du Togo**



# Presentation of Togo



## Presentation of Togo

*Situated on the Bight of Benin, between Burkina Faso, Benin and Ghana, Togo is a country covering 56,600 km<sup>2</sup>, extending over 600 km from North to South. It has a 55 km long Atlantic coastline and is 150 km across at its widest point.*



## Geography

- Official name: Togolese Republic
- Area: 56,785 km<sup>2</sup>
- Population: 6,580,000 inhabitants (2007, World Development Indicators database). Capital: Lomé
- Main cities: Sokodé, Kara, Kpalimé, Atakpamé
- Official language: French
- Currency: CFA franc (100 CFA francs = 0.152449 euro)
- National holiday: 27th April (declaration of independence in 1960)

## Demographic data

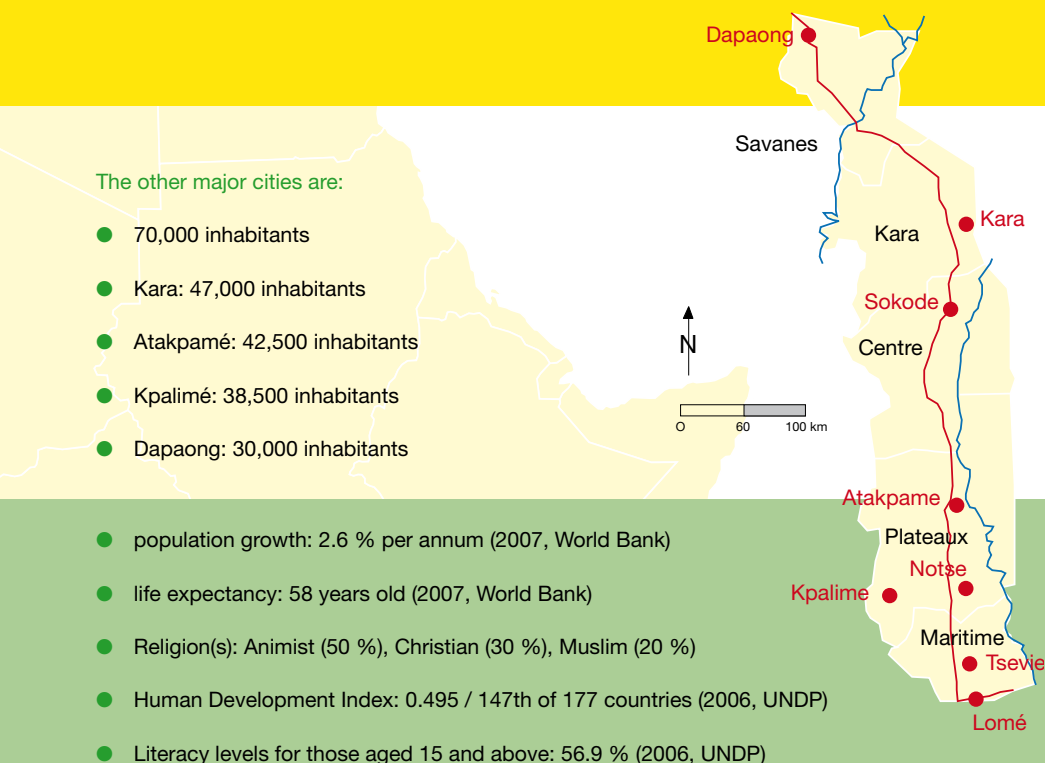
*Given the level of increase in the Togolese population, estimated to be 6.580 million inhabitants, forecasts predict that the population will double over the course of the next 25 years.*

More than 44 % of Togolese are less than 15 years old, despite a high infant mortality rate (83.1 per thousand live births). 25.5 % of men and 59.2 % of women are illiterate.

The Human Development Index (HDI) is low but is in line with other countries in the Gulf of Guinea region.

Togolese society is multi-ethnic. Approximately 37 ethnic groups are spread across the country. The largest are the Ewe, the Ouatchis, the Kabiye and the Kotokoli.

Demographically and economically, Lomé, the administrative capital of the country since 1897, is by far the largest city in Togo with almost 800,000 inhabitants. As a real transport and communication hub, it witnesses the majority of trade in Togo and clearly benefits from far more commercial and industrial activity than other towns and cities in the country.



## Economic data:

*The Togolese economy is based on transit trade, the agricultural sector and phosphate mining. There is a large informal sector (black market).*

- GDP: 2.5 billion dollars (2007, World Bank),
- Growth rate: 1.9% (2007, World Bank),
- Inflation rate: 1.3 % (2007, World Bank),
- Exports of goods and services: 42 % of GDP (2007, World Bank),
- Imports of goods and services: 62 % of GDP (2007, World Bank),
- Principal clients: Ghana, Burkina Faso, Benin (2006, DGTPE),
- Principal suppliers: France, China, India (2006, DGTPE),
- Percentages of GDP generated by different sectors:
  - Primary: 44 %,
  - Secondary: 24 %,
  - Tertiary: 32 % (2005, World Bank),
- Direct foreign investment: 69 million dollars (2007, World Bank).





# Why invest in Togo?



## Why invest in Togo?



*Since 2004, Togo has succeeded in creating a stable political and social environment and restoring the confidence of international donors/lenders.*

### Renewed political and social dialogue

Under the aegis of the European Union, on 20th August 2006, Togo signed a global political agreement binding the government, the political parties and civil society. This Global Political Agreement formed the basis for a national unity government.

Political dialogue and consultation have now become institutionalised within the Conseil national de concertation et de dialogue politique (National Council for political consultation and dialogue), whose aim is to “create, by means of permanent dialogue, the conditions for stability and consolidation of democratic and republican institutions on matters of national interest and democratic and republican principles”.

A permanent framework for dialogue and consultation, which should, from now on, examine all matters of national interest, will replace the Conseil national de concertation et de dialogue politique (National Council for political consultation and dialogue). This permanent framework for dialogue and consultation will bring together, in addition to the political parties represented in the National Assembly, parties that received 5 % or more of the vote in the last legislative elections and people appointed by the President of the Republic.

### The support of international donors/lenders

Togo enjoys the support of international donors/lenders (primarily the European Union, the World Bank and the International Monetary Fund) which are all, once again, providing financial backing. The country also benefits from the support of the Agence française de développement (French Development Agency) (referred to hereafter as the “AFD”), which has always maintained support for Togo.

The European Union, the largest donor/lender to Togo, announced that it would resume financial aid after a 15 year suspension at the end of 2007.

The International Monetary Fund (IMF) followed the European Union and was the first large international financial institution to grant a new loan to Togo in 2008. In 2008 too, the World Bank Council approved an extraordinary loan from the IDA to help Togo repay its arrears, as well as a financial contribution designed to help the country finance its budget.

Other bilateral and multilateral partners are re-engaging in Togo. In 2008, the Executive Council of the African Development Bank approved a grant

to help Togo repay its arrears within the framework of its new Fragile States Facility. On 12th June 2008, the Paris Club agreed to wipe out all Togo's arrears by cancelling and rescheduling its debts, and by rescheduling all the debt services due over the course of the next few years.

Above all, the International Development Association (IDA) of the World Bank and the International Monetary Fund (IMF) decided that the Togolese Republic could be allowed to benefit from debt relief as part of the reinforced Heavily Indebted Poor Countries Program (HIPC), thereby enabling it to reach the decision point specified by this program. Togo becomes the 34th country to reach a decision point. Togo will therefore receive temporary debt relief from certain creditors, but only on condition that it implements a wide range of reforms.

## A growing economy

*Despite the effects of the international economic crisis, Togo is reaping the initial benefits of the economic policy implemented by the government with the support of international donors/lenders.*

For the period between 2008 and 2010, the country's economic goals are ambitious, but realistic:

- raise the growth rate from 1.9 % in 2007 to 4.2 % in 2010,
- revive investment, lifting from 14.1 % of GDP in 2007 to 19.5 % in 2010,
- increase the level of budgetary resources to 17.8 % of GDP in 2010 by means of tax reforms,
- generate a primary budget balance of 1.5 % of GDP in 2010,
- keep inflation within the margin set by the UEMOA,
- reduce the current balance of payments deficit from 7.9 % of GDP in 2008 to 6.4 % in 2010 despite a difficult international economic environment,
- reduce the debt burden to a sustainable level by 2010: 36.3 % of GDP in 2010 compared to 90 % in 2005.





A government seeking to encourage economic development and the private sector





### Civil service reforms

*Togo is modernising its civil and judicial services with the aim of adopting transparent management mechanisms and recruiting high quality personnel to serve the country.*

Conscious of failings in its civil and judicial services, the Togolese government has decided on an ambitious reform program. The public administration convention of 2006 resulted in the development of the national framework for reforming and modernising the civil service, based on the following six objectives:

- redefining and clarifying the duties of the state,
- increasing civil service capacities by taking account of the wage bill and personnel, the need for a civil service culture and requirements in terms of equipment and IT resources,
- rationalising structures and standards in accordance with the criteria for a modern civil service,
- increasing the effectiveness of governmental efforts by means of improved coordination, whilst respecting political neutrality and the continuity of public service,
- promoting a motivating and modern working environment within the civil service, specifically by adopting a policy of improving relations between the civil service and its users,
- promoting the programmatic and institutional reform framework (creation of reform steering, management and monitoring bodies).





## Reforming the justice system

*In addition to modernising its civil service, Togo has undertaken to implement a reform process designed to improve its legal and judicial security, and to consolidate the state's position in terms of law and democracy.*

An ambitious National Modernisation of Justice Program (PNMJ) was launched in 2006 with the following six aims:

- increasing the ability of the Togolese Ministry of Justice to manage the public justice service,
- modernising legislation,
- increasing the capacities of the magistracy and officers of the courts by establishing a Training Centre for the Legal Profession (CFPJ), created within the ENA (National School of Administration) but functionally independent of the latter. Specific attention is also paid, within the CFPJ to training officers of the courts, clerks, notaries, auctioneers and law enforcement officers,
- improving infrastructures, in order to facilitate the work of magistrates,
- increasing subordination of the state to the law, by implementing judicial reviews of actions and the public accounts (creation of an Audit Authority),
- guaranteeing access to the law for all citizens.

Implementation of the National Modernisation of Justice Program (PNMJ), which specifically assumes a revision of the legislation governing the organisation of the judicial system based on order 78-35 dated 7th September 1978 governing judicial organisation, and its implementing provisions, is very broadly reshaping the organisation of the judicial system in Togo.

This sweeping programme aims to improve legal and judicial security, specifically by improving judicial division/separation and decentralising specialist courts. Major modifications to the Togolese judicial system are mainly visible in the restructuring of courts on the first level of jurisdiction.





The current judicial system is made up as follows:

## Supreme courts of appeal

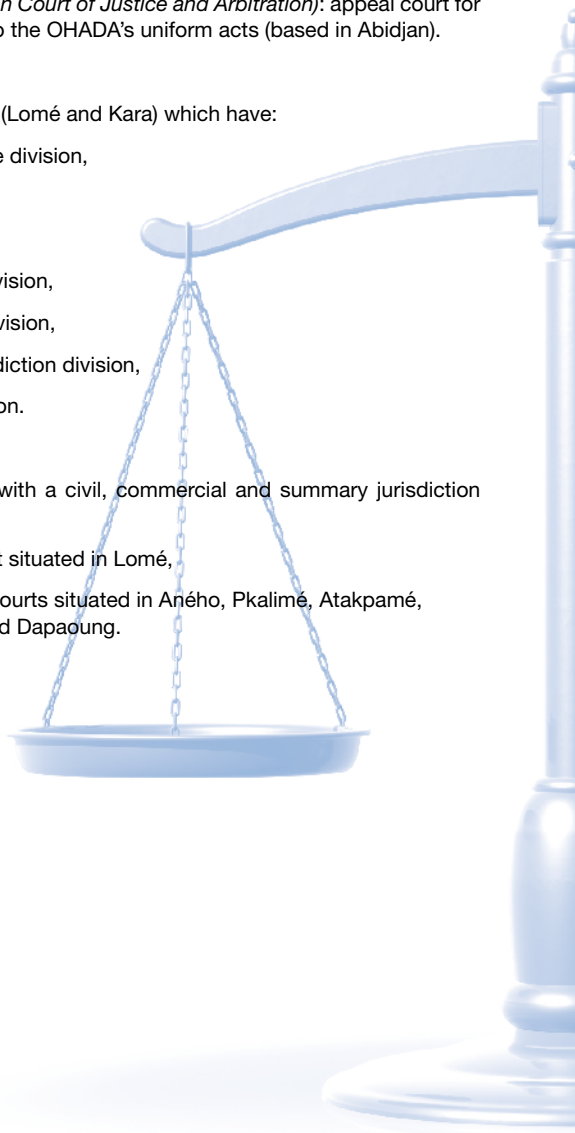
- the Supreme Court,
- the CCJA (*Common Court of Justice and Arbitration*): appeal court for disputes relating to the OHADA's uniform acts (based in Abidjan).

## Courts of appeal

- 2 courts of appeal (Lomé and Kara) which have:
  - An administrative division,
  - A civil division,
  - A social division,
  - A commercial division,
  - A prosecution division,
  - A summary jurisdiction division,
  - An assizes division.

## First level courts

- 24 district courts with a civil, commercial and summary jurisdiction division, including:
  - 1 first class court situated in Lomé,
  - 6 second class courts situated in Aného, Pkaliné, Atakpamé, Sokodé, Kara and Dapaoung.
  - 1 juvenile court,
  - 1 labour court.



### The reformed judicial system will comprise:

A higher appeal and appeal system that is identical to the current system but with a remodelled first level court system comprising:

- regional courts instead of the single first class court in Lomé: there will be 1 regional court per region, with expertise in administrative matters,
- Each regional court will house:
  - 1 specialist commercial division,
  - 1 labour court,
  - 1 juvenile court,
- District courts.

In addition to revision of the legislation governing organisation of the judicial system, the National Modernisation of Justice Program also aims:

- to develop a code of administrative procedure, which is distinct from the code of criminal procedure and the code of civil procedure,
- to create an Audit Authority (draft legislation governing the creation of an Audit Authority),
- to increase the capacities of magistrates and officers of the courts by recruiting additional magistrates, by creating a Training Centre (CFPJ) and by reforming the status and organisation of the Supreme Council of the Magistracy,
- to guarantee access to the law for all citizens.



## Reorganisation of public finances

*The support of international donors/lenders is accompanying a reorganisation of public finances, which have been made possible by major reforms of budgetary governance. Better control of budgetary expenditure, combined with an increase in tax revenue, are enabling Togo to stop accumulating domestic arrears.*

The Togolese government, which is keen to ensure improved mobilisation of domestic resources and better management of public finances, has set itself the goal (International Monetary Fund, Interim Poverty Reduction Strategy Paper):

- of increasing budgetary revenue, which will represent 17.8 % of GDP in 2010,
- of generating a surplus primary budget balance of at least 1.5 % of GDP in 2010.

## The revival of public procurement

Government contracts within the Togolese Republic are currently governed by order n° 93-006 of 4th August 1993 implementing the legislation governing government contracts and decrees n° 94-039/PR which sets the application thresholds for legislation.

- **Procedures for awarding contracts:**
  - bidding,
  - open or restricted tendering,
  - negotiation.
- **Reference institution: National Commission for Government Contracts,**
- **Characteristics and benefits:**

Types of companies	Conditions or obligations	Rebates
Togolese company	Condition: the majority of shares are owned by Togolese nationals	7 % of all the points awarded for the technical rating.
Togolese company	Condition: the majority of employees are Togolese	7.5 % of the maximum financial rating
Foreign company winning a government contract	Obligation: sub-contract at least 30 % of the contract to Togolese companies	

A new decree implementing the legislation governing government contracts and the outsourcing of public services, as well as a law governing government contracts and the outsourcing of public services are currently being drafted.

### ● Harmonisation with the UEMOA's regulatory framework:

The system for awarding government contracts proposed by the draft decree is in line with community requirements in this regard (according to which the procedures for awarding contracts and outsourcing public services concluded in UEMOA member countries must comply with the principles of free access to public procurement, equal treatment for candidates, mutual recognition, non-discrimination and transparency, thanks to the rationality, modernity and traceability of procedures for awarding government contracts and outsourcing public services) and more precisely:

- directive n° 04/2005/CM/UEMOA governing procedures for awarding, executing and payment for government contracts and outsourcing public services within the UEMOA,
- directive n° 05/2005/CM/UEMOA governing control and regulation of government contracts and outsourcing of public services within the UEMOA.

### ● The principal contributions of the new decree:

- the remodelling of institutional organisation: the decree puts an end to a system of centralised control and regulation of government contracts by the National Commission for Contracts and proceeds with the reorganisation of institutions managing the control, awarding and execution of contracts,
- solutions designed to guarantee compliance with the principles of integrity and transparency during the process of awarding contracts,
- the establishment of appeal mechanisms for tenderers.

## Withdrawal of the state from the commercial sector

*Togo has, for a long time, been committed to a reform of the public enterprise sector and intends to press ahead with the withdrawal of the state from the productive sector in favour of national and international private operators. This policy has already been implemented with the liquidation of several non-profitable enterprises and the privatisation of a certain number of other companies, which are considered non-strategic.*

The Togolese government intends to pursue this policy, specifically by restructuring and possibly privatising certain key enterprises (banking establishments, the Société togolaise de coton, the Office togolais des phosphates / International Fertilizers Group).



# The business environment





## Where to invest in Togo

*Togo has sizeable resources and a great deal of potential:*

- In the agricultural sector (mainly cotton, coffee and cocoa). The primary sector represents almost 40 % of GDP in Togo. It is made up essentially of agriculture, livestock farming and forestry. The main food crops are maize, sorghum, beans, cassava, millet and yam. These crops represent 2/3rds of agricultural production and are primarily intended for domestic use. The main cash crops are coffee, cotton, cocoa and palm oil. These crops represent 40 % of exports.
- In the mining sector (specifically phosphates, limestone and iron). The mining sector in Togo is primarily concentrated on the extraction of phosphates. Clinker processing, which resumed in 1997, now represents Togo's leading exported product. Marble production stopped several years ago. Other mining resources have been identified in Togo and are awaiting exploitation, in particular iron, dolomite and attapulgite ores.
- In the transport and services sector, the port at Lomé is the gateway to Burkina Faso, Mali and Niger and a genuine focus for commerce and industry. The free port at Lomé is the only deepwater port on the West African coast, which can provide berths for 3rd generation vessels.



## The business climate

The fact that Togo has signed the United Nations Convention against Corruption, its inclusion in the African Peer Review Mechanism (APRM) on 25th June 2008, as well as the adoption by the Togolese government of the African Union Convention on Preventing and Combating Corruption and the ECOWAS protocol on combating corruption, demonstrate the genuine political will of the public authorities to fight corruption and to encourage transparency in economic and financial matters.



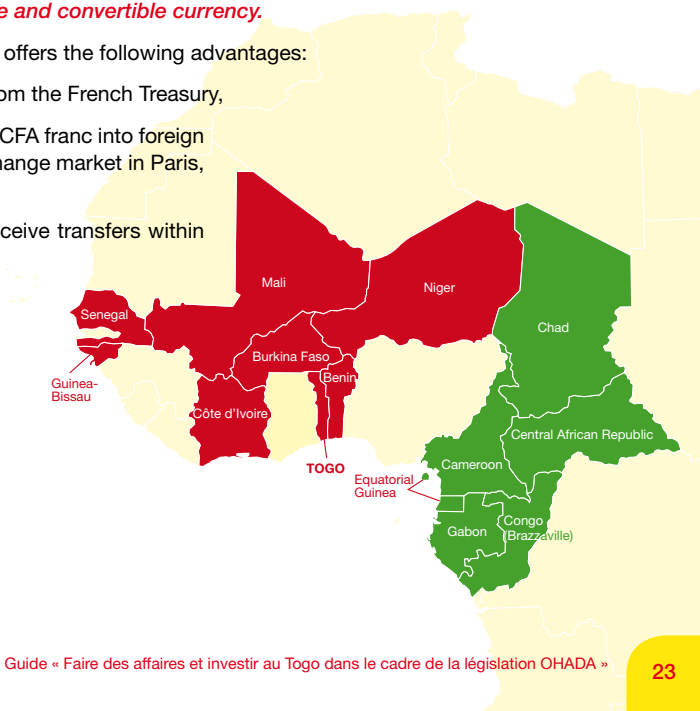


## A strong and stable currency: the CFA franc

*The CFA franc is a currency shared by 14 African countries, which are members of the franc zone. Togo's membership of the franc zone provides the country with a stable and convertible currency.*

The convertibility of the CFA franc offers the following advantages:

- a guaranteed value in euros from the French Treasury,
- the opportunity to convert the CFA franc into foreign currencies via the foreign exchange market in Paris, with the euro as the standard,
- complete freedom to make/receive transfers within the franc zone.





### The SME/SMI charter

*An SME/SMI charter, drawn up in August 2006 by an ad-hoc committee, is currently being ratified.*

This draft charter provides a precise and favourable regulatory and institutional framework for SMEs designed to create conditions that are conducive to their development. The preface to the charter states that the development of SMEs is one of the Togolese government's priorities and that political commitment is needed, on a national level, to create a global environment which has an incentive and coherent effect for SMEs.

The principal measures envisaged include:

- measures to aid and support SMEs, the main concerns being to improve access to finance, information and training/education, to encourage exports and promote the competitiveness of SMEs in general,
- numerous provisions relating to the financing of SMEs (simplification of financing procedures, creation of financial bodies including investment companies (UCITS) in receipt of tax benefits, the creation of a guarantee fund designed to ensure repayment of up to 75 % of the principal amount of a loan plus interest, etc),
- a favourable tax system and measures to alleviate financial difficulties for SMEs/SMIs,
- specific measures to aid and support more targeted types of entrepreneurship (enterprises moving from the informal to the formal sector, innovative companies, young entrepreneurs and female entrepreneurs, etc).

SMEs can voluntarily sign up to the charter and remain in charge of their own management decisions (article 1 of the charter). SMEs recognised by the charter are obliged to fulfil certain obligations and commitments in return for the benefits it provides, including legal and fiscal obligations or more targeted commitments such as compliance with environmental standards, accounting standards, information and updating commitments, quality related standards and commitments and the creation of permanent jobs.

## Promoting investment

*Togo is one of the countries benefiting from the Generalised System of Preferences (GSP), a program set up within the framework of the United Nations Conference on Trade and Development (UNCTAD, New Delhi in 1968) allowing certain products originating from developing countries to benefit from reduced or zero tariffs compared to the MFN tariff (most favoured nation) on the markets in industrialised countries.*

Togo therefore benefits from a preferential arrangement with the following regions and countries: European Union countries, the United States, Canada, Australia, Japan, Switzerland, New Zealand, Norway, Russia, Turkey, Belarus and Bulgaria.

Being included in the category of Least Developed Countries, Togo benefits from the GSP's "Everything But Arms" clause / initiative, which provides access to the European Union market without customs duties or quotas for almost all products.

Togo has recently been admitted to the AGOA (African Growth and Opportunity Act), an American law dating from 2000 on growth and economic opportunities in Africa enabling countries that are declared eligible to see some of the goods they produce being exempt from tax on arrival on American territory.

In addition, in recent years, Togo has fulfilled the criteria for inclusion in the Millennium Challenge Account.



### Protecting investments

Togo has ratified the convention founding the Multilateral Investment Guarantee Agency signed in Washington on 11th December 1984 and established by law 87-024 of 22nd December 1987 (AMGI/MIGA). Established under the aegis of the World Bank, the aim of the Multilateral Investment Guarantee Agency is to insure against non-commercial risks, including expropriation, war and social unrest, and to provide technical assistance in order to promote direct foreign investment.

### An alternative way of settling disputes

*By ratifying the OHADA Treaty of 17th December 1993, Togo has recognised arbitration as a normal way of settling commercial disputes. Togo is open to the main types of arbitration that may be used by investors in international business relations.*

#### OHADA arbitration:

OHADA legislation allows conflicts to be dealt with quickly and effectively, thereby protecting the interests of investors and securing investments.

- The OHADA's uniform act on arbitration

The OHADA's uniform act on arbitration adopted by the Council of Ministers of the OHADA on 11th March 1999 represents the legal framework applicable to all arbitration, where the court is situated within the OHADA zone.

- Scope of the uniform act on arbitration

The OHADA's uniform act is designed to apply to a wide range of arbitration cases, both domestic and international, ad-hoc or institutional, including those dealing with commercial disputes.

- The advantages of OHADA arbitration

Limited possibilities of post-arbitration litigation:

- The arbitration decision may only be contested by proceedings to have the decision declared void in very few cases (a failure to comply with the principle of arbitrator's impartiality, infringement of public order, etc.). These proceedings to have the decision declared void must be heard by the competent court in the country of arbitration. This decision may only form the subject of a further appeal to the OHADA's Common Court of Justice and Arbitration.
- Facilities relating to the enforcement of arbitration decisions: enforcement of an arbitration decision is granted in return for simply producing an original copy of the decision and the arbitration agreement, the competent court only being able to refuse the enforcement order if the decision is clearly contrary to a rule of international public order for the countries involved, the arbitrator has ruled without an arbitration agreement, the arbitrator has ruled without fulfilling his/her duties or the principle of adversary proceedings has not been respected.



### The Common Court of Justice and Arbitration (CCJA)

The uniform act treaty allows for institutional arbitration under the aegis of the CCJA located in Abidjan. In its role as an arbitration institution, the CCJA monitors the organisation and control of arbitration proceedings. Therefore, the CCJA appoints or ratifies the arbitrators, follows the progress of the case, examines draft decisions, and its president issues an “enforcement order” for them, which is valid throughout the entire OHADA zone. It thereby exercises the powers of an arbitration institution in the same way as the ICC in Paris, and, for this purpose, has enacted optional rules of arbitration applicable to both domestic and international arbitration.

### ICSID arbitration

- Ratification of the Washington Convention of 18th March 1965

Togo ratified the Washington Convention of 18th March 1965 establishing the International Centre for the Settlement of Investment Disputes between States and Nationals of other states in 1967.

- The ICSID procedure

An autonomous international Institution, established under the aegis of the World Bank, the ICSID provides a flexible procedure for settling disputes. The primary aim of the ICSID is to remove the main obstacles to the free circulation of international private investment posed by certain non-commercial risks and the lack of specialist international methods for the settlement of investment related disputes. The ICSID provides an institutional and procedural framework for independent conciliation commissions and arbitration courts, which are established on a case by case basis for the resolution of disputes. The ICSID has two specific sets of rules of procedure for the parties to choose from.

The characteristics of ICSID procedures in favour of investors. These characteristics act as major guarantees of security for the investor:

- the party states are completely free to make use of ICSID arbitration, but once they have agreed to it, they may not withdraw unilaterally from the procedure,
- an arbitration decision issued in accordance with the convention cannot be ignored by a court in either party state and the arbitration decision may only be subject to the avenues of appeal specified in the convention,
- all the party states to the convention, whether they are party to the dispute or not, are obliged to recognise and execute the ICSID's arbitration decisions.

## The Togolese Court of Arbitration: CATO

The Togolese Court of Arbitration was established in 1989 by law n° 89-31. This law provides a precise framework for the operation and organisation of the court. The Togolese Court of Arbitration should very soon be operational.

The Togolese Court of Arbitration is independent and is made up of 3 separate bodies:

- the Board of Governors,
- the General Secretariat,
- the Arbitration Court.





# Business law





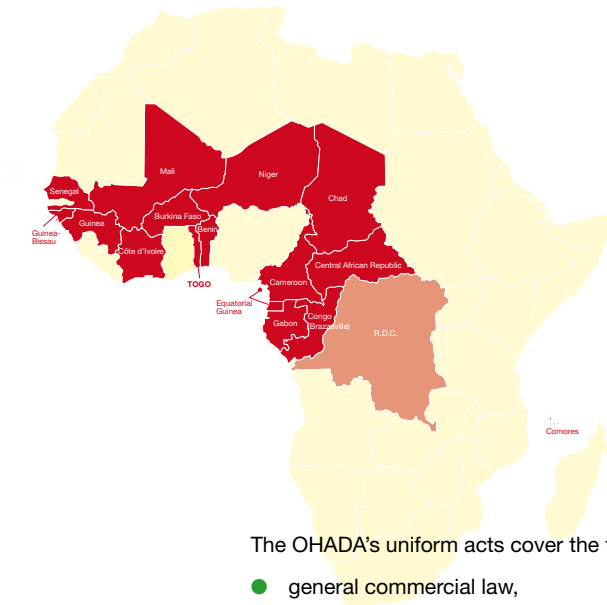
*Investors in Togo will be subject to both supranational rules including those of the UEMOA, the ECOWAS, the OHADA, the CIMA and the AIPO, and national Togolese rules.*

Any investor in Togo should therefore take account of these supranational rules before examining Togolese legislation.

OHADA legislation, a secure legal framework

The adoption on 17th October 1993 in Port-Louis (Mauritius) of the Treaty relating to the Organisation for the Harmonisation of Business Law in Africa (OHADA) helps to improve legal and judicial security in sub-Saharan Africa.

The OHADA currently has the following 16 member countries<sup>1</sup>:



Benin,  
Burkina Faso,  
Cameroon,  
Comores,  
Congo (Brazzaville),  
Côte d'Ivoire,  
Gabon,  
Guinea,  
Guinea-Bissau,  
Equatorial Guinea,  
Niger,  
Mali,  
Central African Republic,  
Senegal,  
Chad,  
Togo

The OHADA's uniform acts cover the following areas:

- general commercial law,
- law on commercial companies and economic interest groupings,
- law on securities,
- simplified procedures for recovery and enforcement proceedings,
- collective proceedings for wiping out debts,
- arbitration law,
- the organisation and harmonisation of company accounting systems,
- contracts for transporting goods by road.

<sup>1</sup> The Democratic Republic of Congo is in the accession phase to the OHADA Treaty.



A draft uniform act relating to cooperatives and mutual societies is in the process of being adopted<sup>2</sup>. The harmonisation of labour law and legislation governing sales to consumers is in progress. The process of harmonising contract law has also begun.

It is possible to say that OHADA business law constitutes, in itself, a genuine and complete body of law as regards private investment.

For any investor, this body of legislation helps to simplify the management of projects in all the member countries, it provides security for creditors, third parties and investors.

Nevertheless, talking about harmonised regional law only makes sense if there is a guarantee that it is applied in the same way by each national jurisdiction. For this reason, the OHADA's **Common Court of Justice and Arbitration (CCJA)** is able to rule, without appeal, on disputes governed by the application of the OHADA's uniform acts. As a genuine appeal jurisdiction, the CCJA is able to judge both the law as well as the substance, to the extent that the Treaty charges it to call forth the substance of the dispute and to rule on it.

Furthermore, the CCJA may be consulted by any party state or by the **Council of Ministers** on any matter relating to the interpretation and application of the Treaty, uniform acts and regulations passed by the Council of Ministers.

<sup>2</sup> This draft has been in progress since March 2001. A plenary meeting of the national commissions was held in Bamako between 27<sup>th</sup> and 30<sup>th</sup> January 2009 to finalise the draft for this uniform act

It should be remembered that article 10 of the Treaty specifies that the uniform acts are directly applicable and mandatory in party states, notwithstanding any provision to the contrary in previous or subsequent domestic law. No reservations are permitted, all the provisions of domestic law, which contradict the uniform act are repealed. The countries have no discretion to adjust the uniform acts to suit a particular context, for example.

Although the uniform acts may refer to national legislation, on certain points, there are very few of these references. It would therefore be possible to talk about **unified regional law** and not only about harmonised regional law.

As regards institutions, in addition to the CCJA, other institutions also contribute to the promotion of legislation issued by the OHADA. Specifically, the **Council of Ministers of Justice and Finance** of Member Countries takes charge of executive management of the OHADA and is entrusted in this position with:

- unanimously adopting the uniform acts, which are directly applicable in the domestic legislation of each party state,
- adopting the implementing regulations for the Treaty,
- approving the annual harmonisation program,
- electing the members of the Common Court of Justice and Arbitration,
- appointing the permanent secretary and the director of the *École régionale supérieure de la magistrature (Regional Magistracy College)*,
- adopting the annual budgets from the permanent secretary of the CCJA.

The **Permanent Secretariat** is the executive body of the OHADA, its main duties are:

- to assist the Council of Ministers and coordinate the activities of institutions,
- to prepare and monitor the procedure for adopting uniform acts,
- to publish the uniform acts in the Official Journal of the OHADA,
- to oversee the *École régionale supérieure de la magistrature (Regional Magistracy College)*.

### The principal characteristics of uniform acts

The aim of the following explanation (see table below) is to briefly present the principal characteristics of uniform acts, which have the effect of modernising and safeguarding the economic activity of investors.

# Uniform act relating to the law on commercial companies and economic interest groupings

<p>The uniform act relates only to commercial companies (which excludes non-commercial companies) and economic interest groupings. The provisions of this act are public order.</p> <p>The investor will have the choice between a general partnership, a limited partnership, a limited liability company, a limited company, a joint venture, a de facto company and an economic interest grouping.</p> <p>The philosophy which becomes clear from this act, is to make flexible and clear provisions for the creation and management of companies.</p> <p>The uniform act makes numerous provisions to protect minority shareholders and the personal status of directors.</p> <p>In terms of governance, the uniform act breaks new ground by envisaging the specific possibility of creating single-shareholder limited companies, which could prove to be very useful for an investor.</p> <p>Equally, it is no longer necessary to have a Board of Directors for limited companies that have a maximum of 3 shareholders, a Managing Director will take the place of the person, assuming the powers and responsibilities of the Board of Directors.</p>	<p>It is important to highlight the fact that companies articles of association must be established in a notarised deed in order to guarantee their authenticity.</p> <p>This provision may equate to a constraint for entrepreneurs but it has the merit of stabilising the environment for start-up companies and those modifying their articles of association, in the interest of creditors, in particular.</p> <p>The uniform act envisages the possibility of creating an economic interest grouping (EIG). This structure, which is flexible and less formal than a commercial company has no legal status, although it has a fiscal status (principle of the autonomy of fiscal legislation). An economic interest grouping must not replace the activity of its members, on pain of being declared invalid. It is a grouping of resources in the service of its members.</p> <p>A Togolese company, like a foreign company, may create a branch with a legal status.</p> <p>The following table covers the principal characteristics of branches, limited companies and limited liability companies.</p>
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Legal entities	Branch of a foreign company	Commercial companies	
		Limited company (S.A.)	Limited liability company (S.A.R.L.)
Lifetime	2 years unless renewed	99 years	99 years
Share capital	N/A	10,000,000 CFA francs	1,000,000 CFA francs
Nominal value	N/A	10,000 CFA francs	5,000 CFA francs at least
Types of shareholders/partners	N/A	Shareholder(s): individual or corporate body	Partner(s): individual or corporate body
Number of shareholders/partners	N/A	Min. : 1 Max. : N/A	Min. : 1 Max. : 50
Nature of shares	N/A	Registered or bearer shares	Company shares
Transferring interests or shares	N/A	Permitted, except in the event of provisions to the contrary in the articles of association.	<b>Transfers between partners/shareholders:</b> permitted, except in the event of provisions to the contrary in the articles of association <b>Transfers to third parties:</b> the majority of partners/shareholders not transferring represent $\frac{2}{3}$ of company shares
Administration and management of the company	Director with an authorisation to commit the company	<b>1- Limited company/ with a Board of Directors</b> Administration Board of Directors (between 3 and 12 members) Management Chief Executive Officer or Chairman of the Board of Directors and Managing Director <b>2- Limited company with a Managing Director</b> Administration and management Managing Director (company with a maximum of 3 shareholders)	<b>Manager</b> Named in the articles of association or appointed by the shareholders
Auditor	N/A	Compulsory	Compulsory if: the share capital > 100 million, or annual turnover > 250,000,000 CFA francs or staff of > 50 people
Involvement of a notary	Not compulsory	Compulsory	Compulsory

## The uniform act relating to general commercial law

This act has contributed to an improvement in the status of individual and corporate traders.

It has strengthened the role of the trade register by extending the scope of commercial information and by reinforcing the effects of registration. The Trade and Consumer Credit Register (RCCM) thereby allows information relating to individuals and corporate bodies to be centralised, data relating to personal property securities, as well additional and secondary modifications that occur, to be gathered.

Registration in the RCCM provides a genuine guarantee for third parties of the status as a trader of an individual or corporate body. In addition, the registration of property securities in the RCCM renders the act or formality binding on parties and on third parties.

The composition of a clear definition of the business and the obligation to pay a pre-determined intermediary in the event that the business is transferred help to safeguard operations relating to financing. Equally, the uniform act introduces into Togolese legislation the concept of lease management, which has not existed previously.

The overall arrangement for commercial sales, as distinct from common law governing sales, has now been sanctioned in the interests of parties.

The uniform act has given the concept of commercial leasing a significant place among the elements that are essential for a business. The lessee's rights are clear and strong and the procedure and terms for terminating the lease are detailed in the uniform act.



## The uniform act on the right to arbitration

This uniform act allows for non-judicial handling of possible commercial disputes. The uniform act governs all arbitration which is conducted at a place within the territory of a party state.

A fundamental contribution of the act consists of extending, to public bodies, the right to be parties to arbitration, without being able to invoke their own law to contest the arbitrability of a dispute, their authority to make a commitment or the validity of the arbitration agreement.

OHADA legislation allows conflicts to be dealt with quickly and effectively, thereby protecting the interests of investors and securing investments.

It is the rules of law established by the parties, or failing this, those which the arbitration court deems the most appropriate, which will apply and not necessarily the law of a particular country.

With the aim of making effective decisions, the uniform act limits the possibilities for post-arbitration litigation. The decision sentence may only be contested by proceedings to have the decision declared void in very few cases, heard by the competent jurisdiction in the country where the arbitration process took place, the latter's decision itself may only form the subject of a further appeal to the CCJA. Furthermore, enforcement of the decision is granted in return for simply producing an original copy of the decision and the arbitration agreement, the competent court only being able to refuse the enforcement order if the decision is clearly contrary to a rule of international public order for the countries involved. Arbitration decisions heard on appeal by the CCJA are enforceable in all countries within the OHADA zone.

The uniform act treaty also provides for institutional arbitration under the aegis of the CCJA. The latter appoints or ratifies the arbitrators, follows the progress of the case, examines draft decisions, and its president issues an "enforcement order" for them, which is valid throughout the entire OHADA zone. It thereby exercises the powers of an arbitration body, and, for this purpose, has enacted rules of arbitration applicable to both domestic and international arbitration. Ultimately, it is the CCJA which takes charge of the judicial review of arbitration.

## Uniform act on the organisation of collective proceedings for wiping out debts

The uniform act has instituted three procedures within the OHADA's judicial area:

- a procedure for preventing the cessation of payments: a preventive settlement, which is designed to avoid the cessation of payments or the cessation of a company's activities and to enable its debts to be wiped out by means of a preventive arrangement,
- two procedures applicable in the event of a cessation of payments: legal redress and liquidation of property.

The act defines the economic, professional and criminal sanctions applicable to the debtor and company directors (personal bankruptcy, bankruptcy and similar offences).

Those governed by this act are trading individuals or corporate bodies, non-trading corporate bodies governed by private law and public enterprises in the form of corporate bodies governed by private law.

It is the court with jurisdiction in commercial matters, which is competent as regards collective proceedings and any possible disputes relating to them. The territorially competent court of jurisdiction is that within whose jurisdiction the debtor has his principal establishment or, where this is a corporate body, its registered office or, where it does not have a registered office within the country, its principal establishment.





## Uniform act on the organisation of simplified procedures for recovery and enforcement proceedings

The uniform act outlines two legal procedures, which are easy for a creditor to implement, in order to force the debtor to fulfil his/its commitments: an injunction to pay a sum of money and an injunction to secure the delivery or restitution of personal property.

The uniform act reinforces the enforcement proceedings designed to force a defaulting debtor to fulfil his/its commitments, by the following means: seizure, seizure for the purpose of a sale, seizure for the purpose of the allocation of debts, seizure and assignment of remuneration, seizure-apprehension and seizure-under a prior claim of tangible personal property, seizure of rights and transferable securities, seizure of immovable property.

## Uniform act on the organisation of securities

The uniform act organises securities into the following types:

- personal guarantees: surety-bonds, letters of guarantee (i.e. first demand guarantees) and counter guarantees,
- personal property securities: possessory liens, pledges, collateral security and preferential rights,
- Immovable property securities: mortgages.

The uniform act takes account of socio-economic realities on the African continent. Therefore, for bonds, for example, it is stipulated that an illiterate person may be accompanied by two witnesses who vouch for his/her identity and presence on the bond deed, and also testify that the nature and effects of the deed have been explained to him/her.

## Uniform act relating to contracts for transporting goods by road

Inspired by the European Convention governing the international carriage of goods by road (CMR) of 1956, the uniform act relating to contracts to transport goods by road, adopted on 22nd March 2003, is moving towards the regional integration of legislation in this area.

Having specified the scope of the contract for transporting goods by road, the act details the obligations incumbent on the carrier and the shipper, who are the two parties to the contract.

## Uniform act governing the organisation and harmonisation of company accounting systems

This uniform act pursues the aims established by the aforementioned uniform acts, i.e. to safeguard economic activities in order to give confidence to investors and facilitate exchanges between party states.

The uniform act is generally applicable since it relates to the entire productive sector, irrespective of the civil or commercial nature of activities, with the exclusion of banks and insurance companies as well as organisations that are subject to the rules of public accounting (Article 2).

The OHADA accounting system is based on a methodical approach to accounting and makes widespread use of the terms “prudence, consistency, honesty and transparency” (article 3). These principles highlight the general objective for financial statements. The balance sheet, the income statement, the financial table and appended statement must provide a faithful picture of the company's assets, financial situation and income. For this reason, the principles of transparency, specialisation of financial years, historic cost, continuity of business and significant scale must be respected.

The head of a company is responsible for reliable internal control, which will make external auditing much easier.

The uniform act governs consolidation and breaks new ground by creating combined financial statements. Consolidation will enable companies' assets, financial situations and incomes to be presented included in consolidation, as if they were a single entity.

The legislator has gone further by stipulating, for companies forming an economic entity which is governed from the same strategic decision making centre situated outside the region, without there being any legal controlling links between them, that they may draw up and submit combined financial statements, as if they were one company.



# Tax legislation



## Taxation governed by common law

### a) Corporation tax

Since the passing of the Finance Act for 2009, the rate of corporation tax (IS) is fixed at 30 % for industries and 37 % for other companies.

Payment is made in four instalments, each one less than or equal to a quarter of the contributions imposed on the company, payable for the previous year for which it has been taxed. New companies are not required to pay instalments for the first 12 months of trading.

Certain corporate bodies are expressly exempt from corporation tax, including, for example, cooperatives. There are also special arrangements within General Tax Code:

- **Arrangements for parent companies and subsidiaries:** net income from holdings owned by a subsidiary is deducted from overall net income for the period, following the deduction of a proportion fixed uniformly at 5 % of the total income for holdings, representing costs and expenses.
- **Arrangement for mergers of companies and similar operations:** capital gains, other than those made on goods, resulting from the free allocation of stocks or company shares following mergers, demergers, partial contributions of capital by joint stock companies or limited liability companies, are exempt from corporation tax. The beneficiary companies must be of the same nationality as one of the member states of the ECOWAS and the contribution must have received the approval of the Minister for Economic Affairs and Finance.

Companies and other corporate bodies liable for corporation tax are **subject to a minimum fixed tax contribution (IMF)**. The minimum fixed taxed contribution (IMF) is calculated in brackets on the basis of turnover. The lowest bracket subjects turnovers of between 0 and 5 million CFA francs inclusive to an IMF of 50,000 CFA francs and the highest bracket subjects turnovers of more than 30 billion CFA francs to an IMF of 200,000,000 CFA francs.

### b) Business tax

Subject to certain exemptions, including specifically the state, local authorities, agricultural cooperatives, fishermen and farmers (Article 234



of General Tax Code), any individual or corporate body undertaking regular non-salaried business activities is liable to pay business tax. Business tax is calculated on the basis of the fiscal capacity of those liable to pay tax assessed on the basis of economic criteria depending on the extent of business conducted by them on Togolese territory.

The basis for calculating business tax comprises the two following aspects:

- global turnover including all tax, with the exception of value added tax, or the gross amount, including all tax with the exception of VAT, of income or fees generated over the course of the previous calendar year,
- the rental value of premises, warehousing/storage land, docks and other facilities used to conduct taxable business operations, including facilities of any kind liable to property tax.

It is stipulated that the tax resulting from the tax calculation based on the rental value of business premises may never be less than a third of that resulting from the calculation based on the turnover or income for the reference period.

The business tax rate varies depending on the business sector (Articles 236 and 237 of General Tax Code).

### c) Single professional tax

This is a summary tax put in place for craftsmen and micro-business in the informal sector. Single professional tax (TPU) provides an exemption from income tax for individual entrepreneurs, a minimum fixed tax contribution for individuals, business tax, payroll tax (employer's contribution) of 7 % and value added tax. The TPU rate is established on the basis of fixed tariffs for turnover brackets, and companies must have a turnover that is less than 30,000,000 CFA francs for production activities and/or deliveries of goods and similar operations, and less than 10,000,000 CFA francs for operations other than those mentioned above (Finance Act 2008). Where the taxpayer conducts mixed activities, he will be accepted for a TPU arrangement if his global annual turnover is less than 10,000,000 CFA francs.

The TPU arrangement does not apply (Finance Act 2009):

- to individuals generating non-commercial profits (BNC),
- to individuals generating agricultural profits (BA),
- to industrial bakers (bakeries, cake shops),
- to individuals, who handle imports or exports in CFA francs for businesses providing services.

### **d) Property tax**

Property tax on constructed properties is established on the basis of taxation equal to 50 % of the rateable value at a rate of 25 %. Property tax on non-constructed properties is calculated on the basis of the market value on 1st January each year at a rate of 2 %. Finally, the property surcharge is established on the basis of the market value of the building at a rate of 1 %.

### **e) Payroll tax**

Individuals and corporate bodies are liable for payroll tax of 7 %.

### **f) Income tax for individuals**

Income tax for individuals (IRPP) is deducted at source by the employer and paid to the state.

Tax is calculated using a sliding scale per income bracket, with a rate of 4 % for the lowest income and a rate of 45 % for the highest income (according to the Finance Act 2009).

### **g) The tax system for capital gains tax**

Outside of the applicable tax agreements, capital gains with a Togolese source paid in Togo and received by people with their tax domicile or registered office outside Togo form the subject of a deduction at source equal to 20 % of the gross value of distributed revenue.

### **h) Indirect taxes**

Value added tax (VAT) is levied at the single rate of 18 % (there are no reduced rates).

Financial activity tax (TAF) is levied at 10 %.

Tax on insurance policies varies depending on the premium and the type of insurance.

Various excise taxes and duties on petroleum products are also payable for delivering and importing products.

## A framework that is conducive to investment: the export processing zone

Law 89/14 of 18th September 1989 governing the status of the export processing zone for exports created an alternative tax system for eligible companies.

The status of a processing zone for exports is granted either to physically defined zones, which are enclosed and isolated, or, individually, to any exporting company properly registered in Togo, whatever its location within national territory.

In order to facilitate approval for free companies and their establishment, the S.A.Z.O.F. (Société d'administration des zones franches) which is a semi-public company with a legal status and financial autonomy, has been created.

The purpose of the S.A.Z.O.F. is to complete all the administrative formalities and activities necessary for the smooth operation of export processing zones. It specifically seeks individuals and corporate bodies, developers of free processing zones, and provides assistance for the latter. It also monitors the process for approval dossiers, provides assistance for developers and companies for all other procedures, administrative authorisations and formalities, procedures for establishing companies, planning permission, residence permits for expatriate workers.

The S.A.Z.O.F. is administered by a Board of Directors elected by the General Meeting and is managed by a Managing Director appointed and dismissed by the Board of Directors.

The main duty of the S.A.Z.O.F. is to promote the development of processing activities and export services. The Togo Export Processing Zone is now home to 61 operational businesses with 34 currently being set up. They offer its developers, currently 13 different nationalities, a favourable framework for businesses involved in exporting which use Togolese labour.

The eligibility conditions for the export processing zone are simple, you need to:

- Operate a processing or service business,
- Guarantee exports of your production of goods and services (at least 80%),
- Give priority for permanent employment to Togolese workers.

The S.A.Z.O.F. issues authorisations, which are confirmed by an order from the minister entrusted with developing the export processing zone. The S.A.Z.O.F. offers investors the services of its single office to help them obtain an authorisation certificate for the export processing zone and for



other administrative procedures relating to the creation of a business (counterpart of the CFE for the CCIT).

The S.A.Z.O.F. offers considerable tax and economic advantages, including VAT and customs duty exemptions on certain materials and equipment, favourable arrangements for corporation tax, payroll tax, business tax and property tax as well as preferential rates for public services.

### ● In terms of corporation tax

5 % of profit is taxable for the first 5 years
10 % of profit is taxable between the 6 <sup>th</sup> and 10 <sup>th</sup> years
15 % of profit is taxable between the 11 <sup>th</sup> and 20 <sup>th</sup> years
Common law applies from the 21 <sup>st</sup> year

### ● The minimum fixed tax contribution (IMF)

5 % of the tax corresponds to the turnover generated between the 2 <sup>nd</sup> and 5 <sup>th</sup> years
10 % of the tax corresponds to the turnover generated between the 6 <sup>th</sup> and 10 <sup>th</sup> years
15 % of the tax corresponds to the turnover generated between the 11 <sup>th</sup> and 20 <sup>th</sup> years
Common law applies from the 21 <sup>st</sup> year

### ● Business tax

5 % of the tax calculated between the 2 <sup>nd</sup> and 5 <sup>th</sup> years
10 % of the tax calculated between the 6 <sup>th</sup> and 10 <sup>th</sup> years
15 % of the tax calculated between the 11 <sup>th</sup> and 20 <sup>th</sup> years
Common law applies from the 21 <sup>st</sup> year

### ● Property tax

5 % of the tax calculated between the 2 <sup>nd</sup> and 5 <sup>th</sup> years
10 % of the tax calculated between the 6 <sup>th</sup> and 10 <sup>th</sup> years
15 % of the tax calculated between the 11 <sup>th</sup> and 20 <sup>th</sup> years
Common law applies from the 21 <sup>st</sup> year

Finally, enterprises within the export processing zone are subject to a deduction at source of 12.5 % on their rent in accordance with the conditions of article 1186 of General Tax Code.

It should be noted that draft **investment legislation** is currently being compiled in order to increase the appeal of Togo for investors.

## Customs regulations

Since 1997, Togo has been applying the UEMOA's CCT (common customs tariff), which has been applicable for third countries since 1st January 2000. The customs duty rates specified in the CCT are fixed for 4 different categories from 0 to 4. Each category corresponds to a list of specific goods specified by regulations issued by the Council of Ministers (category 0: 0 %, category 1: 5 %, category 2: 10 %, category 3: 20 %).

In addition to extra-community transactions, by means of the CCT, the UEMOA also governs intra-community transactions. The UEMOA adopted customs legislation in 2001.

Togo signed up to the GATT multilateral commercial system in March 1964 and has been a member of the WTO since 31st May 1995, which specifically involves compliance with the most favoured nation clause (article 1 of the general agreement on customs tariffs and trade).





### Foreign exchange control

As regards foreign exchange, residents and non-residents<sup>3</sup> are obliged to comply with the UEMOA's provisions governing the external financial relations of UEMOA member countries established by regulation n° 09/CM/UEMOA of 20th November 1998, which came into force on 1st February 1999. This UEMOA regulation implemented by regulation n° R09 applies in a uniform manner in all UEMOA countries and represents a desire for advanced liberalisation of current transactions and capital transactions.

- **Capital is allowed to move freely within the UEMOA**

As outlined in article 6 of regulation n° R09, all movements of capital between UEMOA member countries, all investment and loan transactions, are free and not subject to any restrictions whatsoever.

- **Current transactions destined for foreign countries**

In a general manner, the majority of current transactions destined for foreign countries are authorised and implemented in accordance with the principle of freedom by authorised agents.

Current transactions destined for foreign countries include: issuing tourist currency allowances to resident travellers, opening, operating and closing foreigners' accounts in francs, executing transfers for less than 300,000 CFA francs and payments destined for foreign countries relating to various operations including payment for deliveries of goods, charges for port or customs services and all other additional costs of transporting goods, income or expenditure for stopovers by vessels, wages/salaries,

<sup>3</sup> Individuals with their main centre of interest abroad, foreign officials holding a post in a UEMOA member country and national or foreign corporate bodies for their establishments abroad.

processing, fees, insurance, commission and brokerage, intellectual property rights, interest and dividends, etc.).

Payments destined for foreign countries, other than those outlined above, must form the subject of a foreign exchange authorisation request to the Minister in charge of finance.

### ● **Capital transactions with foreign countries**

In a general manner, all entries of capital into the Union are freely allowed, with the exception of imports of gold which is subject to prior authorisation from the Minister of Finance. The rules specifically provide for the free transfer of income from the liquidation of investments or the sale of foreign transferable securities by non-residents, free payment for purchases of options on foreign markets, the free transfer of sums needed for the contractual amortisation of debts as well as the repayment of short term loans granted to finance commercial and industrial operations.

Payments destined for foreign countries, other than those outlined above, must form the subject of an authorisation request to the Minister of Finance.

### ● **Foreign exchange transactions must be executed by agents**

Foreign exchange transactions, movements of capital and payments of any kind between a UEMOA member country and a foreign country, or within the UEMOA between a resident and a non-resident, may only be conducted by means of the BCEAO (Central Bank of West African States), the postal authorities, an accredited agent or foreign exchange broker.

Foreign currencies held in a UEMOA member country must be transferred to or deposited with an accredited agent, or, where applicable, the BCEAO, whether this money belongs to a resident or a non-resident. Furthermore, this same article states that residents must transfer to an accredited intermediary bank all revenue or income in currency encashed in a foreign country or deposited by a non-resident.





# The investor's social environment





*Labour law in Togo is governed by the Employment Act of 2006 and the various collective agreements adopted by different sectors.*

● **Placement et recruitment, 3 options:**

- ANPE TOGO: National Employment Agency,
- private employment agencies,
- the employer may directly recruit a job applicant who has previously registered with the ANPE. He must declare the appointment to the ANPE within 8 days.

● **Employers' declarations:**

All employers are obliged to provide the ANPE in Togo with a periodic declaration regarding their staff situation at least once every six months, using forms that are sent to them.

● **The different types of contracts:**

*Fixed term contract (FTC)*

An FTC may be freely concluded without formalities, except for contracts for a period of less than one month, which must be written, or which require the employee to relocate from his/her normal place of residence. An FTC has a maximum term of 4 years (including all renewals). An FTC ends either by written agreement between the parties, or when it expires, for gross negligence, serious negligence or judicial termination.

### ***Permanent contract***

A permanent contract may be freely concluded without any conditions as regards forms but a compulsory notification must be issued within 15 days in the case of a verbal (non-written) contract. A permanent contract may be terminated at any time by giving notice.

### ***Other types of contracts***

Training contracts and apprenticeships



#### ● **The minimum wage:**

The law guarantees all workers a minimum wage: the SMIG (minimum guaranteed inter-professional wage) and the SMAG (minimum guaranteed agricultural wage). The Council of Ministers revised these minimum wages on 13th August 2008. The revision corresponds to an increase of more than 100 % in the SMIG, which has now risen from 13,757 CFA francs to 28,000 CFA francs (20.96 to 42.67 euros). The SMAG has benefited from the same increase.



#### ● **The Togolese social security system**

The social security system in Togo is based on the principle of social insurance, which is a system of mandatory contributions. It is divided into 3 categories:

- invalidity, old age and death,
- workplace accidents, occupational illnesses,
- family benefits (workers household allowance, prenatal care, family allowances).



It does not provide health or unemployment cover. Nevertheless, care is provided, within the framework of the Employment Act, to employees and members of their families within the public health system.



#### ● **Breakdown of social security contributions:**

Contributions are based on all remuneration and benefits paid/offered to the employee by the employer.

Sectors	Employer's contribution	Employee's contribution
Family benefits	6 %	
Occupational risks	2,5 %	
Pensions	8 %	4 %
Total	16,5 %	4 %





Employers, with the exception of the state, public authorities, non-profit making public bodies, foreign embassies and consulates, private individuals and taxpayers subject to TPU, are liable for payroll tax at a rate of 7 % for all employees and other gross remuneration.

- **Principal regulations relating to employment:**

*The law governing foreign workers*

Recruitment of a foreign worker must be preceded by an employment authorisation and form the subject of a contract of employment concluded in writing and stamped/signed by the Managing Director. It is the responsibility of the employer to submit the application for an employment authorisation and the application for a stamp/signature in a registered letter with an acknowledgement of receipt. These applications are subject to the imposition of a levy to be paid by the employer, the amount of which is fixed by an official decree. The stamp/signature is valid for a maximum of 2 years and is renewable.

*Legal working hours*

Legal working hours are limited to 40 hours a week in all sectors, except in the agricultural sector, where the number of hours may not exceed 48 hours a week. Hours worked above the limits set by the Employment Act (article 142) give rise to an increased wage (overtime pay). In other respects, a weekly rest is mandatory. In principle, it should take place on a Sunday for a minimum of 24 consecutive hours.

### ***Paid holiday***

The employee has a right to paid holiday, to be borne by the employer, equivalent to two and a half days per month of actual service, i.e. one month a year (unless there are more favourable provisions in collective agreements).

### ***Regulations governing child labour***

Children under the age of 15 must not be employed, except in specially authorised cases.

## **● Redundancy**

Redundancy is governed by the Employment Act. It must always take place for legitimate reasons. Togo has a procedure governing redundancy for economic reasons. The employer is specifically obliged to notify the labour inspector of all planned redundancies for economic reasons.

The employer should also be aware that employment for disabled people is regulated.



# Intellectual property rights



## Legal framework

*Intellectual property rights are governed by the Bangui Agreement of 2nd March 1977 revised in February 1999 and October 2002. This agreement has been integrated into the Togolese legal system in the form of law n° 2001-013 of 29th November 2001.*

## Institutional framework

**Togo is a member of:**

- the WIPO: The World Intellectual Property Organisation,
- the AIPO: The African Intellectual Property Organisation arising from the Bangui Agreement of 2nd March 1977, covering 16 African countries (Benin, Burkina Faso, Cameroon, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Mauritania, Niger, Central African Republic, Senegal, Chad and Togo).

**The specialist institution in Togo:**

- The INPIT: The AIPO is represented in Lomé by the Institut national de la propriété industrielle et de la technologie (*National Institute for Industrial Property and Technology*) (INPIT), based within the Ministry of Industry, Commerce and Development for the export processing zone.

### The benefits of the AIPO

Any registration submitted to the authorities in one member country, or to the organisation, equates to a national registration in each member country.

International registration of designs and models: thanks to the AIPO's signing of the Geneva Act of the Hague Agreement in 2008, users can obtain protection in all of the 16 countries and in the other countries that are party to the Geneva Act for their industrial designs and models by means of a single, unique registration application.



## Registration procedures

The applicant may submit a registration:

- to the AIPO by registered post with an acknowledgement of receipt addressed to the AIPO (B.P. 887 Yaoundé (Cameroon), tel.: (237) 220 57 00/220 39 11 - Fax: (237) 220 57 27/220 57 21/ www.oapi.wipo.net)
- to the INPIT or an authorised representative by means of an application (INPIT: Rue des Médias B.P. 3286 Lomé-Togo, tel.: (228) 222 10)
- Registrations relating to applications for:
  - the protection of inventions,
  - the registration of trade names,
  - the registration of industrial designs or models,
  - the registration of utility models,
  - the registration of brands (products/services),
  - the registration of geographical indications,
  - the registration of configuration diagrams for integrated circuits,
  - plant variety protection certificates.
- Infringement clearance search:
  - An infringement clearance search consists of searching for a possible prior registration relating to a brand which displays similarities. If the search returns no results, registration may take place.
- Registration:
  - Once the various conditions as regards forms have been fulfilled and payment of the various charges and taxes has been verified, the authorities will issue a registration certificate.
- Lead time:
  - Approximately 4 months from submission of an application.
- Costs:

Infringement clearance search	100,000 CFA francs
Registration	400,000 CFA francs
Other costs	50,000 CFA francs
<b>Estimated total cost</b>	<b>550,000 CFA francs</b>



# How to establish a company





### The company's memorandum of association

*The first stage consists of choosing what type of company the entrepreneur wishes to establish (See above the OHADA).*

For commercial companies (limited companies, limited liability companies), the entrepreneur must then draw up articles of association, which will be lodged with the records of a notary, accompanied by subscription forms, share capital, the list of subscribers and the statement of subscriptions and payments and the minutes of the founding general meeting (where applicable).

The notary will then draw up the notarised declaration of subscription and payments, thereby enabling the entrepreneur to begin the formalities for entry in the Trade and Consumer Credit Register (RCCM).

It should be noted that it is also possible for an individual to set up as an individual trader within the framework of a sole proprietorship. For this purpose, he/she will require a set up authorisation for “establishment”. The establishment formalities are almost identical to those for commercial companies, although the involvement of a notary and the drafting of articles of association are not compulsory.

### The necessary formalities for registering a company

The procedure enabling an investor to create a company is simplified by the creation of a single office within the Togolese Chamber of Commerce and Industry.

The main purpose of the single office or CFE (Enterprise Formalities Centre) is to simplify the administrative process for establishing a company and formalities relating to any subsequent modifications. The necessary forms for establishing a company are available to download from the CNPT web site.

This single office enables a company to be established in a short time (14 days) depending on the regulations.



## Paperwork for the establishment of a company

Paperwork to be submitted to the CFE in 2 envelope folders for compliance checks:

### ● for a corporate body,

- a duly completed questionnaire (amended return), available from the CFE, issued in return for payment of 1,000 CFA francs,
- a stamped application costing 500 CFA francs (MCIA) (tax stamp) available from the CFE,
- an application to obtain authorisation as an economic operator (DGI) available from the CFE,
- a legalised copy of the certificate of nationality and five individual photocopies of the legalised copy,
- a copy of the birth certificate,
- a legalised copy of an identity card for nationals or a passport for foreigners,
- a legalised copy of the marriage certificate for those who are married,
- a legalised copy of the degree or certificate for a liberal profession,
- an extract from criminal records, which is less than 3 months old, for Togolese citizens (issued by the office of the court governing the place of birth on presentation of an original birth certificate) or a certificate of no convictions for foreigners,
- a private, unstamped, authorisation, if the applicant is represented by an agent,
- a post box certificate issued to the operator by the Togolese postal service,
- a legalised copy of the technical authorisation from the Ministry overseeing the project,
- two authenticated copies of the declaration of regularity and compliance or a notarised declaration of subscription and payment,
- two copies of the certified version of the list of managers, directors or shareholders/partners,
- one copy of the credit agreement, where applicable,
- an authorisation to complete formalities and a sworn statement (available from the CFE).
- six authenticated and notarised copies of the articles of association,
- a detailed list of secured assets, where applicable, seven identity photographs of the Head or Managing Director of the company,
- a company logo,
- For the receipt of payment of local property tax and pursuant to new article 1448 of the Finance Act 2009, the local property tax tariffs are determined in accordance with the following table:

TYPE OF PROPERTY	TARIFF
Concession	4,000 CFA francs per household
1 room apartment	2,000 CFA francs
2 room apartment	6,000 CFA francs
Apartment with 3 rooms and more	9,000 CFA francs
Villa or individual concession	30,000 CFA francs
Property on 1 level	40,000 CFA francs
Property on 2 levels	75,000 CFA francs
Property on more than 2 levels	100,000 CFA francs
Property covering an area of more than 600 square metres	100,000 CFA francs

● **For an individual,**

- a duly completed questionnaire (amended return), available from the CFE, issued in return for payment of 1,000 CFA francs,
- a stamped application costing 500 CFA francs (MCIA) (tax stamp) available from the CFE,
- an application to obtain authorisation as an economic operator (DGI) available from the CFE,
- a legalised copy of the certificate of nationality and five individual photocopies of the legalised copy,
- a copy of the birth certificate,
- a legalised copy of an identity card for nationals or a passport for foreigners,
- a legalised copy of the marriage certificate for those who are married,
- a legalised copy of the degree or certificate for a liberal profession,
- an extract from criminal records, which is less than three months old, for Togolese citizens (issued by the office of the court governing the place of birth on presentation of an original birth certificate) or a certificate of no convictions for foreigners,
- a private, unstamped, authorisation, if the applicant is represented by an agent,
- a post box certificate issued to the operator by the Togolese postal service,
- a legalised copy of the technical authorisation from the Ministry overseeing the project,
- an authorisation to complete formalities and a sworn statement (available from the CFE),
- seven identity photographs of the Head of Managing Director of the company,
- a company logo,
- a receipt for payment of local property tax (See above for a corporate body).

## Service charges

### ● For a corporate body

- 197,750 CFA francs in addition to an optional figure of 25,000 CFA francs to obtain authorisation as an importer and exporter for nationals and residents of ECOWAS countries,
- 207,750 CFA francs in addition to an optional figure of 55,000 CFA francs to obtain authorisation as an importer and exporter for foreigners,

### ● For an individual

- 143,000 CFA francs in addition to an optional figure of 25,000 CFA francs to obtain authorisation as an importer and exporter for nationals and residents of ECOWAS countries,
- 153,000 CFA francs in addition to an optional figure of 55,000 CFA francs to obtain authorisation as an importer and exporter for foreigners,

Payment is made to the cashier's office of the CCIT. Receipts for payments are then issued to the CFE as evidence and the CFE issues a receipt for submission of the declaration, which contains the date for collection of the paperwork.



Publication

Once he/she has obtained his/her registration, the entrepreneur must publish a notice of legal announcement in order to be able to obtain a declaration of regularity and compliance, which completes the procedure for establishing a company.

Residence permit

A residence permit is compulsory for foreigners (including nationals of ECOWAS countries) to live and work in Togo. There are several kinds of residence permits (<http://www.dgdn.tg/>):

*Temporary residence permit*

This permit becomes valid when it is first issued and lasts for one year. This is the trial period, which enables the Directorate General of National Documentation to monitor a foreigner who has just set up in order to see whether he/she complies with the applicable laws and regulations.

*The normal permit*

After three temporary permits, a foreigner residing within the country and who has satisfactory completed the trial period may apply for a normal permit which is valid for a period of three years.

*Special residence permit*

For a foreigner who has married a Togolese national and for those who have resided continuously in Togo for at least 15 years and who are well assimilated into Togolese society, there is a special residence permit. It is valid for a period of 10 years.

The costs of residence permits

1 year residence permit	100,000 CFA francs
3 year residence permit	250,000 CFA francs
10 year residence permit	500,000 CFA francs



**The conditions to be fulfilled in order to obtain a residence permit are as follows:**

- an extract from criminal records in the country of origin, which is less than three months old, for those applying for a residence permit for the first time,
- a certificate of no convictions issued by the Togolese courts,
- a stamped application addressed to the General Director of National Documentation in Lomé,
- six (06) identity photographs,
- three stamped envelopes bearing the address of the applicant in Togo,
- a medical certificate, which is less than three months old, issued by a government approved doctor,
- a photocopy of the first three (03) pages of a passport which is valid for more than six months from the application date,
- a photocopy of the previous residence permit and the page containing a valid stamp,
- an original of a clearance certificate or a non-taxation certificate for applicants who are unemployed,
- a photocopy of the set up authorisation,
- an employment certificate for employees,
- a photocopy of the employer's residence permit,
- a bank certificate,
- a bank statement,
- the economic operator's authorisation,
- an education certificate for students.



# Finance for enterprises







*This section lists the principal sources of finance for investors in Togo.*

### Support from the main donors/lenders

In addition to providing traditional support for public authorities and para-public organisations, the majority of active donors/lenders in Togo offer investors assistance designed to develop the private sector.

#### **The West African Development Bank (WADB)**

The WADB is an international public establishment the aim of which, under the terms of article 2 of its articles of association, is “to promote the balanced development of member states and achieve the economic integration of West Africa” by financing priority rural development projects, basic infrastructures, modern infrastructures, telecommunications, energy, industries, transport, agro-industries, tourism and other services.

#### **Support for the private sector**

The WADB’s numerous missions include supporting the private sector. In 2007, the WADB supported the private sector in the form direct finance of 40.02 billion CFA francs for the implementation of 7 projects, representing approximately 40 % of its approvals for the financial year. It also provided 10 billion CFA francs in the form of a guarantee for granting a bond issue.

#### **The International Finance Corporation (IFC)**

The International Finance Corporation (IFC) is the World Bank Group’s institution entrusted with private sector operations.

The IFC offers its clients a wide range of financial products and services and continues to create new financial instruments in such a way that allows companies to manage risks and extend their access to foreign and national financial markets.

The IFC's current portfolio in Togo includes investment of 1.9 million dollars in Transam, a soap manufacturing company, a finance line for imports of 5 million dollars to Ecobank Togo and a regional credit line of 100 million dollars to Ecobank Transnational Incorporated (ETI), with its registered office in Togo.

### **The African Development Bank (AfDB)**

Since 1972, the year in which it first became involved in Togo, the African Development Bank Group has approved 27 operations, including 24 projects/programs and 3 studies, with a total commitment value of almost 270 million US dollars. These commitments cover loans provided from the resources of the ADB's funds (14 %), soft loans provided from the resources of the ADF (82 %) and the Nigeria Trust Fund (4 %).

A sector-by-sector breakdown of these operations reveals a predominance of the social sector (25.2 %), followed by the transport sector (24.7 %), multi-sector operations (22.7 %) and rural development (16.9 %). Industry and the banks and telecommunications follow with 5 % and 3.2 % respectively. Finally, the water and sanitation sector has benefited from 2.3 % of commitments.

### **The European Union: the Centre for the Development of Enterprise (CDE)**

Investors can request support from the Centre for the Development of Enterprise (CDE), a joint institution of ACP states (Africa, Caribbean and Pacific) and the European Union, established within the framework of the Cotonou Agreement. The aim of the Centre for the Development of Enterprise, financed by the European Development Fund (EDF), is to support the development of private sector enterprises in ACP countries.

The CDE's activities in relation to ACP enterprises and intermediary organisations are organised on the basis of two primary modes of operation:

- a structured and long term approach with programs for groups of enterprises and intermediary organisations,
- ad-hoc assistance for individual enterprises, intermediary organisations and service providers in the private sector.



*The program is based on the following approach:*

- Primary objective: identify and support the activities of flagship enterprises in a certain number of sectors, which have the greatest potential for economic and social development with ACP countries.
- Principal benefits:
  - recognised assistance and implementation with the support of stakeholders in the same sector,
  - availability of in-depth knowledge of key sectors,
  - a quicker and more effective response to the needs of enterprises,
  - achievement of synergies with other stakeholders in the sector in question – national authorities, regional institutions and donors/ lenders.
- Selection of sub-sectors on the basis of:
  - comparative benefits,
  - potential for sustainable growth,
  - prospects for innovation and emulation,
  - socio-economic merits (economic interaction, synergies and networks, added value, employment and productivity).

*The results and impacts of the program can be summarised as follows:*

- improvements in productivity,
- improved access to the export market (regional and/or international),
- improvement in the quality of products / services and their certification,
- diversification of products/services,
- creation of networks and group synergies within national economies,
- development of new markets,
- improved access to investment finance.

**L'Agence française de développement (French Development Agency) (AFD):**

Via its subsidiary PROPARGO (Promotion et participation pour la coopération économique), which specialises in financing and promoting the private sector, the AFD works directly for the benefit of enterprises or by means of local financial structures.

PROPARCO's mission is to act as a catalyst for private investment in developing and emerging countries to encourage growth, sustainable development and achievement of the Millennium Development Goals (MDG).

Its sector-based strategy, tailored to the level of development in a country, focuses on the productive sector, financial systems, infrastructures and investment capital.

The organisation invests in a geographic area which includes both large developing countries and the poorest countries, in particular in Africa, with the highest standards in terms of social and environmental responsibility.

PROPARCO offers a complete range of financial instruments, enabling it to adapt to the specific requirements of private investors in developing countries (loans, capital, guarantees and financial engineering).

The measurement of developmental and environmental impacts assists the monitoring of changes in the quality of each project and justifies PROPARCO's investments.

## Guarantee funds

### **Le Fonds africain de garantie et de coopération économique (*The African Fund for Guarantees and Economic Cooperation*)(FAGACE):**

The FAGACE is an economic and financial public international corporation specialising in guarantees. The following countries are members of the FAGACE: Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Gambia, Guinea-Bissau, Mali, Mauritania, Niger, Rwanda, Senegal, Sierra Leone and Togo.

It guarantees medium and long term loans designed to finance economically and financially viable projects and short term loans designed to finance marketing credit and inter-bank loans. On 30th June 2007, it provided a guarantee for 14 projects in Togo with a value of 27,042 billion CFA francs.

The FAGACE also facilitates the implementation of certain projects thanks to support measures including reducing interest rates or extending the terms of loans. The value of rebates granted to Togo on 30th June 2007 amounts to 476.09 million CFA francs for 4 projects.

### **The Guarantee Fund for Private Investment in West Africa (the GARI Fund):**

As an ECOWAS financial establishment, the aim of the GARI Fund is to facilitate access for private enterprises in the region to medium and long term finance, by sharing the risks associated with these operations with credit institutions. The beneficiaries are national and international banks and financial institutions, which grant medium and long term loans.

### The AFD fund (ARIZ):

ARIZ (Assurance pour le risque de financement de l'investissement privé en zone d'intervention de l'AFD) (*Investment Risk Insurance in the Priority Solidarity Zone*) is a guarantee facility created by the Agence française de développement (*French Development Agency*), designed to facilitate access to finance for small and medium sized private enterprises (SMEs) and microfinance institutions.

Its aim is to support projects to establish and develop enterprises, thanks to the increasing involvement of banks in their financing. ARIZ's ambition is to create a lever for economic growth thanks to partnerships with the banks, financial institutions and investment capital organisations in developing countries.

ARIZ provides a revamped range of guarantees to encourage:

- the financing of projects to establish and develop enterprises (from small-scale micro-businesses to small and medium sized enterprises involved in export) by means of medium and long term credit,
- access to refinancing for micro-finance institutions,
- capital contributions from parent companies to their subsidiaries as well as the acquisition of holdings by investment capital organisations in local small and medium sized enterprises,
- financing relating to the improvement of energy efficiency.



## The principal financial institutions

The Togolese banking system is considered developed, because it has a high number (ten or so) of institutions which are members of the Professional Association of Banks and Financial Institutions. Togo also has a Central Bank and is home to the headquarters of the Central Bank of West African States (BCEAO) and the UEMOA Banking Commission.

According to the Central Bank of West African States (BCEAO), the following financial and banking institutions are active in Togo:

- The Guarantee Fund for Private Investment in West Africa,
- The Banque sahélo-saharienne pour l'investissement et le commerce-Togo (*The Sahelo-Saharienne Bank for Investment and Commerce-Togo*),
- Banque régionale de solidarité-Togo (Regional Solidarity Bank-Togo).
- Financial Bank Togo,
- Banque Atlantique Togo (*Atlantic Bank Togo*),
- Cauris Investissement,
- Caisse d'épargne du Togo (Togo Savings Bank),
- Société togolaise de crédit automobile,
- Union togolaise de banque (*Union Bank Togo*),
- Ecobank-Togo,
- Banque togolaise de développement (*Togolese Development Bank*),
- Banque togolaise pour le commerce et l'industrie (*Togolese Bank for Commerce and Industry*),
- Banque internationale pour l'Afrique in Togo (*International Bank of Africa in Togo*),
- Société interafricaine de Banque (*Inter-African Banking Company*).

## The regional financial market

The UEMOA has equipped itself with a regional stock exchange for transferable securities (BRVM) within the framework of a genuine regional financial market facilitating the economic integration of its member countries. It is based in Abidjan, in Côte d'Ivoire. The financial market is governed by community regulations and is placed under the supervision of the Conseil régional de l'épargne publique et des marchés financiers (Regional Council for Public Savings & Financial Markets) (CREPMF). Fund management and intermediation companies (SGI), asset management

companies (SGP), business developers, stock market investment advisors and banking agents are authorised to become involved in this market on behalf of investors .

In addition to its principal mission of increasing the integration of the economies of member countries and supporting the liberal economic policy initiated within the zone, the regional financial market has set itself three objectives:

- Raise levels of savings, thanks to the diversification of financial products which are likely to create the conditions for increased mobilisation of domestic savings and external capital.
- Reinforce the financial structure of enterprises which could mobilise capital in the long term.
- Reduce the costs of financial intermediation by directly connecting offers and demands for capital.



### Microfinance

Conscious of the importance of microfinance in the economic development of the country, Togo specifically instituted a national strategy project for microfinance 2004-2008 and a national microfinance day in 2006.

Togolese women and small farmers represent a major proportion of the clientele for microfinance and are also considered good investment vehicles and a strategic vector in the achievement of poverty reduction targets.

- Microfinance projects (two types of operation)
  - grouped microloans: a loan is granted to a group of people who are jointly and severally liable for repayment of the loan,
  - individual contracts: a person receives a sum of money and must repay it with interest within a relatively short period of time (weeks or months).
- The principal microfinance institutions in Togo:
  - APGA, ASDEB, CAPAB, CEACA, Farmer MicroFinance, FECECAV, FUCEC Togo, MEGPCC Dekawowo, Microfund, Mutuelle Akwaba, OPIC-Togo, TIMPAC, UMECTO, WAGES (Source: Mixmarket.org, a web site which provides an IMF search engine for the African zone and specifies the social character of the institution; its loan portfolio is quoted in dollars) and the Association professionnelle des institutions de microfinance au Togo (*Professional Association of Microfinance Institutions in Togo*).

The OHADA's uniform act relating to cooperatives and mutual societies, a draft of which is currently being examined, is eagerly awaited by operators in the sector.



## Mixed Sources

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