



ICAO Meeting ACCRA 28/31 th March 2017 – Optimizing the Air Transport Operating Environment (session 6)

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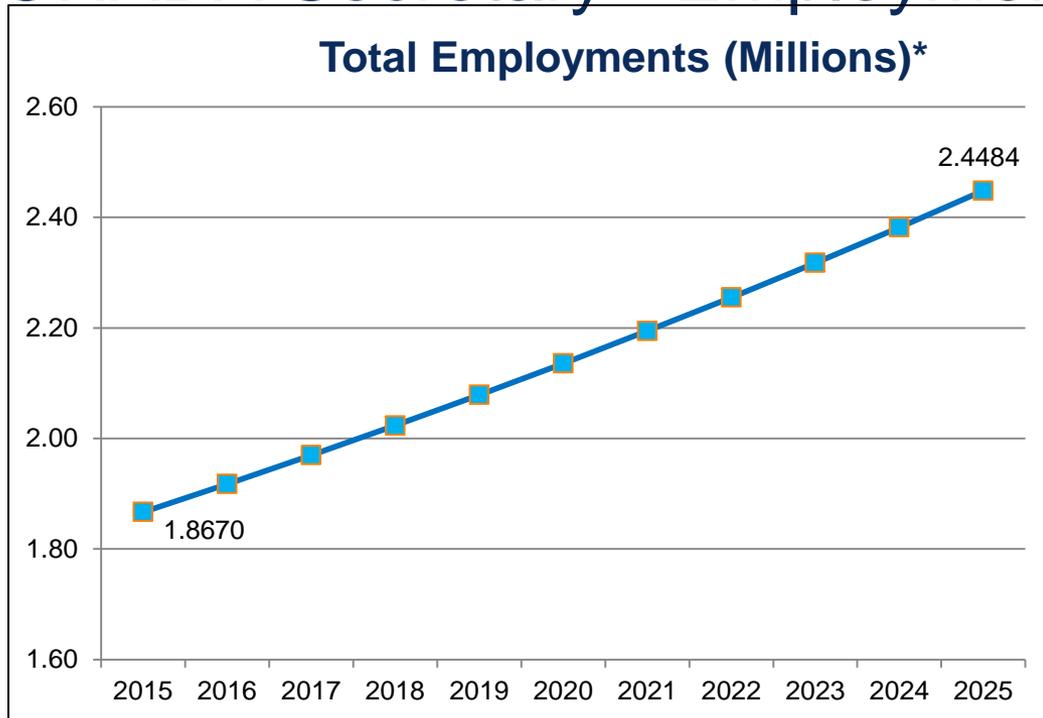
OHADA Revised Uniform Act in May 2014 : a threat for the air transport environment and development

- OHADA – Corporate Law body – for 17 countries: Benin, Burkina Faso, Cameroun, République du Centre Afrique, Tchad, Comores, Congo, République Démocratique du Congo, Guinée Equatoriale, Gabon, Guinée, Guinée Bissau, Côte d’Ivoire, Mali, Niger, Senegal et Togo

- Revised Uniform Companies Act : obligation to convert a branch to a separate local legal entity after a 2 year period unless exemption justified by a special regime is recognized
 - If, beyond this period of time, the branch is not converted to a local legal entity governed by the laws of the respective contracting State, the branch shall be revoked from the commercial register of the Contracting State in which it was operating → Threat for a total of 30 IATA airlines flying to OHADA zone

- Prior to the revisions to the Uniform Act in May 2014, there was no time limit regarding the issuance (or continued reissuance) of the exemption (renewable every 2 or 5 years).

Presentation of Business Case of air transport to OHADA Secretary- Employment



- Contribution in terms of employment of tourism and travel (direct and indirect) expected to grow by 2,7% per year from 2015-2025.
- The % of tourism and travel over total employment is significant in some countries :
 - Cameroun: 5.5% (2014); 5.7% (2025)
 - Sénégal: 9.9% (2014); 9.7% (2025)
 - Guinée: 3.5% (2014); 3.4% (2025)

* Comprend tous les pays de l'OHADA sauf le Congo, Guinée Bissau, Guinée Equatoriale.

Source: <http://www.wttc.org/research/economic-research/economic-impact-analysis/country-reports/>

Submission of an interpretation to the OHADA Court

- In late 2015, there was an increasing lack of consistency with the interpretation of the Revised Uniform Act by member states in granting foreign airlines with an indefinite exemption from establishing separate local legal entities with Indefinite exemptions afforded to carriers in some countries and temporary exemptions (2 years) afforded to carriers in others
- **IATA submitted a formal request** to the OHADA Joint Court of Justice and Arbitration (JCJA) in December 2015
 - In its submission, IATA requested that the Court officially confirm that based on the legislation, airlines were subject to a special regime and thus entitled to an indefinite exemption

Ruling from the OHADA Court

- The OHADA JCJA issued a favourable ruling on 18 October 2016
- In its ruling, the JCJA stated the following, including:
 - Airline companies which are foreign to the OHADA area...come within the category of companies subject to a special regime. Consequently, their branches located in the member States of the OHADA are eligible to benefit from unlimited exemption from the obligation to create subsidiaries
 - As a consequence of their belonging to “companies subject to a special regime”, branches benefit from the unlimited exemption from the obligations to be converted to a legal entity governed by the laws of each OHADA State
 - Air Service Agreements within the framework of Chapter IV of the Chicago Convention pertain to “measures intended to facilitate air transport”; they therefore constitute “legislative or regulatory provisions” to which are subject “companies subject to a special regime” within the meaning of the Act

Conclusion : a good understanding by OHADA of air transport environment

- Affected foreign carriers operating in OHADA member states have been contacting the respective government ministry (Ministry of Commerce) informing them of the JCJA ruling and request that such exemption be granted.
- As per ICAO principles, the airline activity is to be performed within a “light” juridical entity such as a branch in countries other than the country where the head-office of the airline is located
- As per article 21 of the 2003 ICAO Template of Air Service Agreement, each country signing an ASA should grant to the airline the right to establish an office in order to sell and market international air services and the interpretation of the OHADA JCJA derives directly from this principle