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A LEGAL ANALYSIS OF OHADA BANK GUARANTEES AND THEIR IMPACT ON ACCESS TO TRADE FINANCE BY SMALL AND MEDIUM ENTERPRISES IN CAMEROON.

By

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DECLARATION

I, EKOLE BAZIL NAJEMBE, declare that this research paper is my original work and has not been presented for a degree or for any other purpose to any other institution other than the University of Pretoria

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This work has been submitted with my approval as supervisor.

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DEDICATION

I dedicate this work first to the Almighty God for taking me this long with my academic journey and the Najembes, my spouse, Futella Christine Akum Epse Najembe, Najembe Gabriella Diale-Endale, Ekole Bazil Najembe Jr, Najembe Arreilla Jemea-Nah and Ekole Jacque-leolpold Najembe, for their unconditional love, constant support, and encouragement throughout my postgraduate studies at the University of Pretoria.

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LIST OF ABBREVIATIONS

AfCFTA	African Continental Free Trade Area
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
SME(s)	Small and Medium-sized Enterprises
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale (Central African Economic and Monetary Community)
CCJA	Cour Commune de Justice et d'Arbitrage (Common Court of Justice and Arbitration)
COBAC	Commission Bancaire de l'Afrique Centrale (Banking Commission of Central Africa)
BEAC	Banque des États de l'Afrique Centrale (Bank of Central African States)
ICC	International Chamber of Commerce
URDG 758	Uniform Rules for Demand Guarantees (2010 revision, ICC Publication No. 758)
ISP98	International Standby Practices (ICC Publication No. 590, 1998)
UCP 600	Uniform Customs and Practice for Documentary Credits (ICC Publication No. 600, 2007)
URCG	Uniform Rules for Contract Guarantees (ICC rules preceding URDG)
UCP 500	Uniform Customs and Practice for Documentary Credits (previous ICC version before UCP 600)
UN Convention	United Nations Convention on Independent Guarantees and Standby Letters of Credit (1995)

LIST OF CASES

Blancet v Compagnie Générale de Crédit-bail (France, Court of Cassation)

Époux Jonville vThe SA Ranger (France, Versailles Court of Appeal)

Société Ivoirienne de Banque v Société CORECA (OHADA, Côte d'Ivoire)

Treben c Compagnie Générale de Location et d'Équipement (France, Paris Court of Appeal)

Van Niekerk & Schulze (UK case reference , demand guarantee treatment) *(mentioned in comparative context with UK law)*

Van de Merwe v IIG Capital LLC (England)

SA Technique électrique de l'Oise v Wahda Bank (France)

LIST OF LAWS / LEGAL INSTRUMENTS

Laws / Legal Instruments

Agreement Establishing the African Continental Free Trade Area (AfCFTA) (2018)

Constitution of the Republic of South Africa (1996)

OHADA Treaty on the Harmonisation of Business Law in Africa (1993, Port-Louis, Mauritius)

OHADA Uniform Act on Secured Transactions (Revised, 2010)

OHADA Uniform Act on Commercial Companies and Economic Interest Groups (1997, revised 2014)

Uniform Commercial Code (UCC), Article 5 (Letters of Credit, USA)

United Nations Convention on Independent Guarantees and Standby Letters of Credit (UNCITRAL, 1995)

International Chamber of Commerce (ICC) Rules

Uniform Customs and Practice for Documentary Credits (UCP 500) ICC Publication No 500, 1993

Uniform Customs and Practice for Documentary Credits (UCP 600) ICC Publication No 600, 2007

Uniform Rules for Contract Guarantees (URCG) ICC, 1978

Uniform Rules for Demand Guarantees (URDG 458) ICC Publication No 458, 1992

Uniform Rules for Demand Guarantees (URDG 758) ICC Publication No 758, 2010

International Standby Practices (ISP98) ICC Publication No 590, 1998

ABSTRACT

Small and Medium Enterprises (SMEs) are increasingly recognised for their valuable contributions to economic advancement. In Cameroon, they play a critical role in job creation, income distribution and poverty alleviation. Despite their potential, SMEs face significant financial barriers, especially in accessing trade finance. This dissertation examines the extent to which the OHADA Uniform Act Organising Securities (2010) facilitates or impedes the use of bank (demand) guarantees by SMEs in Cameroon as a financing instrument to access trade financing. The paper further examines the conceptual and theoretical nature of demand guarantees. It also discusses the facilitation role of demand guarantees for SMEs' growth, as well as their legal rigidity, institutional shortcomings, and limited awareness of the instrument. Employing doctrinal and content analysis methods, the paper examines the legal and institutional frameworks governing bank guarantees in Cameroon under the 2010 revised OHADA Uniform Act Organising Securities, as well as their effective practical applications. The findings reveal that, although the harmonised legal framework established standardised legal structures that enhance credit predictability for the use of demand guarantees, there exist some restrictive provisions, such as fixed nomenclature requirements, a lack of flexibility in its applicability, and ambiguous enforcement mechanisms. Drawing on legal theory, international best practices, and economic data, the dissertation presents legal and policy recommendations to enhance the effectiveness of OHADA-compliant bank guarantees. Through regulatory reform, enhancing transparency, flexibility, and legal certainty can significantly enhance SME access to finance, encourage intra-African trade, and improve economic development in Cameroon.

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Small and Medium-sized Enterprises (SMEs) are widely recognised as key contributors to inclusive economic growth and sustainable development, both globally and in Cameroon. SMEs constitute a vital component of national economies. The Cameroonian Ministry of Small and Medium Enterprises (MINPMEESA) categorises SMEs as a sector that employs between six and one hundred individuals with revenues exceeding two hundred and fifty thousand francs of the Communauté financière d'Afrique (CFA).[1] SMEs in Cameroon account for approximately 99.8% of all businesses in the country.[2] According to data from the Cameroon National Institute of Statistics, SMEs account for approximately 45% of Cameroon's gross domestic Product (GDP) and employ about 60% of the nation's workforce.[3]

The goal of the African Continental Free Trade Area (AfCFTA) is to promote intra-African trade by reducing tariffs and enhancing market access, thereby significantly benefiting SMEs by expanding their customer base and fostering competitiveness.[4] Since many SMEs are innovative and adaptable, they can leverage this agreement to enhance their production capacity and explore export opportunities, hence promoting regional trade. [5]According to African Development Bank (AfDB) reports, approximately 61% of SMEs in Cameroon lack access to credit and are unbanked.[6] This problem is further exacerbated by banks' perception of lending risk to SMEs as high-risk activities for the

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1 FN Tapang 'Modelling sustainability challenges of small and medium-sized enterprises in Cameroon: case study in Buea' (2023) 28 *International Journal of Science and Business* 206.

2 FSG Talom & RK Tengeh 'The Impact of mobile money on the financial performance of the SMEs in Douala, Cameroon' (2020) 12 *Sustainability* 183.

3 FN Tapang & GN Enongene 'Moderating effects of weather conditions on the relationship between electricity supply reliability and SME sustainability' (2023) 11 *International Journal of Entrepreneurial Knowledge* 20.

4 a beyene 'enhancing the competitiveness and productivity of small and medium scale enterprises (smes) in africa: an analysis of differential roles of national governments through improved support services: (2002) 27 *Africa Development*.130.

5 N Martin and others 'Determinants of financing of small and medium-sized enterprises in Cameroon: an empirical analysis' (2021) 4 *Kardan Journal of Economics and Management Sciences* 25.

6 T Wansi & DN Burrell 'Financing challenges of Cameroon's small and medium enterprises (SMEs)' (2023) 7 *Financial Markets, Institutions and Risks* 88.

financial institutions.[7] According to data from the Cameroon Ministry of Small and Medium-Sized Enterprises, Social Economy, and Handicrafts (MINPMEESA), the financing gap for SMEs is estimated to be over 1.6 trillion CFA francs (approximately USD 2.8 billion), underscoring the magnitude of the challenge faced by these enterprises.[8]

The Organisation for the Harmonisation of Business Laws in Africa (OHADA):

The acronym OHADA stands for "Organisation pour l'Harmonisation en Afrique du Droit des Affaires," translated into English as the "Organisation for the Harmonisation of Business Laws in Africa." This intergovernmental organisation was founded on 17 October 1993 in Port-Louis, Mauritius. It established a treaty known as the OHADA Legal Framework, which facilitates the integration of business law and its uniform implementation across its 17 member states.[9] The primary objective of OHADA is to harmonise and modernise the business laws of its member states.

The OHADA implements its objective through the creation of various Uniform Acts. The OHADA Uniform Act Organising Securities contains clauses that provide multiple guarantees to creditors, thereby reinforcing their rights over debtors. The legal requirement in the Uniform Act addresses the following: classification of collaterals, personal guarantees, securities on movables, mortgages, and leases.[10] The OHADA Uniform Act also establishes a legal framework that includes provisions for bank guarantees; however, Cameroon SMEs do not utilise this instrument, and as a result, SMEs face significant challenges in using the OHADA legal framework's bank guarantee.

The financing barrier faced by SMEs is due to a rigid legal framework, credit histories, perceived credit risks, and insufficient collateral.[11] The provisions of bank guarantees under the OHADA Uniform Act were created to help mitigate the challenges, enabling

[7] AI Kato & GE Tsoka 'Impact of venture capital financing on small- and medium-sized enterprises' performance in Uganda' (2020) 12 *The Southern African Journal of Entrepreneurship and Small Business Management* .11.

[8] NGR Kenmegni 'Firms' Characteristics and Cameroonian Small and Medium Size Enterprises' Access to Bank Loan' https://www.iosrjournals.org/iosr-jef/papers/Vol13-Issue4/Ser-1/A1304010108.pdf (accessed 13 June 2025) 1.

[9] Countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of the Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal, and Togo.

[10] M Fontaine 'Les objectifs de l'harmonisation du droit des contrats Deux projets OHADA et les principes OHADAC: objectifs contrastés' (2016) 24 *European Review of Private Law* 393.

[11] Fontaine(n 10) 393.

SMEs to secure the necessary funding, particularly in the context of trade financing.[12] Despite the advantages of the legal provision for the demand guarantee in the OHADA Uniform Act and the economic importance of SMEs' contributions to the Cameroonian economy, SMEs still encounter numerous obstacles in effectively using bank guarantees to secure financing, especially the OHADA demand guarantee, leading to a significant gap in accessing trade finance.[13]

The role that bank guarantees play as outlined in the OHADA legal framework can offer valuable insights into how legal tools promote trade finance, supporting SMEs' overall development goals and addressing urgent economic needs.[14] By analysing these dynamics, the paper aims to provide evidence-based recommendations that can inform policymakers and support the development of targeted interventions to improve financial access for SMMEs. Ultimately, in an era marked by economic uncertainty and persistent inequality for SMMEs, competition policy makes a meaningful contribution to creating a more inclusive economy and a supportive environment for these enterprises.

1.2 STATEMENTS OF THE PROBLEM

Despite the establishment of the OHADA Uniform Act, legal rigidity, institutional shortcomings, and limited awareness continue to restrict SMEs in Cameroon from accessing and effectively utilising demand guarantees under the OHADA Uniform Act. This problem was first noticed with the adoption of the OHADA Uniform Act in 1997, which has not provided SMEs with practical access, leading them to operate informally, rely on personal credit, and often struggle to comply with the legal regime. As a result, bank guarantees under the OHADA law remain underutilised within the SME sector, and this affects their growth because they cannot carry out their activities effectively and efficiently using this tool. The gap between the legal framework that governs demand guarantees and their practical utilisation continues to hinder SMEs' capabilities to engage in formal trade finance operational schemes. This shortcoming persists despite scholarly critiques, such as those by Enonchong, who has highlighted the deficiencies of the

12 F Taghizadeh-Hesary and others ‘A model for calculating optimal credit guarantee fee for small and medium-sized enterprises’ (2021) 95 *Economic Modelling* 361.

13 H Hu and others ‘Evolutionary game of small and medium-sized enterprises’ accounts-receivable pledge financing in the supply chain’ (2022) 10 *Systems Journal article* 21.

14 Y Su & B Zhong ‘Supply chain finance decision analysis with a partial credit guarantee contract’ (2017) 5 *Journal of Applied Mathematics and Physics* 1355.

OHADA bank guarantee regime and called for reforms to align it with best practices adopted in more developed jurisdictions worldwide.[15]Enonchong recommended reconsidering Article 29 of the Uniform Act (now Article 40 in the revised Uniform Act of 2010), which bans natural persons from issuing demand guarantees to remove obstacles for SME founders who often provide personal security in informal lending settings.[16] Notwithstanding, such suggested reforms remain largely theoretical and have not yet been adopted.

Three leading challenges are the cause of this problem that this research seeks to investigate, namely:Legal rigidity, where the Uniform Act imposes strict formal requirements that disproportionately affect SMEs' operational activities. Article 40 of the Uniform Act prohibits private individuals from issuing demand guarantees, excluding SME owners and their directors from personally guaranteeing credit obligations indirectly when such guarantees are needed, despite their central role in informal financing structures.[17] Enonchong has criticised this as an unwise protective approach which fails to reflect commercial realities and hence denies SMEs access to an essential financing instrument.[18] In other jurisdictions, such as England and France, lending practices for SMEs are accepted when a natural person issues a demand guarantee. In contrast, Article 40 restricts it, hurting SMEs in Cameroon.[19]

Institutional shortcomings*:* Even where applicable law in Cameroon permits the issuance of guarantees, other obstacles, such as inconsistent institutional enforcement and interpretation, remain an institutional problem. Financial institutions in Cameroon are often reluctant to honour OHADA-guarantees due to concerns about loss, operational inefficiencies, predictability and uncertainty.[20] This has led to the inadequate application of the legal framework, discouraging SMEs from relying on the OHADA guarantee mechanism.

Limited awareness: A greater percentage of SMEs in Cameroon are unaware of the existence of OHADA demand guarantees. Financial illiteracy, low engagement with

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15 N Enonchong *Demand guarantees under the OHADA Uniform Act on Securities* file:///C:/Users/User/Downloads/ssrn-2863868-14.pdf (accessed 14 June 2025) 9.
16 Enonchong (n 15) 9.
17 OHADA Uniform Act Organising Securities, Article 29
18 Enonchong (n 15) 9–10.
19 Van Der Merwe v IIG Capital LLC \EWHC 2631 (Ch); Treben v Compagnie Générale de Location et d'Équipement Paris Court of Appeal, 14 February 1991, D. 1993 Somm. 109.
20 Enonchong (n 15) 3–4.

formal financial institutions, and a lack of targeted education on trade finance instruments further restrict their use. Enonchong notes that demand guarantees are a relatively new creation in francophone Africa and were practically unknown in most OHADA states before the 1997 Uniform Act. [21]Even after its adoption, demand for the instrument remains low because SMEs do not understand how it operates.[22]

1.3 RESEARCH QUESTIONS

1.3.1 Main Research Question:

How does the legal regime governing OHADA Bank Guarantees affect the ability of SMEs in Cameroon to access trade finance?

1.3.2 Sub-Research Questions

a) To what extent do the legal sources, mechanisms, and commercial functions of demand guarantee instruments shape their operation, the roles of the parties involved, and the resolution of common legal issues across jurisdictions?
b) What is the nature and legal function of bank (demand) guarantees under the OHADA Uniform Act, and how can their conceptual and theoretical frameworks explain their role in facilitating commercial transactions?
c) To what extent does the OHADA bank guarantee framework facilitate or hinder access to trade finance for SMEs in Cameroon?
d) What legal and institutional barriers affect the effectiveness of bank (demand) guarantees in facilitating access to finance for SMEs in Cameroon?
e) What legal reforms and policy recommendations could enhance the effectiveness of OHADA guarantees in improving trade finance access for Cameroonian SMEs?

1.4 OBJECTIVES

1.4.1 General objective

To critically analyse the legal regime governing OHADA bank guarantees and assess its impact on the ability of Cameroonian SMEs to access trade finance.

[21] Enonchong (n 15) 3–4.
[22] Enonchong (n 15) 3–4.

1.4.2 Specific Objectives

a) To examine the legal sources, mechanisms, and commercial functions of demand guarantee instruments, and assess how they shape their operation, the roles of the parties involved, and the resolution of common legal issues across jurisdictions.
b) To analyse the nature and legal function of bank (demand) guarantees under the OHADA Uniform Act, and evaluate how their conceptual and theoretical frameworks explain their role in facilitating commercial transactions.
c) To evaluate the extent to which the OHADA bank guarantee framework facilitates or hinders SMEs' access to trade finance in Cameroon, and whether its formal requirements accommodate the financing needs of SMEs.
d) To identify the legal and institutional barriers preventing SMEs from effectively utilising OHADA-compliant bank guarantees for trade finance.
e) To propose legal reforms and policy recommendations

1.5 LITERATURE REVIEW

1.5.1 Key Legal Provisions Under OHADA's Uniform Act on Secured Transactions Governing Bank Guarantees

The Uniform Act has established a precise legal instrument that regulates transactions of its member states, including Cameroon. The legal framework provides guidelines for secure lending. According to Cazali and Maffei, the Uniform Act established various forms of secured transactions, including bank guarantees, which the principle of legal predictability can rely on and are aligned with civil law jurisdictions, such as Cameroon, that face legal and documentation issues arising from the use of such financing techniques and how they interact with each other from a legal and contractual perspective. [23]Additionally, he argues that specific provisions require guarantees for exceptionally secure obligations to be in writing, establishing a formal requirement that banks must adhere to when providing services such as guarantees. Since banks have the legal right to increase guarantees in the event of default, the implementation of these provisions in Cameroon must guarantee that SMEs have simpler access to trade finance.

This harmonisation of the OHADA legal framework on business law creates a clear regulatory environment, supporting both debtors and creditors in their transactions, as highlighted in the literature on project finance under civil law, which discusses the

[23] F Maffei & C Cazali *Project Finance in Civil Law Jurisdictions* (2015) 494–531.

implementation of such transactions.[24]The OHADA regime finds a complementary operational partner in Afreximbank, whose AFGAP legal infrastructure provides mechanisms for risk mitigation through instruments compatible with secure transaction regimes.[25] For example, Afreximbank's letter of credit confirmation, Guarantee, and Country Risk Guarantee Directly address commercial and political risks, which are powerfully aligned with the OHADA legal framework, to enhance credit confidence while safeguarding debtor participation. These facilities cover a range of eligible instruments, including letters of credit, performance bonds, and trade-related promissory notes, and offer extended protection of up to one hundred per cent (100%) of the value of the underlying transaction, effectively bridging the enforcement gap between legal provisions and trade finance best practices.[26]

While Maffei and Cazali provide a concise overview of the legal framework underpinnings which facilitate bank guarantees, their analysis does not sufficiently address the practical implementation of these legal provisions at the institutional level in Cameroon. This gap implies that, while laws exist to protect and facilitate trade engagements, their real-world application may be hindered by local inefficiencies or misunderstandings. This study examines practical interpretations and implementations, focusing on how banks in Cameroon can adapt to these laws to enhance SME access to trade financing.

1.5.2 Accommodation of Formal Requirements for Bank Guarantees to SMEs Financing Needs in Cameroon

Furthermore, the law governing bank guarantees does not favour SMEs' access to trade finance for international trade-related business deals. Tawah's study presents this vital perspective.[27] Tawah explains the challenges that SMEs face, particularly emphasising that their limited access to formal financing is worsened by the fact that they have limited awareness of the rules under the OHADA Uniform Act and how to best utilise them, including an explicit legal provision on secured transactions.[28] A gap has been identified

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[24] Maffei & Cazali (n 23) 494-531.
[25] As above.
[26] B Oramah 'Afreximbank in the Era of the AfCFTA' (2021)8 *Journal of African Trade* 24-35.

[27] RN Tawah 'Financing small and medium-sized enterprises in Cameroon' in C Tamesse & V Tih (eds) *The Oxford handbook of the economy of Cameroon* (2023) 547–562.
[28] Tawah (n 27) 562.

that SMEs consider very important to investigate: how the OHADA legal regime can be used to enhance SMEs' access to financial resources. These literary sources suggest that they do not fully understand the legal framework for using the instrument; consequently, their ability to utilise bank guarantees for trade finance remains hampered or underutilised.

However, Tawah's research primarily focuses on the characteristics of SMEs and their interactions with banks, without delving deeply into the specific legal and procedural obstacles that inhibit effective engagement with OHADA bank guarantees. While Tawah provides an essential analysis of the factors affecting access to finance, the current research intends to significantly extend this by detailing the specific procedural and institutional barriers that exist within the framework of OHADA, drawing upon case studies that highlight these challenges. Consequently, this research aimed to fill the identified gap by not only discussing the characteristics of SMEs but also illuminating the operational and legal intricacies that limit the adoption of bank guarantees.

1.5.3 Legal and Institutional Barriers to Effective Utilisation of OHADA-Compliant Bank Guarantees

Leno's investigated the inefficiencies and ineffectiveness in the banking system in Cameroon, and the unpredictable interpretations of OHADA’s legal provisions lead to disparities in access to trade finance for SMEs.[29] His findings reveal that, although regulatory instruments exist for demand guarantee, their implementation is inconsistent across different financial institutions and banks within the OHADA member states, thereby making it very difficult for SMEs to utilise their ability to secure trade finance tools recognised by the OHADA framework. This perspective aligns with this research, which aimed to explore how such interpretative variances affect the overall perception of risk related to SMEs within the banking sector in Cameroon and the entire CEMAC region.

Leno presents an influential argument regarding systemic inefficiencies and how they deter SMEs from entirely using bank guarantees. Yet, he does not explore the potential for collaborative strategies between banks and SMEs to foster financial literacy and

[29] ND Leno ‘The resolution of insolvency in Cameroon’ in O Akanle & R Bamodu (eds) *Corporate insolvency law and bankruptcy reforms in the global economy* 174–190.

enhance institutional processes. This research sought to explore this gap by examining possible foresight measures for financial institutions to actively engage with SMEs, educating them about available financial instruments while creating an environment conducive to the better interpretation and application of OHADA guarantees.[30]

Tawah further investigated the institutional shortcomings, such as inconsistent bank policies and bureaucratic inefficiencies, that have a direct proportional link to the effectiveness of guarantee implementation. Banks may interpret OHADA's provisions differently, leading to disparities and the acceptance of bank guarantees across all financial institutions. As investigated by Leno, the ineffectiveness within the banking sector and the inconsistent application of governing laws create a situation in which SMEs regard the use of bank guarantees as an impediment rather than an opportunity.[31] A central avenue for overcoming such institutional reluctance is the deployment of credit facilitation products by Afreximbank, which leverages its preferred creditor status and multilateral membership to provide partial or complete guarantees for service delivery, thereby enhancing its ability to absorb substantial portions of economic and political risk, ranging from borrower insolvency to currency transfer restrictions. To encourage intra-African trade and global commerce opportunities for SMEs, Afreximbank has lowered the perceived risk profiles of SME transactions. In addition to encouraging banks to accept OHADA-compliant guarantees, this strategy promotes international trade by enabling SMEs to access working capital and participate in competitive intra-African and global trade. [32]

Notwithstanding, Leno's analysis does not adequately address the mechanisms that lead to these inconsistencies in the interpretation of the legal provision governing demand guarantee under the OHADA Uniform Act, nor does it explain how different economic realities of SMEs affect the perceived risks by banks and other lending institutions in Cameroon. In this context, this research will delve into these aspects, investigating not only the barriers posed by uneven regulatory application but also suggesting potential remedies that could streamline interpretations of OHADA bank guarantees among Cameroonian banks and other financial institutions. To provide SMEs in Cameroon with

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[30] Leno (n 29)191.
[31] Leno (n 29)191.
[32] African Export-Import Bank (Afreximbank) *Annual report 2022: Supporting African trade* (2022) https://media.afreximbank.com/afrexim/Africa-trade-report-2022.pdf (accessed 12 July 2025) 45.

a more comprehensive understanding of trade finance-related challenges, this study was built upon Leno's findings by focusing on key areas.

1.5.4 Interpretation and Implementation of OHADA Guarantee Provisions by Financial Institutions

According to Alexander, financial institutions in Cameroon interpret and implement the OHADA guarantees provision, which has a significant impact on SMEs' access to trade finance.[33] Banks and other financial institutions have varying policies regarding the requirement for bank guarantees, resulting in inconsistent practices that confuse a significant number of SMEs. He further stated that the banking sector needs to standardise its interpretation to ensure clarity and predictability in the utilisation of bank guarantees. According to this literature, there is a need for a uniform approach to applying the national legal framework governing it, so that it facilitates greater participation by SMEs.[34]

However, Hadjiemmanuil also discussed the relationship between financial institutions' risk assessment-related activities and concluded that they often place a great emphasis on the creditworthiness of the borrower rather than relying on bank Guarantees.[35]These activities of the bank usually associate SMEs with very high-risk profiles; many financial institutions may still perceive lending to SMEs as too risky, despite the presence of a guarantee. As this literature emphasises, understanding the interplay between the perception of risk and legal frameworks is crucial for developing trust with lenders.[36]

1.5.5 Contribution to the Academic Discourse

While the existing literature has laid the groundwork for understanding OHADA's influence on the accessibility of trade finance for SMEs, significant gaps remain regarding the uneven interpretations of legal provisions by financial institutions and practical implementation barriers. This study adds to the ongoing discourse by addressing these gaps in depth, providing detailed findings on the operational challenges and opportunities that exist. Through a comprehensive examination of this subject matter, this research aimed to provide actionable recommendations that enhance SMEs'

33 K Alexander 'The banking union: from the past to the future' (2023) 40 *European Law Review* 154-187.
34 Alexander (n 33) 187.
35 As above.
36 C Hadjiemmanuil *Bank Resolution Financing in the Banking Union* (2016) 34.

understanding and utilisation of the OHADA framework, thereby bolstering their access to trade finance in Cameroon.

1.6 RESEARCH METHODOLOGY

This study used qualitative research methodology, analysing both primary and secondary data. The primary data was sourced from the OHADA Uniform Act for secure transactions. In contrast, secondary data comprised of scholarly articles and professional reports on bank guarantees and SME access to trade finance, which were collected through desk research rather than fieldwork. The research employed two primary methods for data collection.

Doctrinal Legal Analysis: The research examined legal texts, primarily the OHADA Uniform Act on Secured Transactions, to clarify the structure of bank guarantees and their application to SMEs. The ICC standard of Demand Guarantee is widely used globally. This study focused on reviewing academic articles, case studies, and reports that discuss the role and challenges of bank guarantees for SMEs, supporting the argument with contextual background and highlighting existing issues.

Data for this research were collected by analysing legal texts, specifically the OHADA Uniform Act Organising Securities, and comparing it with the ICC standard of demand guarantees, which is practised in other jurisdictions such as France, South Africa, and England, to identify the rules concerning the impact on bank guarantees for SMEs in Cameroon. The research conducted an academic analysis, exploring relevant scholarly literature and theoretical frameworks with a primary focus on studies that examine bank guarantees and the effectiveness of SMEs in accessing trade finance for daily operations and growth. This study further reviewed government and financial institution reports concerning SMEs and trade finance to gather additional information on the current financial access landscape.

The data were analysed through content analysis, identifying recurring themes or patterns in the legal documents and literature. This strategy helped the researcher understand the common benefits and challenges associated with bank guarantees for SMEs, enabling them to effectively utilise the financial instrument to its full satisfactory capacity and encourage their growth. Finally, a thematic analysis organised the findings into key themes relevant to the research objectives, such as the legal structure of bank guarantees, the barriers SMEs face in accessing trade financing instruments, including demand guarantees, and recommendations for enhancing the use of demand guarantees.

1.7 SIGNIFICANCES OF THE STUDY

This research is crucial for multiple stakeholders within the Cameroonian economy, encompassing all 17 member states that are parties to the OHADA Treaty, as well as financial institutions, policymakers, and SMEs themselves. Policymakers can utilise the OHADA bank guarantee as a tool to help small and medium-sized businesses thrive. This can help them develop plans to promote financial inclusion and establish a regulatory framework that facilitates easier access to loans for small and medium-sized enterprises. This study also calls for policies based on evidence that can make financial tools more accessible to SMEs. Ultimately, our study aims to foster a more open economic climate that enables small and medium-sized businesses to thrive and make significant contributions to both local and African markets.

1.8 ETHICAL CONSIDERATION

This research did not involve the collection of data from human subjects; instead, it gathered data in the form of text, as mentioned in the methodology section. The ethical issues related to the study primarily concern respecting the intellectual property of other authors, particularly in terms of how the study utilised and reported the data collected. The study adhered to UP's plagiarism and related policies to address this

1.9 LIMITATIONS AND DELIMITATIONS

1.9.1 Limitations

This study was limited in scope, as it was confined to analysing bank guarantees under the OHADA Uniform Act. A challenge of the methodology was that the study relied solely on qualitative analysis of secondary data, which may overlook real-world insights into the research problem, best achieved through interviews and surveys if the researcher had the time to conduct fieldwork in Cameroon. As a result, the findings might not entirely reflect the SME dynamic challenge in practice in Cameroon. A change in legislation in the future may be beyond the researcher's control, including those related to bank or demand guarantees or the economic landscape in Cameroon, which could influence the relevance and applicability of the findings during the study timeframe.

Resource limitation: The fact that the timeline to conduct this study was just three months and the lack of budget availability is also significant constraint of this study because the researcher didn't have access to financial institutions or SME owners in Cameroon, insight, and the results might lack a comprehensive understanding regarding the practical application of bank guarantees. Recognising that intersectional inequality adds to the obstacles faced by SMEs, especially by marginalised groups, may be worthwhile. Accessing trade finance is made more difficult for women-owned SMEs from the standpoint of feminist economic justice. But these particular marginalised groups would not be the primary focus of the study.

1.9.2 Delimitations

This research was confined to Cameroon with a focus on the subject matter outlined in the OHADA Uniform Act on Secured Transactions. It did not address other forms of legal frameworks or regulations that apply to other financial instruments within the country and beyond the OHADA treaties.

Scope of the Study: The examination primarily focused on the OHADA Uniform Act on Secured Transactions and international best practices, including the ICC demand guarantee and other practices in developed countries.

1.10. CHAPTERS OUTLINES

Chapter 1 provides a general introduction to the dissertation, outlining the key aspects of the study, including the research background, problem statement, research questions, and research objectives. The methodology part will analyse the approaches to be followed and the rationale for their use in this thesis. The significance and the value of the dissertation, as well as a summary of its chapters, will also be included**.**

Chapter 2 provides an overview of demand guarantee instruments by examining their legal sources, the fundamental mechanisms underlying their nature, their commercial function, the role of the parties involved in relation to their conceptual and theoretical framework, and the common legal issues and characteristics they govern.

Chapter 3 will focus on understanding demand guarantees under the OHADA Uniform Act, their facilitating role for SMEs in Cameroon and the role of the OHADA Bank or demand guarantee framework in facilitating access to trade for SMEs in Cameroon

Chapter 4 will critically examine the legal and institutional challenges that prevent SMEs from fully utilising demand, identifying and reviewing challenges such as regulatory complexities and limited institutional support, while comparing these with best practices from other jurisdictions and international law.

Lastly, Chapter 5 presents the research findings, recommendations, and conclusions drawn from the issues addressed in this dissertation.

CHAPTER 2:

THE NATURE AND LEGAL FUNCTION OF BANK (DEMAND) GUARANTEES UNDER OHADA LAW: CONCEPTUAL AND THEORETICAL PERSPECTIVES

2.1 INTRODUCTION

The research topic and problem statement were introduced in the previous chapter of this research, which also noted that Cameroon's bank guarantees remain underutilised due to the strict legal frameworks. To gain a deeper understanding of the unified regulations governing these financial instruments in Cameroon, this chapter will examine the nature of bank guarantees and their operational role under the OHADA Uniform Act.
This chapter will critically examine the brief historical development in the international best practice of demand guarantees, the role and purpose of demand guarantees in general, the autonomy principle, the formal prerequisite imposed by the Uniform Act, the compatibility of the OHADA guarantee legal framework with SME realities, and the extent to which the OHADA legal system aligns with international best practices. This chapter is significant because solving these issues requires knowledge of the Uniform Act's definition and legal framework for bank guarantees as well as global best practices. By examining the OHADA Uniform Act, this chapter provides a detailed explanation of how a unified approach can enhance the effective use of demand guarantees, enforcement, and the instrument's credibility. It is on this basis that it is essential to suggest realistic reforms and progressive increased trust among parties involved in international trade throughout OHADA member states, including Cameroon. Here now, let's start with the nature of the Bank guarantees

2.2: The nature of bank guarantees

2.2.1 Bank Guarantees

The concept of Bank or demand guarantees has become increasingly crucial in trade transactions in recent times, as globalisation and trade liberalisation are rapidly expanding.[37] Under the OHADA Uniform Act on Secured Transactions, it has developed into a crucial legal tool in modern business transactions, making it easier for SMEs to

[37] B Oramah '*Foundations of structured trade finance*' Afreximbank (2025) 10.

obtain financing. Demand or bank guarantees are regarded as an essential financial tool for the growth of SMS in Cameroon and the entire OHADA member states.[38]Their ability to offer financial security and build trust among contracting parties makes them indispensable, especially in jurisdictions where contract enforcement remains uncertain, like Cameroon.

Bank or demand guarantees have become a standard part of international trade. For instance, instruments such as demand guarantees, standby letters of credit, and commercial letters of credit are all treated as autonomous contracts, whose operation will not be interfered with by courts on grounds that are immaterial to the guarantee or credit itself.[39]The concept behind the demand guarantee transaction is that if the presented documents (where applicable) align with the terms of the credit, the financial institution must pay; if the documents do not meet the requirements, the bank must not pay. However, when it comes to the use of demand guarantees by SMEs in Cameroon, a considerable number of exceptions to the autonomy principle of demand guarantees have been found over time. The terms and conditions of the underlying contract may be taken into consideration, and the bank may, in many cases, ignore demand guarantee service. This feature makes bank guarantees especially relevant for banks and suppliers, as it significantly alleviates concerns about credit risk.[40]

The importance of demand guarantees stretches beyond fostering minimal trade transactions; they are vital in sectors where trust is paramount but may be in short supply.[41] In the context of SMEs in Cameroon that lack access to formal financing to carry out their operations at both the domestic and international levels, bank guarantees can be significant for stimulating supply chain financing in both domestic and international trade that SMEs can undertake. SMEs are decreasing their reliance on trade finance, which can be linked to the strict conditions that may not provide the financial flexibility SMEs typically require. [42]

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38 Oramah (n 37) 10.
39 Oramah (n 37) 10.
40 F Niepmann & T Schmidt-Eisenlohr 'No guarantees, no trade: How banks affect export patterns' (2017) 108 *Journal of International Economics 38*.
41 Niepmann & Schmidt-Eisenlohr (n 40) 338.
42 MS Fombang & C Adjasi 'Access to finance and firm innovation' (2018) 10 *Journal of Financial Economic Policy* 73.

Access to bank guarantees make a way for parties involve in international commerce trade transaction to engage in trade with enhanced security, thereby facilitating the establishment of long-term business relationships. For example, the Working Capital Guarantee Programme (WORKAP), developed by Afreximbank to assist African exporters, SMEs, and businesses involved in the supply chain in accessing working capital finance in both pre- and post-shipment situations. This includes specific export contracts, raw material acquisition, contract financing, and other related activities.[43] Under the programme, they also provide guarantees to lenders to cover the credit risks associated with export working capital facilities and trade debt instruments for a duration of three years.[44]

Moreover, the limited number of trade finance options, including bank guarantees, can significantly restrict the growth of SMEs, particularly during periods of financial uncertainty.[45] For instance, exporters, especially those from developing nations like Cameroon, face increased transaction risks when financial institutions stop supporting trade finance, as was the case during the 2008 global economic crisis. This leads to a decrease in exports.[46]Adequate provision of bank guarantees fosters growth among SMEs and contributes to economic development.[47]

Ultimately, trade finance mechanisms like bank guarantees are crucial for establishing a stable and predictable trading environment in Cameroon, particularly now that Africa is striving to promote regional integration through the AfCFTA, especially in countries with weak financial systems and high credit risk for those involved in international import-export operations, and that is what the Afreximbank is pushing for SMEs to be inclusive in the intra-Africa trade.[48] They are crucial in facilitating trade, safeguarding all parties, and fostering economic stability and resilience in both domestic and international trade, due to their capacity to offer security and uphold trust in transactions.

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[43] Fombang & Adjasi (n 42) 73.
[44] Fombang & Adjasi (n 42) 73.
[45] Fombang & Adjasi (n 42) 73.
[46] M Auboin 'International regulation and treatment of trade finance' WTO Working Papers (2010) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1561623 (accessed 14 June 2025)
[47] Y Su & B Zhong 'Supply Chain Finance Decision Analysis with a Partial Credit Guarantee Contract' (2017) 5 *Journal of Applied Mathematics and Physics*.1355.
[48] Auboin (n 46) 75.

2.2.2 Brief Historical Development, Role and Purpose of Demand Guarantees

International bodies draft this International Rule, *which is* often contractually incorporated into such guarantees by the parties. Two sets of regulations are essential in this regard. The most important, probably, are the Uniform Rules on Demand Guarantees (URDG) prepared by the Banking Commission of the International Chamber of Commerce (ICC). The current revision dates back to 2010 and is typically referred to as the URDG 758.[49] A competing set of rules, the International Standby Practices, was drafted and published in 1998 by the Institute of International Banking Law & Practice (IIBLP) in America.[50] This second set of rules, commonly referred to as the ISP98, received the endorsement of the ICC in 1998 and was subsequently published as an ICC text. An earlier effort to unify this part of the law internationally was made by the United Nations Commission on International Trade Law (UNCITRAL) in the form of a convention, the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, adopted by the General Assembly on 11 December 1995.[51]

Due to the holistic nature of their commercial purpose, which provides the beneficiary with assurance of payment, demand guarantees have been crucial to international trade.[52] Taking into account their legal nature and the common legal aspects associated with them is essential, particularly for traders involved in international transactions, as well as for their commercial purposes.[53] Notably, demand guarantees have evolved through custom and banking practices.[54] In particular, a large number of letters of credit's operative rules, regardless of the legal system, have emerged from the customs of bankers dealing with importers and exporters, as well as with shipping and insurance companies.[55] From a legal perspective, businesses operating in various parts of the world benefit from understanding the sources of law, whether at the international or domestic level, that govern demand guarantee instruments.[56] Furthermore, parties to demand guarantees need to understand their rights and obligations.[57]

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49 C Hugo Demand guarantees in the People's Republic of China and the Republic of South Africa (2012) 2 *Brics law journal* 8.
50 Huge (n 49) 8.
51 As above.
52 TES Elhouderi 'The autonomy doctrine in the law of letters of credit and demand guarantees in Libya, Egypt and England: A comparative study…' PhD thesis, University of Leicester, 2023 16.
53 Elhouderi (n 52)16.
54 Elhouderi (n 52)16.
55 Elhouderi (n 52) 16.
56 Elhouderi (n 52) 17.
57 Elhouderi (n 52) 17.

2.2.3. Codes of Practice (ICC Rules in Demand Guarantees)

As there are differences in domestic legal frameworks regarding the rules governing demand guarantees, it was necessary to pursue harmonisation and unification to reduce these disparities.[58] In this respect, the International Chamber of Commerce (hereinafter 'ICC') attempted to unify banking practices by establishing a set of rules governing letters of credit. These are the *Uniform Customs and Practice for Documentary Credits* (hereinafter 'UCP').[59]Although the UCP rules are a non-legislative code, established by a non-governmental body, they have been internationally recognised. They are considered 'the most successful harmonising measure in the history of international commerce'.

Part of the success of the UCP and the Uniform Rules for Contract Guarantees (URCG) stems from the fact that they have been regularly revised to meet modern needs.[60] Since the ICC published the first revision of UCP rules in 1933 (ICC Brochure No. 82), they have been subject to revision numerous times: in 1951 (ICC Brochure No. 151), in 1962 (ICC Publication No. 222), in 1974 (ICC Publication No. 290), in 1983 (ICC Publication No. 400), and in 1993 (UCP 500).[61] Eventually, in 2007, the ICC published an updated set of rules called UCP 600, which is the current version of the ICC's UCP guidelines for letters of credit.[62] There was some ambiguity in the UCP 500 version and so UCP 600 took into account the new developments in international banking practice and sought to avoid the shortcomings of previous versions, particularly UCP 500.[63]

One of the fundamental changes to the UCP 600 includes the new articles relating to definitions (Article 2) and interpretations (Article 3). For example, Article 3 aims to eliminate any ambiguity or misleading language that may appear in the letter of credit. UCP 600 is smaller in size and easier to use compared to UCP 500. Some articles were combined to simplify the overall UCP style, lowering the number from 49 in UCP 500 to 39 in UCP 600.Additionally, the ICC has published the *Uniform Rules for Contract Guarantees* (URCG). [64]These rules were created to ensure clarity and consistency in the

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[58] Elhouderi (n 52) 21.
[59] International Chamber of Commerce Uniform Customs and Practice for Documentary Credits (UCP) (ICC Publication No 82, 1933).
[60] Elhouderi (n 52) 22.
[61] Elhouderi (n 52) 22.
[62] ICC Uniform Customs and Practice for Documentary Credits (UCP 600) (ICC Publication No. 600, 2007).
[63] Elhouderi (n 52) 24.
[64] ICC Uniform Rules for Contract Guarantees (URCG) (ICC Publication No. 325, 1978).

implementation of financial instruments. By recognising the distinct characteristics and complexities of demand guarantees, the ICC later decided to develop specialised rules specifically designed for them. This led to the *Uniform Rules for Demand Guarantees* (hereinafter 'URDG').[65]

The primary objective of the URDG was to codify current demand guarantee business practices by establishing a fair set of guidelines that balance the interests of financial institutions, the principal, and the beneficiary.[66] In 1992, URDG 458, the first set of technical rules for demand guarantees, was unveiled.[67] These regulations were designed to provide a clear framework that would serve as a worldwide standard for the issuance, administration, and enforcement of demand guarantees.

The ICC subsequently updated and modified them in 2010, leading to the release of the most recent version, URDG 7508.[68] URDG 758 is a more thorough and detailed document than URDG 458, as it incorporates several enhancements. For instance, URDG 758 provides a more extensive set of guidelines for handling various situations that may arise in demand guarantee transactions, addressing both documentary and non-documentary conditions.[69]It should be noted that, like the prior version, URDG 758 applies to both demand guarantees and counter-guarantees.[70] These rules are designed to be incorporated expressly into the relevant contract. The development from the URCG to the specialised URDG reflects the ICC's efforts to provide specific and thorough guidelines for various types of guarantees, ultimately improving the clarity, consistency, and fairness of demand guarantee transactions in international trade.[71]

2.2.4 Incorporation of UCP and URDG into the Contract under OHADA Legal framework

It is important to note that a legislative body does not issue UCP and URDG rules, so they have no force of law, and the parties might incorporate them into the contract in order to be effective.[72]Article 1 UCP 600 makes it clear that the UCP rules shall apply if 'the text

[65] Elhouderi (n 52) 26.
[66] Elhouderi (n 52) 26.
[67] ICC Uniform Rules for Demand Guarantees (URDG 458) (ICC Publication No. 458, 1992).
[68] ICC Uniform Rules for Demand Guarantees (URDG 758) (ICC Publication No. 758, 2010).
[69] Elhouderi (n 52) 28.
[70] URDG 758 art 1.
[71] Elhouderi (n 52) 29.
[72] Elhouderi (n 52) 29.

of the credit expressly indicates that it is subject to these rules. As the OHADA Uniform Act on Secure Transaction is operational with its implementation and the financial market becomes increasingly interconnected to the UCP and URDG, the strategic use of demand guarantees is expected to grow, particularly in emerging markets like Cameroon, where SMEs contribute significantly to many macroeconomic indicators, as mentioned in the background of the study. For legal practitioners, these points out the necessity of mastering both the doctrinal foundations and practical mechanics of demand guarantees, including the nuances of drafting, selecting governing law, and dispute resolution, to navigate the complex interplay between the principle of autonomy and equitable considerations in enforcement.[73]

In addition to its protective function, demand guarantee serves a developmental purpose, to facilitate access to finance by acting as a collateral substitute and risk-mitigating instrument for lenders. This entails increased bank financing eligibility, the ability to bid on public procurement contracts, and the ability to conduct cross-border business for SMEs in Cameroon and other OHADA member states. Through the codification of this financial instrument and its associated securities, the OHADA legal framework provides a dual framework that enables parties to choose the form best suited to their business objectives. The flexibility of the instrument may be limited in comparison to other jurisdictions by specific formal requirements, such as stringent nomenclature rules and default statement conditions, as discussed in the following sections below.

2.3 Definition, classification of Demand Guarantees

Article 49 of the revised OHADA Uniform Act (2010) defines a bank guarantee as an independent undertaking issued by a financial institution or a bank, which commits it to pay a specific sum of funds to a beneficiary upon written request under the terms of the guarantee. [74]The difference between independent and suretyship guarantees is central to the OHADA classification of personal securities. Suretyship is governed by Articles 7 to 21 of the Uniform Act and is dependent on the existence and enforceability of the principal obligation. On the other hand, independent guarantees, which are regulated under Articles 49 to 57, are not contingent upon the validity or performance of the

[73] Elhouderi (n 52) 29.
[74] OHADA Uniform Act Organisation of Securities (2010) art 49.

underlying contract.[75]A demand guarantee differs from suretyship (cautionnement), which is accessory in nature, in that it is not dependent on the underlying contract obligation.

This dual framework of the OHADA law enables parties to select the most suitable form of securities based on the risk level, complexity, and enforceability requirements of their transaction. Examining SMEs involved in commercial transactions, with a particular interest in those venturing into regional and international trade, suggests that they would benefit more from an independent guarantee due to its autonomous enforcement mechanism. Under the international legal regime, a demand guarantee has been described as:

"*Any guarantee, bond or other payment undertaking, however named or described, by a bank or another entity given in writing for the payment of funds on presentation of a written demand and such other document(s) as may be specified in the guarantee*".[76]

The International Chamber of Commerce (ICC') defines a demand guarantee in article 2(a) of its Uniform Rules for Demand Guarantees ('URDG') as follows: For these Rules, a demand guarantee (hereinafter referred to as"Guarantee") means any guarantee, bond or other payment undertaking, however named or described, by a bank, insurance company or other body or person (hereinafter called the "Guarantor") given in writing for the payment of money on presentation in conformity with the terms of the undertaking of a written demand for payment and such other document(s) as may be specified in the Guarantee, such undertaking being given.

(i) at the request or on the instructions and under the liability of a party (hereinafter called the "Principal"); or

ii) at the request or on the instructions and under the liability of a bank, insurance company or any other body or person (hereinafter "the Instructing Party") acting

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[75] OHADA Uniform Act Organising Securities (2010) art 7-21,49-57.

[76] M Kelly-Louw 'Selective Legal Aspects of Bank Demand Guarantees… 'LLD thesis, University of South Africa, 2008 87.

> *on the instructions of a Principal to another party (hereinafter the "Beneficiary").*[77]

Considering the definition above, the OHADA Uniform Act on Secure Transactions adopts an exact and broad perspective. A security interest, as defined by Article 4 of the Uniform Act, is an institution's promise to fulfil the debtor's obligation in the event of default or at the beneficiary's initial request under the bank guarantee. [78]

This definition is based on international principles, such as the URDG 758, which characterises a demand guarantee as an independent obligation that is not subject to any dispute regarding the underlying contract.[79] Examining the concept of bank guarantee under the OHADA, it is an independent obligation and not merely accessory to the principal obligation, unless otherwise specified in the Uniform.[80] This independence of the demand guarantee provides it with the autonomy necessary to function as a credible tool for trade finance, particularly in high-risk jurisdictions.[81]

2.4 Role of International Instruments in Shaping OHADA Practice

The OHADA legal structure, rooted in the civil law tradition, incorporates elements of international standards. Compared with the current practical application of global standards, these elements promote harmonisation. The OHADA guarantees that its structure and operation clearly reflect the influence of documents like the UNCITRAL Convention, ISP 968, and ICC URDG 758.[82] For instance, Article 52 of the OHADA Uniform Act on Secured Transactions echoes the principle of Article 7 of URDG 758, which stipulates the need for written claims presentations and clear terms.[83]

This convergence has enhanced the interoperability of OHADA guarantees with best practices worldwide, encouraging previously foregone investment and facilitating regional trade. While the OHADA framework is not a formal party to these instruments, their persuasive authority informs the interpretation and application of its laws by the court and financial institutions.[84] If an SME is involved in international trade, this

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77 Elhouderi (n 52) 52.
78 OHADA Uniform Act Organising Securities (2010) art 4.
79 Kelly-Louw (n 76) 93–95.
80 Elhouderi (n 52) 110–112.
81 Elhouderi (n 52) 145.
82 UNCITRAL Convention on Independent Guarantees and Stand-by Letters of Credit (1996).
83 ICC URDG 758 art 7.
84 Kelly-Louw (n 76) 203.

alignment is crucial because it eliminates the legal ambiguity brought on by disparate domestic legislation.

Compared to other laws, the OHADA law on bank guarantees generally aligns with global best practices. Still, it falls short of more developed jurisdictions in terms of procedural clarity and depth. Examining the case in South Africa, the courts uphold the autonomy principle rigorously, allowing interference only where fraud is proven beyond a reasonable doubt.[85] Van Niekerk and Schulze's findings also show that the United Kingdom follows a similar trajectory, treating demand guarantees as akin to promissory notes payable immediately upon presentation.[86] The specific regulations governing standby letters of credit and independent guarantees in the United States, including the issuer's judicial review standards, defences, and beneficiary obligations, have been codified in Article 5 of the Uniform Commercial Code.[87] On the other hand, the OHADA legal framework provides limited procedural guidance and relies primarily on judicial interpretation and scholarly commentary to address legal gaps. The comparative gap with best practices in international business transactions has become significant in Cameroon, where inconsistent judicial interpretation and a lack of specialised commercial courts hinder predictability. SMEs navigating this environment face risks not only from contract default but also from judicial delay and contradictory rulings.

2.5 Legal Characteristics and Function of Bank or Demand Guarantees

The core legal foundation for bank guarantees in the OHADA law is clearly outlined in Title I, Chapter 2 of the Uniform Act, which governs independent or demand guarantees Section 1 (Articles 52-56) outlines the procedure to be followed by any entity entitled to create a valid independent guarantee, including the requirement that it be in writing and contain sufficient detail to identify the primary obligation, the beneficiary, the conditions for demand, and the guarantor. [88]

Additionally, Article 52 stipulates that an independent guarantee shall be effective irrespective of the legal fate of the secure obligation in question. This section reflects the

[85] JP Van Niekerk & WG Schulze The South African Law of International Trade: Selected Topics 2 ed (2006) 311.
[86] Van Niekerk & WG Schulze (n 85) 311.
[87] As above.
[88] OHADA Uniform Act Organising Securities (2010) art 52.

doctrine of independence, which shares similar characteristics with rules such as those of URDG and ISP98. [89]The primary legal nature of this independent guarantee lies in its autonomy, which will be further explained below under the theoretical framework, with a principle that is significant to ensure that the generator's obligation to pay is not conditioned on the performance or breach of the underlying contract.[90]Based on international trade, to ensure quick and simple payment without unnecessary legal action.

The autonomous nature of the demand Guarantee serves two central purposes. First, it offers security and comfort to the beneficiary, knowing that the bank's payment obligation is not contingent upon the performance dispute of the underlying contract. Secondly, it encourages the bank's role as a neutral party, which acts solely on demand for payment and compliance with documentary requirements, rather than on substantive contract-related issues.[91]Article 52 of the Uniform Act formalises the procedure by stating that the effectiveness of an independent guarantee is not affected by the legal fate of the obligation whose performance is secured.[92] This article provides apparent predictability and reliability to trade relationships that occur at the national level and across all member states that are signatory to the OHADA treaties.

2.6 Nomenclature of Guarantee, Validity and Nullity: The Harsh Edge of Formalism

The OHAD law has established several types of security arrangements, including independence guarantees, counter-guarantees, sureties, pledges of accounts, tangible/intangible assets, and financial instruments. Notwithstanding, for this research and trade finance in particular regarding SMEs, the scope of this research will focus on independent guarantees, also known as demand guarantees, created by banks or financial institutions in favour of the creditor and payable upon demand.[93] These guarantees can be either direct or indirect.[94]

A direct demand guarantee involves the participation of three parties, namely, the beneficiary, most often a trading partner or financial institutions, the bank, usually the

89 URDG (1992) ICC Publication No 510 8–9.
90 URDG (1992) ICC publication art 52.
91 Kelly-Louw (n 76) 162.
92 OHADA Uniform Act Organising Securities (2010) art 52.
93 Kelly-Louw (n 76) 85.
94 Elhouderi (n 52) 64.

guarantor and the principal, typically the SME.[95] An indirect (Four-party) demand guarantee introduced a second bank (the counter-guarantor) that issues the guarantee at the request of the principal bank.[96] This structure is proper when the beneficiary requires a guarantee from a local financial institution.[97]

The validity of a bank guarantee is recognised in the OHADA Uniform Act for secure transactions, which is subject to compliance with specific formal requirements, as failure to comply renders the guarantee operations null and void.[98] Article 52 of the Uniform Act states that a guarantee must be in writing, clearly identify the secured obligation, state the guarantee, principal, and beneficiary, and specify the terms of payment, such as demand upon default or first written request.[99] Article 7 of the URDG, which also mandates that guarantees must explicitly state the terms for payment to avoid ambiguity, is an example of an international best practice that aligns with this compliance requirement.[100]

Article 30 of the Uniform Act stipulates that a demand guarantee must have a strict nomenclature and refer to itself as a "First Demand Letter of Guarantee." [101] The tool is deemed void if this requirement is not met. This strategy is designed to assist the court in categorising instruments correctly, but it results in excessive legal rigidity.[102] In Société Ivoirienne de Banque v Société CORECA, the court invalidated a demand guarantee for failing to use the prescribed label, despite its precise terms. [103]

This stands in contrast to the international best practice in other countries around the world, where demand guarantee is used as an instrument for trade finance. For example, under English law and the ICC URDG 758, the substance of the instrument takes precedence over its label.[104] When it comes to international transactions, a trivial labelling error cannot undermine the enforceability of a security instrument, such as a demand guarantee. [105]Yet. Under the OHADA law, such an error leads to disastrous consequences,

95 Elhouderi (n 52) 68–70.
96 Kelly-Louw (n 76) 92.
97 Elhouderi (n 52) 72.
98 OHADA Uniform Act Organising Securities (2010) art 52.
99 As above.
100 Kelly-Louw (n 76) 101.
101 OHADA Uniform Act Organising Securities (2010) art 30.
102 Kelly-Louw (n 76) 107.
103 Société Ivoirienne de Banque v Société CORECA, Arrêt n°001/2001, Cour Commune de Justice et d'Arbitrage (CCJA), 17 janvier 2001.
104 Elhouderi (n 52) 112.
105 Kelly-Louw (n 76) 118–119.

especially for SMEs that rely on the financial instrument to gain access to financing and secure cross-border deals.[106]

2.7 Applicability and Scope for SMEs

As already mentioned in the chapter of this dissertation, SMEs in Cameroon account for 99.9 % of the Cameroonian economy.[107] Despite their economic relevance, SMEs face chronic challenges in accessing formal financial instruments created by the OHADA law due to perceived risk, poor credit histories, and limited collateral. Bank guarantees made under the OHADA law offer a potential pathway to overcome these challenges by serving as collateral substitutes and tools of financial credibility.

Article 2(3) of the Uniform Act explicitly acknowledges that security interests, including guarantees, may be used to ensure the performance of obligations in professional trade-related activities.[108] Thus, SMEs, which are the backbone of informal economies in Cameroon, are not excluded from the scope of the provision in Article 2(3), as mentioned in the OHADA law, which applies to SMEs. Because it can facilitate international trade under the AfCFTA, provide trade credit, and enable participation in public contracts, guarantees are crucial for SMEs. However, due to high insurance costs, complex compliance requirements, and institutional inefficiencies, access remains primarily theoretical. Chapter 4 will further explore these concerns.

2.8 The Mechanism of Demand Guarantees and the Principle of Autonomy

Demand guarantees serve as independent promises made by banks or other financial institutions to pay the beneficiary upon a simple demand, regardless of disputes resulting from the underlying contract. The first step in the process is an agreement between the applicant and the beneficiary. To ensure that the underlying obligation is fulfilled, the applicant requests a guarantor, typically a bank, to provide a guarantee in favour of the beneficiary.[109] A direct guarantee involves the applicant, the issuing bank, and the beneficiary. It is the issuing bank's duty to honour payments upon request and, if payment

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[106] Elhouderi (n 52) 145.
[107] African Development Bank 'SMEs and Access to Finance in Africa' (2020) Working Paper 89. https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/access-to-finance-for-smes-through-fis (accessed 23 September 2025)
[108] OHADA Uniform Act Organising Securities (2010) art 2(3)
[109] Elhouderi (n 52)33.

is made, to seek reimbursement from the applicant.[110] In contrast, an indirect guarantee introduces a fourth party. Here, the applicant instructs its local bank (the instructing bank) to issue a counter-guarantee in favour of a foreign bank (the issuing bank) located in the beneficiary's country.

The beneficiary then receives the primary guarantee from the issuing bank, which also assumes the immediate payment obligation. After payment is made, the applicant indemnifies its instructing bank, and the counter-guarantor agrees to reimburse the issuing bank. Consequently, an indirect guarantee creates four different contractual relationships: (a) the underlying contract between the applicant and the beneficiary; (b) the applicant's indemnity agreement with its bank; (c) the counter-guarantee between the issuing bank and the instructing bank; and (d) the guarantee between the issuing bank and the beneficiary.[111] The autonomy principle is reflected in the independence of each of these contracts.

The autonomy principle is essential to the commercial utility of demand guarantees, as beneficiaries obtain immediate assurance of payment, allowing them to "pay now, argue later," thereby enhancing trust and efficiency in cross-border trade.[112] Nevertheless, it is not without legal boundaries. Fraud constitutes the most widely recognised exception: where a demand is manifestly fraudulent, banks may lawfully refuse payment.[113] Though the OHADA Uniform Act does not codify the fraud exception, courts in several member states have acknowledged it through judicial decisions, thereby aligning OHADA practice with broader doctrines of good faith and abuse of rights.[114]

International best practices reinforce these limitations.

The ICC's URDG 758 recognises counter-guarantees and respects the parties' autonomy while allowing the rejection of abusive or fraudulent demands. [115]In a similar vein, the 1995 UNCITRAL Convention on Independent Guarantees and Standby Letters of Credit

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110 M Coleman 'Performance guarantees' (1990) *Lloyd's Maritime and Commercial Law Quarterly* 223–224.
111 Elhouderi (n 52)34.
112 G McMeel 'Pay now, argue later' (1999)5 *Lloyd's Maritime and Commercial Law Quarterly* 6.
113 R Goode *Commercial law* (2016) 1037.
114 OHADA Uniform Act on General Commercial Law (2010) art 4.
115 ICC URDG 758 art 19.

permits banks to withhold payment in instances of flagrant fraud.[116] As shown in Blancet v Compagnie Générale de Crédit-Bail, the guarantee may be nullified under French law, which places a strong emphasis on good faith and disclosure obligations, if the beneficiary withholds material information.[117]

By contrast, OHADA law avoids imposing a strict duty of advice. Still, Article 40 prohibits natural persons from issuing guarantees, a restriction that has been criticised for undermining SME access to finance in Cameroon and other member states.[118]Thus, while the mechanism of demand guarantees is firmly grounded in the principle of autonomy, comparative practice reveals a careful balance: ensuring certainty and commercial efficiency for beneficiaries, while preserving safeguards against fraud, abuse, and inequitable conduct.

2.9 Conditions for Demand under the OHADA Law: Restriction on Flexibility

Another domain of focus related to the conditions that must be met for a valid demand guarantee operation between the Cameroonian banks or financial institutions and the SMEs is found in Article 45 of the Uniform Act on secured transactions, which requires that a demand must be accompanied by a document specified in the guarantee and a statement identifying the nature of the principal default.[119] While this provision in the Uniform Act is designed to protect account parties against abusive calls, it also restricts commercial freedom for SMEs to operate or use the instrument freely. Compared to the URDG 758, it allows a range of demand conditions, including bare demand, which means that no default statement is required. Justified demand where a statement of default is required.[120] looking at what is being practised in France, Article 2321 of the French Civil Code explicitly allows parties using the demand guarantee as an instrument to trade finance to determine whether a demand guarantee is payable on first demand or subject to terms.[121] English law also upholds this principle of contractual freedom.[122] On the other hand, the position of the OHADA's default requirement to establish a default statement

[116] United Nations Convention on Independent Guarantees and Standby Letters of Credit (UNCITRAL 1995) art 19.
[117] Enonchong (n 15) 18.
[118] OHADA Uniform Act Organising Securities (2010) art 40.
[119] OHADA Uniform Act Organising Securities (2010) art 45.
[120] URDG 758 art 20(a).
[121] French Civil Code art 2321.
[122] Enonchong (n. 15) 23.

reduces the utility of the instrument in a fast-moving commercial environment and for the case of SMEs in Cameroon and the entire member state of the OHADA treaties, which rely on prompt and uncomplicated access to financing, this limitation adds another hurdle.

2.10 Issuer's Obligation to Examine Documents: Ambiguity and Delay

It is practice in the context of financing transactions that when a party is required to provide a guarantee in respect of another party's (the Debtor) obligations to a creditor (the Creditor), that such guarantee is treated like a call *or* on-demand guarantee. Until now, little thought has been given to whether such a guarantee can be treated as anything other than just that – an on-demand guarantee.

According to Article 46 of the Uniform Act, it is a requirement that the issuer examine all documents within a "reasonable time". Still, it does not define the outer limit of this period.[123] In contrast with the practice under Article 14 of the UCP 600,[124] This specifies a maximum of five working days, thereby providing certainty and clarity. This vagueness in OHADA law opens the door to arbitrary delays that undermine the confidence of beneficiaries and SMEs. Moreover, the obligation under Article 46 for the issuer to transmit a demand document to the account party "for information" before payment creates an operational environment with confusion. No explicit consequence is defined for failure to comply, unlike the detailed remedy outline for suretyship under Article 19(2) of the Uniform Act for secure transactions. This divergence could cause interpretive inconsistencies and judicial disputes.

2.11 Economic Significance of Bank Guarantees for SMEs

Across the globe. Including Cameroon, the Credit Guarantee Schemes (CGSs) represent a key policy instrument for critically examining the SME financing gap, while limiting the burden on public finances. SMEs and start-ups are typically limited in their capacity to access credit due to under-collateralisation, a limited or no credit history, and, often, a lack of expertise needed to produce sophisticated financial statements. The economic role of a bank guarantee transcends its legal formulation. They are tools of financial inclusion

[123] OHADA Uniform Act Organising Securities (2010) art 35.
[124] The Uniform Customs & Practice for Documentary Credits (UCP 600) is a set of rules agreed by the International Chamber of Commerce, which apply to finance institutions which issue Letters of Credit financial instruments helping companies finance trade. Many banks and lenders are subject to this regulation, which aims to standardise international trade, reduce the risks of trading goods and services, and govern trade.

that enable SMEs to contribute to or participate in the global formal trading network, attract credit, and expand their operations into other jurisdictions worldwide. In Cameroon, where SMEs make up the majority of employers yet remain financially marginalised, the effective deployment of guarantees can serve as a bridge between informal enterprises and structured economic participation.

Through guarantees, SMEs can access supplier credit, bid for government contracts, and enter new markets with the backing of a reputable bank or other authorised financial institutions. This contributes not only to firm-level growth but also to macroeconomic objectives, such as creating employment, promoting export diversification, and achieving fiscal stability.[125]Notwithstanding, this potential remains unrealised due to systemic inefficiencies. Policymakers need to address several issues, including regulatory inefficiencies, the low legal literacy of SME operators, and the cost of issuing demand guarantees, to improve access to trade finance through this method. Chapter Four will propose specific reforms in this area.

2.12 Institutional Support and Enforcement in Cameroon

The application and enforcement of OHADA bank guarantees in Cameroon depend on institutional actors, including the judiciary, commercial banks, and the Central African Banking Commission (COBAC), which operates as the regulator of financial service providers in the Central African Economic and Monetary Community (CEMAC), encompassing financial institutions such as banks in Cameroon and the whole region of CEMAC member states. Due to low awareness, a lack of standardised banking procedures, and a lack of judicial experience with OHADA legal instruments, implementation is poor despite a clear mandate. SMEs are often the primary focus, but they frequently lack the necessary resources and are consequently excluded. However, a few financial institutions or banks provide user-friendly templates that enable SMEs to benefit from guarantees or other services. Another complication related to judicial enforcement is the case of backlogs, unfamiliarity with the OHADA guarantee regime, and limited capacity for expedited commercial adjudication.

[125] Afrximbank *Annual Report on Intra-African Trade* (2022)https://media.afreximbank.com/afrexim/Africa-trade-report-2022.pdf (Accessed 23 September 2025) 45.

Deman guarantees, as regulated by the OHADA Uniform Act, offer significant legal and economic potential for facilitating trade finance, particularly for SMEs in Cameroon. However, their use is limited by their strict formalism, prescribed nomenclature, limited demand conditions, and unclear issuer obligations. A comparative analysis reveals that legal systems with greater flexibility, such as those in England and France, are crucial for meeting the business needs of SMEs. Future revisions should focus on enhancing the institutional frameworks that support SMEs in accessing trade finance instruments and aligning OHADA legal standards with global best practices.

2.13 THEORETICAL FRAMEWORK

2.13.1 Autonomy Theory

The fundamental principles of the international and OHADA law are the autonomy principle of demand or bank guarantee. It establishes that the guarantor's obligation to pay is wholly independent from the underlying contract between the principal and beneficiary. Article 52 of the Uniform Act explicitly affirms this principle, and an independent guarantee remains effective "regardless of the legal fate of the secured obligation."[126] That is to say that if the underlying contract is invalid, terminated, or disputed, the bank must still honour a compliant demand from the beneficiary.
Commercial efficiency serves as the basis of this theory's reasoning. Contracting parties cannot afford to wait for drawn-out legal proceedings regarding whether a supplier delivered conforming goods in international trade. The autonomy principle ensures that all payments respond promptly to transaction or operational flows, thereby protecting the guarantee from disputes and preserving business confidence and transaction chain liquidity. The ICC URDG 758 and the UNCITRAL Convention both codify this principle, which the OHADA Legal Framework has also effectively incorporated into its regional framework, applicable in Cameroon.[127]

Whether SMEs frequently participate in public procurement or subcontracting for large projects where timely payment is crucial, a typical example from Cameroon can highlight the significance of this principle. If a Cameroonian SME supplies construction materials to a government project but faces disputes over the quality of delivery, litigation could drag on for many years. However, with a demand guarantee as the principle or theory

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[126] OHADA Uniform Act Organising Securities (2010) arts 52.
[127] ICC URDG 758 UNCITRAL, Convention on Independent Guarantees (1995).

stated above, the SME can rely on the bank's autonomous obligation to comply once the beneficiary, being the SME, makes a demand for compliance. This enables the SME to maintain its cash flow and fulfil obligations to its workers and suppliers.

Compared to English courts, courts in other jurisdictions have consistently reinforced the autonomy principle, treating demand guarantees as equivalent to promissory notes payable on demand.[128] The court in South Africa has also adopted a similar approach, allowing interference only in cases of fraud, where the beneficiary's demand is proven to be manifestly abusive.[129] On the other hand, OHADA jurisprudence is still developing, and the court sometimes conflates guarantee with suretyship, thereby undermining the autonomy principle. Strengthening judicial understanding of this doctrine is vital for the effective functioning of the demand guarantee in Cameroon and the 17 African countries that are members of the OHADA treaties

2.13.2 Risk Allocation and Financial Security Theory

Risk allocation is another theoretical framework that underpins guarantees in their operational role in international trade and domestic trade, serving as tools of financial security and risk allocation. In international transactions, particularly in high-risk jurisdictions such as Cameroon, the allocation of risk between parties determines whether the deal will proceed at all. Demand guarantees shift the risk of performance from the beneficiary to the guarantor, who usually has more financial resources and credibility. The bank essentially serves as a creditworthy middleman by taking on the risk of the principal's default and ensuring payment to the beneficiary. Judicial delays, limited specialised commercial courts, and inconsistent application of OHADA law hamper contract enforcement in Cameroon and several other member states. [130]If litigation is the only option for non-performance in such a setting, a contractor might be reluctant to work with an SME. However, where the SME offers a demand guarantee, the contractor gains assurance that a neutral, financially sound institution (the bank) will step in to make payment if needed.

When an SME participates in supplying inputs for an energy infrastructure project or imports and exports, the project sponsors may require a demand guarantee covering

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[128] *Edward Owen Engineering Ltd v Barclays Bank International Ltd [1978] QB 159.*
[129] *Lombard Insurance Co Ltd v Landmark Holdings (Pty) Ltd [2010] ZASCA 74.*
[130] Kelly-Louw (n 76) 95.

performance. Without such a guarantee, the SME might be excluded due to concerns about financial reliability. The SME gains access to opportunities that were previously unattainable by becoming a viable partner with the guarantees in place. The global experience supports this theory. The fundamental principle of transferring risk to a solvent guarantor remains unchanged, despite other jurisdictions, such as France, having greater latitude in drafting demand guarantees under Article 2321 of the Civil Code. Since standby letters of credit are regarded as trustworthy tools for risk allocation, Article 5 of the US Uniform Commercial Code provides detailed guidelines for them.[131] For OHADA, strengthening this theory in practice requires that banks be encouraged, through regulatory incentives and capacity building, to extend demand guarantees even to SMEs, rather than limiting them to large corporates.

2.13.3 Legal Formalism vs. Commercial Flexibility Theory

The OHADA regime is characterised by a strong element of legal formalism, particularly in its treatment of guarantees. Articles 30 and 52–56 require strict compliance with formality requirements, including that the instrument must expressly describe itself as a "first demand guarantee," and that a statement of default accompany a demand.[132] Regardless of the parties' true intent, non-compliance renders the document void.This contrasts sharply with international best practices, which prioritise commercial substance over form. According to URDG 758 and English common law, minor errors in labelling or documentation do not always make a document null and void. Instead, the court considers the parties' intent and the document's content.[133] However, in Société Ivoirienne de Banque v. Société CORECA, an OHADA Court declared a guarantee void simply because, despite its explicit language, the necessary nomenclature was not used.[134]

The case of Cameroonian SMEs is particularly problematic in terms of using the OHADA Uniform Act on Secure Transactions, as stated in the problem statement, specifically regarding demand guarantees. Many SMEs lack the legal expertise to draft a guarantee in strict conformity with the Uniform Commercial Code. One of the main issues is that Cameroonian SMEs shouldn't be excluded from vital contracts or funding due to a

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131 UCC art 5.
132 OHADA Uniform Act Organising Securities (2010) arts 30,52-56.
133 ICC URDG 758 art 7.
134 *Société Ivoirienne de Banque v Société CORECA, OHADA Court of Appeal (1998).*

straightforward mistake in contract drafting. This formality actually thwarted the goal of demand guarantees, which is to impose a timely and reliable financial security.

This clarifies the conflict that exists within the complex itself: a conflict between the practical commercial need for freedom and the legal system's desire for certainty. Unquestionably, the strict formality contributes to the clarity of court rulings, albeit to some degree at the expense of guaranteeing the actual functionality of demand guarantees. SME-friendly guarantees would be upheld while being protected from misuse by a more moderate approach, akin to the English substance over form doctrine.

2.13.4 Financial Inclusion and Development Theory

With the proliferation of trade liberalisation and globalisation, demand guarantees are not only legal devices but also instruments of financial inclusion and economic development. They give SMEs access to financing that would not otherwise be possible by serving as alternatives to conventional collateral. SMEs account for over 95% of businesses and contribute approximately 40% of the nation's GDP. However, they are still persistently underfunded due to the stringent collateral requirements set by Cameroonian banks and other financial institutions. By acting as substitutes for traditional collateral, they enable SMEs to obtain financing that would otherwise be unfeasible. SMEs account for over 95% of businesses and contribute approximately 40% of the nation's GDP. However, they are still persistently underfunded due to the stringent collateral requirements set by Cameroonian banks and other financial institutions.

At the international level, credit guarantee schemes have been used to promote SME participation in trade and development. In Asia, for example, the government have sponsored guarantee funds as a back-up support to SME risk, thereby facilitating lending.[135] For the case of OHADA, incorporating demand guarantees into broader financial policies could help overcome the structural exclusion of SMEs from formal finance, as SMEs in Cameroon have long relied on informal sources from friends and family members, which has made them unsustainable. Credit guarantee programs have

135 Asian Development Bank *SME Credit Guarantee Schemes* (2022). https://www.adb.org/sites/default/files/publication/774531/financing-smes-credit-guarantee-schemes.pdf (accessed 23 September 2025) x.

been utilised globally to encourage SME participation in commerce and foster economic growth.

2.13.5 Comparative Legal Theory

Lastly, comparative legal theory offers a framework for evaluating OHADA's demand guarantee policy. By examining how other jurisdictions regulate and interpret these tools, we can gain a deeper understanding of the benefits and drawbacks of the OHADA regime. In jurisdictions like England, demand guarantees are strictly enforced according to their terms and are considered independent contracts, with fraud being the only recognised exception. Contractual freedom in France allows parties to decide whether a guarantee is payable immediately upon demand or under certain restrictions.[136] Similar to English law, South African courts strictly enforce autonomy while acknowledging fraud as an exception.[137] A comprehensive regulatory framework that clarifies duties, defences, and judicial review is codified in Article 5 of the US Uniform Commercial Code (UCC)[16].

However, the OHADA Uniform Act is more dependent on judicial interpretation and offers less procedural clarity. For SMEs that require predictable results from their international transactions, this lack of detail may lead to uncertainty and unpredictability. The comparative perspective underscores the need for the OHADA Uniform Act on Secure Transactions reforms to align more closely with international standards, particularly in terms of reducing unnecessary formality and simplifying procedural rules. Comparative perspectives also highlight the significance of judicial training for Cameroon. The efficacy of the instrument will be jeopardised if judges persist in confusing suretyship with independent guarantees or nullifying guarantees based on trivial technicalities. Learning from English and South African jurisprudence, which prioritise autonomy and commercial certainty, could help strengthen OHADA's framework in practice.

2.13.6 Conclusion

In conclusion, the theories and conceptual framework collectively provide a comprehensive lens through which to analyse the legal and economic functions of guarantees under OHADA law, emphasising their potential benefits, existing limitations,

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136 Art 2321 French Civil Code.
137 *Lombard Insurance Co Ltd v Landmark Holdings (Pty) Ltd [2010] ZASCA 74*.

and areas for reform that would enhance SME access to trade finance in Cameroon and the wider OHADA region.

CHAPTER 3:

THE ROLE OF THE OHADA BANK OR DEMAND GUARANTEE FRAMEWORK IN FACILITATING ACCESS TO TRADE FOR SMEs IN CAMEROON

3.0 INTRODUCTION

3.1 UNDERSTANDING BANK OR DEMAND GUARANTEES UNDER OHADA

The role of bank or demand guarantees in facilitating access to trade finance for SMEs in Cameroon cannot be overstated. Carrying out operations within a context of higher perceived credit risk, underdeveloped financial systems in CEMAC, OHADA, and Cameroon, limited collateral, and SMEs rely on trade financial instruments to mitigate risk and ensure liquidity, which is necessary for both cross-border and domestic transactions. The content of the OHADA Uniform Act on Secure Transactions provides a harmonised legal system for the use of bank guarantees, such as demand guarantees, which are designed to foster predictability, legal certainty, and economic integration.[138]

This chapter will examine the practical role of OHADA bank guarantees in enhancing access to finance for SMEs in Cameroon, specifically for trade finance to support their international sales transactions and at the domestic level. The chapter will examine the various approaches to ensuring operations, the significance of global trade, their alignment with AfCFTA objectives, and other institutional practices that influence the practical implementation of demand guarantee worldwide, especially in Cameroon. The ICC -URDG 758 and other international best practices are compared. It examines how SMEs in Cameroon and other OHADA member states can benefit from more efficient use of OHADA instruments to bridge the trade finance gap.

SMEs and the Challenges of Trade Finance in Cameroon:

Trade finance is regarded as a set of mechanisms and techniques used to mitigate risks, which help provide funding that enables trading at the international and domestic levels. As such, the role of trade policies remains critical in mitigating some of these challenges, like the payment system, through the formulation of friendly legal and regulatory frameworks, enhancing SMEs' productivity by building their managerial and technical

[138] Wansi & Burrell (n 6) 88.

capacities, minimising trade costs, and increasing trade openness, and allows for the financing of production and inventory cycles, thereby enabling them to compete globally and grow.[139] Notwithstanding, the limited access to trade finance exacerbates the problems that SMEs in Cameroon face. Trade finance instruments, such as bank guarantees, serve as a crucial legal tool for SMEs to engage in international commerce and also enhance their growth. They accomplish their goals by supplying the liquidity required to fulfil purchase orders and control cash flow disruption. Without adequate trade finance, SMEs struggle to capitalise on market opportunities.[140] Access to trade finance is crucial for the growth and sustainability of SMEs in Cameroon, as it enables them to bridge working capital gaps, mitigate supply chain risks, and expand into new markets.[141]

The development of appropriate financing products and the support of financial institutions are essential for fostering the growth of SMEs and enhancing their competitiveness internationally.[142] Reducing the difficulties that SMEs face in accessing financial instruments will be essential to closing the financing gap and unlocking the potential of SMEs in Cameroon as drivers of economic growth and intra-African trade. However, it is critical to recognise the significant role of the African Export-Import Bank (Afreximbank) in promoting and encouraging trade among African countries and between the African continent and the rest of the world, particularly in utilising this financial instrument.

Afreximbank has addressed the lack of trade finance for SMEs in Africa by offering a broad range of guarantee services suitable for SMEs across the continent, including the Afreximbank Guarantee Programme (AFGAP). This programme is designed to mitigate risks, enhance financial capacity for SMEs or exporters in Africa, and unlock capital.[143] Afreximbank has also provided facilities like the Working Capital Guarantee, the Supply Chain Finance Guarantee, and the Supplier Credit Guarantee. They have effectively de-

[139] F Lwesya SMEs' competitiveness and international trade in the era of Global Value Chains (GVCs) in Tanzania: An assessment and future challenges (2021)5 *Small Business International Review* 1.
[140] Wansi & Burrell (n 6) 89.
[141] As above.
[142] M Widyastuti and others 'Strengthening Formal Credit Access and Performance through Financial Literacy and Credit Terms in Micro, Small and Medium Businesses' (2023) 16 *Journal of Risk and Financial Management*. 52.
[143] Widyastuti and others (n 139) 52.

risked transactions in Africa, thereby enhancing the ability of financial institutions to extend credit to SMEs, which in turn facilitates their participation in intra- and extra-African trade.[144]

3.2 THE FACILITATIVE ROLE OF DEMAND GUARANTEES FOR SMEs

3.2.1 Global Trade Landscape and SMEs

The dynamics of global trade have become increasingly complex in the current period of globalisation and trade liberalisation, underscoring the vital need for trust and security in transactions, which continue to be the top concerns for businesses involved in cross-border trade. For SMEs in Cameroon, where institutional and infrastructure challenges face the risks involved in cross-border business dealings, this practical reality is faced with particular acuteness. One of the most effective financing instruments for mitigating counterparty risk, ensuring payment security, and fostering trust between trading partners is the use of bank guarantees, particularly independent or demand guarantees.

A bank guarantee, at its core, represents a formal and enforceable undertaking by a financial institution to honour a financial obligation on behalf of its client should that client fail to perform its contractual obligations[145]. By substituting the bank's creditworthiness for that of the client, the guarantee reassures the beneficiary that they will receive payment regardless of any default arising from the underlying contract[146]. This characteristic is of great value in Cameroon's economy, where SMEs often struggle to establish credibility with foreign business partners with whom they conduct business. As Kelly-Louw observes, the demand guarantee operates not merely as a secondary security but as “a direct and autonomous payment obligation, intended to neutralise the uncertainties and delays associated with relying solely on the debtor’s performance or on litigation in the courts.”[147]

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[144] African Export–Import Bank (Afreximbank) *Guarantee Programme (AFGAP): Unlocking Capital, Reducing Risk, Creating Capacity* (2017) https://media.afreximbank.com/afrexim/Afreximbank-Guarantee-Programme-AFGAP-unlocking-capital-reducing-risk-creating-capacity.pdf (accessed 23 September) 2–3.

[145] Kelly-Louw (n 76) 25.

[146] Kelly-Louw (n 76) 13–17.

[147] Kelly-Louw (n 76) 84.

There exists a variety of financial instruments, especially bank guarantees, that have emerged as crucial tools for SMEs to utilise in mitigating perceived risk and fostering trust in commercial interactions, including cross-border transactions and domestic transactions such as public procurement. The OHADA Uniform Act provides a legal framework governing these guarantees, as mentioned in Chapters 1 and 2, which serves as an essential safeguard, allowing parties to agree with a reassuring sense of protection.[148]

3.2.2 Trust and Security Through Bank Guarantees

A transformative operational function of bank guarantees in trade finance is underscored by Youssef's assertion, which highlights the elegance of bank guarantees as a solution to the paradox of requiring mutual trust in inherently risky business situations. The duality present in international commercial, where parties require guarantees against possible non-performance, is reflected in this principle. Over $2 trillion worth of guarantees are issued globally each year, according to statistics from the ICC Banking Commission, underscoring the crucial role these instruments play in underwriting trade commitments across various jurisdictions.[149]

A bank guarantee represents a financial institution's promise to fulfil a specified financial obligation should the primary party default on their contractual obligations. In addition to safeguarding the beneficiary's interests, this transfer of risk from an individual party to a bank expands the trading environment, allowing SMEs to conduct business internationally with greater freedom. Bank guarantees help alleviate some of the obstacles that frequently deter foreign suppliers or buyers from doing business with smaller companies, as they enhance the credibility of SMEs in the eyes of potential partners.[150]

[148] D Çumani 'Banks, firms and trade finance infrastructure in Albania' (2016) 1 *European Journal of Multidisciplinary Studies* 192.
[149] M Muzondiwa & DR Arokia 'A study on analysis of financial challenges of small and medium-sized enterprises (SMEs) in international markets with special reference to Blantyre commercial centre-Malawi, Central Africa' (2024) 4 *I-Manager's Journal on Economics & Commerce* 46.
[150] N Clément and others 'Blended finance: a tool for inciting commercial financial institutions to provide financing for machinery acquisition for SMEs in Cameroon' (2023) 6 *International Journal of Scientific and Management Research* 218.

3.2.3 A Tool for Enhancing Trade Volumes

There is no doubt that a healthy, structured economy with a better mechanism for the practical applicability of bank guarantee systems exhibits significant increases in international commerce volumes compared to those lacking such frameworks. In addition to being an effective instrument for risk management, bank guarantees are crucial for SMEs' market access, enabling them to overcome obstacles that might otherwise limit their potential for expansion.

3.2.4 Characteristics of Bank Guarantees in the OHADA Context

According to OHADA, a bank guarantee is a financial institution's independent and self-contained promise to reimburse the beneficiary on demand.[151] These features distinguish bank guarantees from bank and other financial products that may be contingent upon the underlying agreement. legal independence reduces the entry challenges for SMEs to participate in international trade by allowing a bank's promise to pay to replace conventional collateral requirements.[152]When an SME defaults on its obligations, the beneficiary is assured of payment, drastically reducing transaction insecurity, which is often the main risk in international trade transactions. This assurance makes business engagements with SMEs considerably more attractive, promoting wider market access and integrating more SMEs into global supply chains.[153]

3.3 OPERATIONAL MECHANISMS OF OHADA DEMAND GUARANTEES

3.3.1 The Tripartite Structure of a Guarantee Relationship

A demand guarantee under the OHADA law is mainly based on a tripartite legal relationship involving three parties: The SMEs who are the applicant seeking credit or trying to access a trade opportunity, the financial institution in the place of guarantor issuing the guarantee and the beneficiary who is the counterpart requiring security before entering into a contract. Despite its appearance, the structure is composed of a complex set of requirements that must be fulfilled for the guarantee to function correctly. Understanding this structure is essential for Cameroonian SMEs, as they are frequently

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[151] OHADA Uniform Act Organising Securities art 44.

[152] A Haag & T Henschel 'SME lending relationships' (2016)17 *The International Journal of Entrepreneurship and Innovation* 184.

[153] S Caselli and others 'Public credit guarantee schemes and SMEs' profitability: evidence from Italy' (2019) *57 Journal of Small Business Management* 57.

subject to the strict requirements set by both the guarantor and the beneficiary in their capacity as applicants.

3.3.2 Formal Requirements under the OHADA Uniform Act

The Uniform Act requires that demand guarantees be constituted in writing.[154] This emphasis on formality reflects the OHADA civil law tradition, which emphasises that written documentation offers legal certainty and prevents disputes over oral agreements. Furthermore, the term "independent guarantee" must be used explicitly in the document, in accordance with Article 20 of the Uniform Act. The failure to respect this mandatory nomenclature can render the instrument invalid, as demonstrated in the *Société Ivoirienne de Banque v Société CORECA* case.[155]Although this stringency increases predictability, it also puts SMEs at a disadvantage because they may not have the technical and legal drafting skills necessary to guarantee compliance, which makes them more dependent on expensive legal or banking advisory service providers.

3.3.3 The Application Process by SMEs

Practically, the process begins when a beneficiary insists on the provision of a guarantee as a prerequisite for awarding a contract to a company to supply goods that can be purchased through a vital channel and that require some degree of international transaction to buy from across the border. SMEs in Cameroon, particularly those in the construction and agribusiness sectors, often face this requirement in both private tenders and public procurement (Marché public).[156] The SME must then apply to a bank for issuance of the guarantee. At this stage, the challenge arises; However, OHADA law does not mandate collateral. Many banks or other financial institutions in Cameroon impose collateral requirements, such as pledging real estate, making cash deposits, or providing third-party guarantees, before they are willing to issue the instrument. This undermines the accessibility of demand guarantees for SMEs, which already lack sufficient collateral, thereby diluting the developmental purpose of guarantees as a financial inclusion instrument.

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[154] OHADA Uniform Act Organising Securities (2010) art 49.

[155] Société Ivoirienne de Banque v Société CORECA Arrêt n° 184 du 21 février 2003 OHADA Ta J-05-126.

[156] Art 21 Décret n° 2018/366 du 20 juin 2018 portant Code des marchés publics, Cameroun.

3.3.4 Issuance of the Guarantee and the Autonomy Principle

The guarantee, which is a written commitment to pay the beneficiary upon demand in the event of default, is issued by the bank as soon as a company application is approved. The autonomy principle is embodied in Article 51 of the OHADA Uniform Act, which explicitly states that the guarantor's obligation to pay is unaffected by disagreements arising from the underlying contract.[157] This enhances trust between parties engaged in international trade by guaranteeing that the guarantee operates as an independent obligation. Because it guarantees larger counterparties that payment will still be made directly by the bank, even if the SME defaults, this independence is essential for SMEs.

3.3.5 Triggering the Guarantee through Demand

To trigger a guarantee throughout a successful process, the next step involves the beneficiary calling the guarantor. According to Article 24 of the Uniform Act, the beneficiary's demand must be accompanied by a written declaration stating that the applicant has defaulted on its obligations, as well as other supporting documents if stipulated in the contract.[158]. This article is designed to prevent abuse and fraudulent demands. However, it also reflects OHADA formalist tendencies, which can sometimes frustrate commercial flexibility. For example, suppose a minor error occurs in the wording of the demand guarantee declaration when it is issued. In that case, it can result in the rejection of the demand, leaving the beneficiary unpaid despite the applicant's actual default. The rigidity contrasts with the international best practice under URDG 758, where substance tends to prevail over form.[159]

3.3.6 Bank Examination and Payment within a Reasonable Time

As soon as a demand is presented by a company that requires financing, Article 35 requires banks or financial institutions to examine it within a "reasonable time" and, if a compliant demand, to make payment.[160] While this language aligns with the international best practice standard, banks and other financial institutions often adopt a conservative approach, scrutinising demands in detail before making payment. Albeit, such caution protects banks against fraudulent calls, it slows down the process and undermines the

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[157] OHADA Uniform Act Organising Securities (2010) art 52.
[158] As above.
[159] OHADA Uniform Act Organising Securities (2010) art 24.
[160] OHADA Uniform Act Organising Securities (2010) art 46.

commercial guarantee, which is to ensure swift and reliable payment. In comparison, URDG 758 establishes a five-day examination period offering greater clarity and speed for international transactions.[161]

3.3.7 Observations on the Practical Functioning of Guarantees in Cameroon

Taken together, the operational mechanism of the OHADA demands guarantees that strike a balance between risk management, legal certainty and beneficiary protection. For Cameroonian SMEs, this approach can be highly advantageous, allowing them to access tenders, secure trade credit, and engage in export contracts. Notwithstanding, the combination of strict formal requirements, conservation banking practices and collateral demands often limits the accessibility of this instrument to larger firms. Thus, while the OHADA legal framework has established a harmonised and predictable legal foundation, the challenge lies in ensuring that banks and SMEs can operationalise these mechanisms in a way that genuinely facilitates financial inclusion and trade access.

3.4 LEGAL ENFORCEABILITY AND CERTAINTY FOR CROSS-BORDER TRADE

3.4.1 The Centrality of Legal Certainty in International Commerce

Legal certainty is one of the most essential prerequisites for the success of international sales transactions, as parties involved in cross-border transactions across multiple jurisdictions need to be assured that the tools they rely on, such as demand guarantees, will be accepted and applied uniformly.[162] For SMEs in Cameroon, which typically face higher credit risks and weaker bargaining positions, the enforceability of bank guarantees is crucial to their survival and competitiveness.[163] This is because large multinational corporations can easily dictate terms in these markets. By establishing a supranational system of business law that applies consistently across all 17 member states, the OHADA law directly addresses this issue. This ensures that guarantees made in one nation, like Cameroon, have an enforceable effect in another, like Côte d'Ivoire or Senegal, without requiring revalidation under the domestic legal framework.[164]

[161] Kelly-Louw (n 76) 83–85.
[162] Kelly-Louw Selective (n 73) 15.
[163] Kelly-Louw Selective (n 73) 18.
[164] African Legal Support Facility OHADA: Business Law for Africa's Integration (1) https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility (accessed 23 September 2025).

3.4.2 Harmonisation Across OHADA Member States

An essential step toward harmonising the legal framework governing independent guarantees amongst OHADA zone was the passage of the Revised Uniform Act in 2010. According to the outline in Articles 49 to 57, which establish uniform rules that override conflicting national provisions, courts in all 17 member states, including Cameroon, are bound to apply the same principles when adjudicating disputes concerning demand guarantees[165]. The OHADA legal framework, being considered a supranational harmonisation, is particularly valuable for SMEs because it reduces the legal uncertainty and costs that would otherwise arise from navigating a patchwork of domestic legal frameworks. In effect, the OHADA system has replaced 17 different legal systems with a single coherent law, which is essential for fostering regional integration and building trust among commercial parties operating across borders.[166]

3.4.3 Judicial Enforcement of Guarantees in Cameroon

The clear distinction made in OHADA law between suretyship (cautionnement) and guarantees (garantie autonome) has reinforced the enforceability of demand guarantees within the Cameroonian legal system. [167] As stated in Article 49 of the Uniform Act, independent guarantees are autonomous undertakings, enforceable on first demand, without the beneficiary having to establish the applicant's default in court.

3.4.4 Interaction with International Standards and Foreign Law

Another aspect of enforceability that arises from the interplay between OHADA law and international standards, such as the URDG 758, is revealed by examining other legal systems. Although the URDG 758 is considered soft law and is not legally binding, it is widely recognised as a standard for demand guarantees, and its tenets frequently impact judicial interpretations as well as banking practices. For example, the URDG 758, under Article 20(a), prescribes a five-banking-day period for examining demands that are being submitted, a provision that, although not explicitly incorporated into the OHADA legal framework, has been used by Cameroonian banks as a practical guideline. Furthermore, there is a strong alignment between the OHADA legal framework and the English legal

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[165] Arts 49–57 OHADA Uniform Act Organising Securities (2010) arts 49-57.
[166] As above.
[167] OHADA Uniform Act Organising Securities (2010) art 41.

system, which views demand guarantees as independent undertakings that are enforceable, except in cases of fraud or other exceptional circumstances. [168]Similarly, the OHADA approach has historically been influenced by French law, which ensures compatibility with continental European traditions through the guarantee à première demande. Due to these similarities, an OHADA-compliant guarantee is more likely to be accepted and upheld in other legal systems, thereby increasing the tool's cross-border applicability.

3.4.5 Challenges and Limitations in Practice

Despite the harmonious and predictable legal framework, specific barriers exist that undermine the enforceability and certainty of OHADA bank guarantees in Cameroon. Firstly, the emphasis on formal requirements by the OHADA Uniform Act, such as mandatory nomenclature and default declarations, creates opportunities for banks to deny payment on purely technical grounds, thereby frustrating the beneficiary's expectations.[169] Second, although enforcement proceedings are governed by OHADA legislation, they essentially rely on domestic courts, and delays in Cameroon's judicial procedures can erode the effectiveness of the practical utilisation of demand guarantees by SMEs, particularly when urgent interim relief is needed for international commercial transactions to take place swiftly. [170]Typically, SME owners in Cameroon struggle with financial management and planning, as highlighted by Zhang and Wang, who discuss the dependency of SMEs on external financing and the challenges they face in maintaining operational continuity during economic disruptions.[171] They are unfamiliar with the technical operation of demand guarantees in their contracts. These challenges highlight a gap between the theoretical enforcement of the OHADA bank guarantee and its practical application in securing trade financing.

SMEs in Cameroon are looking to expand into regional and international markets. When combined with the supranational harmonisation of the OHADA law, the autonomy principle guarantees that bank guarantees serve as enforceable, trustworthy, and legitimate risk-reduction tools. Nevertheless, the practical application of this potential

[168] Esal (Commodities) v Oriental Credit Ltd [1985] 2 Lloyd's Rep 546.
[169] OHADA Uniform Act Organising Securities (2010) arts 42-44.
[170] Kelly-Louw (n 76) 102.
[171] G Zhang & T Wang 'Financial budgets of technology-based SMEs from the perspective of sustainability and big data' (2022) 10 *Frontiers in Public Health*.

financial instrument is hindered by formalistic requirements, judicial delays, and knowledge gaps, which collectively limit the accessibility of guarantees for the very SMEs they are intended to support. To fully fulfil its promise of establishing legal certainty for cross-border trade in Africa, OHADA must address these problems through reforms and capacity-building.

3.5 COMPLEMENTARITY WITH AfCFTA AND REGIONAL TRADE OBJECTIVES

3.5.1 The AfCFTA Vision and the Central Role of Legal Certainty

With the AfCFTA's objective of regional integration, it is not sufficient to reduce tariffs and barriers for trade; there must also exist reliable, predictable, and harmonised trade finance instruments that facilitate and promote secure commercial exchange among businesses of different sizes in various jurisdictions.[172] The harmonisation between the AfCFTA objective and the OHADA Uniform Act on Secure Transactions fosters a streamlined strategy to make regional integration a reality, facilitating the efficient scaling of SME operations. [173]For instance, an SME in Cameroon can capitalise on bank guarantees to solidify trade transactions with a counterpart in Ghana, leveraging OHADA-compliant documentation and unique legal understanding. By reducing transaction costs and speeding up trade operations, the predictability provided by these mechanisms enables SMEs to become more competitive on both a regional and international level.[174]Examining the demand guarantee provisions, which are essential in giving businesses, especially Cameroonian SMEs, the security and legal certainty they need to conduct intra-African transactions with confidence and without worrying about payment default or opportunity breaches by their trading partners.[175]

3.5.2 The Convergence of OHADA and AfCFTA Objectives

The objectives of OHADA and AfCFTA converge in their shared emphasis on legal harmonisation and regional integration. While the AfCFTA primarily focuses on trade

[172] B Oramah 'Afreximbank in the Era of the AfCFTA' (2021) 8 *Journal of African Trade* (Suppl 2) 24.
[173] F Corredera-Catalán and others "Post-COVID-19 SME Financing Constraints and the Credit Guarantee Scheme Solution in Spain," (2021)22 *Journal of Banking Regulation* 250–260.
[174] R Gropp and others "The Dynamics of Bank Spreads and Financial Structure," (2014)4 *Quarterly Journal of Finance* 1450014.
[175] African Union Commission AfCFTA Legal Texts and Policy Frameworks (2020) https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html (accessed 12 September 2025).

liberalisation and free market access within African states, the OHADA provides the legal foundation for commercial certainty by harmonising private business laws across its 17 member states.[176] This synergy enables Cameroonian SMEs, which are already subject to the operation of the OHADA law, to leverage demand guarantees and enforceability in other OHADA jurisdictions. The use of internationally standardised guarantees, supported by OHADA law, also helps close the legal gap and establish common ground for contractual trust across various legal systems, as the AfCFTA includes both OHADA and non-OHADA states.[177]

3.5.3 Enhancing SME Participation in Regional Trade

The inability of SMEs to participate successfully in international trade is one of the main obstacles to the AfCFTA.This is exacerbated by the lack of finance for businesses to engage in intra-African trade, which is due to the constraints they face in financing and the high perceived risk associated with it.[178] Bank guarantees mitigate these risks by substituting the creditworthiness of a financial institution for that of the SME, thereby reassuring trade partners that the obligations will be honoured. For instance, a SME in agribusiness in Cameroon exporting cocoa to Ghana under AfCFTA can provide a performance guarantee to ensure the buyer that goods will be delivered as promised because demand guarantee is autonomous and enforceable under the OHADA legislation, the Ghanaian buyer is more likely to trust the transaction, reducing the need for advance payment and enabling smoother cash flow for SME. This mechanism illustrates how demand guarantees can directly support the AfCFTA developmental goal of broadening SME participation in regional trade.[179] Trade finance tools used by importers and exporters to facilitate business transactions are essential for promoting global trade. These instruments bridge the gap between when the traders want to receive payment for producing and shipping goods, and when the importer gets them. Although banks routinely provide trade finance to importers and exporters in advanced economies, developing countries face chronic shortages.[180]

176 OHADA Uniform Act Organising Securities (2010) art 1.
177 OHADA Uniform Act Organising Securities (2010) arts 49-57.
178 B Oramah *Foundations of Structured Trade Finance* (2015) 22.
179 World Bank *Bridging the Trade Finance in West Africa* (2022) https://documents1.worldbank.org/curated/en/099646111222212762/pdf/IDU0bdd00eb604f3a046480b8ff0841530b7035a.pdf (accessed 21 August 2025) ii.
180 As above.

3.5.4 Reducing Transaction Costs and Building Competitive Advantage

Another critical benefit of demand guarantees in the AfCFTA context is their ability to reduce transaction costs across all operations, whether in international or domestic transactions. In situations where there is no guarantee, SMEs often face demands for advance payments, which can be costly via a letter of credit or cumbersome escrow arrangements. When compared to large multinational corporations that can readily mobilise financing, these mechanisms limit working capital and reduce SMEs' competitiveness. By relying on demand guarantees, SMEs in Cameroon and member states of the OHADA region can demonstrate financial credibility without immobilising their scarce capital resources. In addition, the predictability of the OHADA legal framework reduces legal uncertainty and minimises the need for expensive legal due diligence when operating with the 17 OHADA member states. Over time, this cost efficiency can significantly enhance the competitiveness of SMEs in Cameroon in the AfCFTA market, enabling them to expand into new supply chains and sectors of activity.[181]

3.5.5 Case Illustration: Infrastructure and Public Procurement under AfCFTA

The importance of demand guarantees grows beyond individual transactions to the domains of international trade and public procurement, but is critically crucial to the AfCFTA's long-term Success. A greater percentage of government contracts in Cameroon and other African countries require bidders to furnish bid bonds and performance guarantees as a prerequisite for eligibility to utilise the financial instrument. Without gaining access to such demand guarantees, SMEs are excluded from participating in lucrative public procurement markets, including those related to African infrastructure projects. For example, SMEs in Cameroon that conduct construction as part of their activities and wish to tender for a project in Côte d'Ivoire under the AfCFTA's infrastructure agenda can present a performance guarantee issued under the OHADA Uniform Act, which will be recognised and enforceable in the Ivorian legal system. This creates business opportunities for SMEs to enter new markets that have been traditionally

[181] Afreximbank *Annual Trade Finance Report* (2022) https://media.afreximbank.com/afrexim/ATR-2022.pdf (accessed 19 August 2025)

dominated by large players, while simultaneously supporting the AfCFTA's vision of inclusive growth and shared development.[182]

3.5.6 Difficulties in Achieving Full Complementarity

Many African states participating in AfCFTA are not members of the OHADA Treaty, which means the harmonisation is only partial, and SMEs may face divergent legal standards when trading outside the OHADA zone.[183] Secondly, the rigid formalism of the OHADA demands guarantees, such as the mandatory nomenclature and the requirement of default declarations, which may discourage non-OHADA counterparties who are more accustomed to the flexibility of URDG 758-based instruments. Thirdly, the limited awareness and capacity of SMEs in Cameroon to negotiate and manage guarantee instruments hinder their ability to fully exploit their potential under the AfCFTA[184]. These challenges highlight the need for reform and training initiatives that align OHADA practices more closely with international standards, while preserving their regional advantages.

OHADA demand guarantees complement the objective of AfCFTA by providing a harmonised framework that reduces risk, lowers transaction costs, and encourages the participation of SMEs in intra-African trade, functioning as an instrument of trust and financial inclusion for all categories of businesses. These guarantees empower SMEs in Cameroon to expand beyond domestic markets and integrate into continental supply chains. However, the full realisation of this potential depends on addressing the practical challenges of accessibility, flexibility, and cross-regional alignment, thereby ensuring that the OHADA legal innovation serves as a genuine catalyst for the success of the AfCFTA's regional integration project.

3.6 ACCESS TO PUBLIC CONTRACTS AND PROCUREMENT

Public procurement in Cameroon, as well as in other OHADA member states, often stipulates that bidders furnish a bid bond or performance bond as a requirement for

[182] African Development Bank *Group Procurement* (2021) https://www.afdb.org/en/projects-and-operations/procurement (accessed 21 August 2025).

guaranteeing that a tender has been submitted. This regulatory framework presents a considerable barrier to SME participation due to numerous requirements. Nevertheless, access to demand guarantees enables these SMEs to comply with such stipulations, thereby participating on an equal footing with large companies.[185]

A significant percentage of SMEs engage in government procurement processes, often due to capacity constraints in financial backing. This broad access to bank guarantees could effectively facilitate an increase in SME involvement in public sector projects, promoting fair economic inclusion and growth on a wider scale.

3.7 COMPARATIVE PERSPECTIVE AND ALIGNMENT WITH INTERNATIONAL STANDARDS

Despite the value conferred on its rules and principles internationally, the OHADA Uniform Act on Secured Transactions exhibits similarities with the ICC's URDG 758, widely regarded as the leading global benchmark for demand guarantees. Both frameworks adhere to the principle of autonomy, even though the international best practice is based on soft law, which is widely recognised; they still permit counterparty involvement and stipulate the examination of documents. However, the Uniform Act outlines flexibility that may differ from conditions under URDG 758, which is a global standard, providing a distinct approach within the regional context.[186]

In the international commerce environment, aligning with these global best practices can enhance SMEs' ability to adapt to various trading conditions while increasing their participation in global markets. Despite this, the OHADA Uniform Act remains a robust foundation for conducting cross-border transactions and providing SMEs with the necessary legal framework to navigate successfully among member states.

3.8 CHALLENGES IN GUARANTEE UTILISATION BY SMES

Implementation issues persist in real-world applications, despite the Act establishing a legal framework that provides several guarantees. Among these is the disproportionate collateral that banks require to deliver guarantees to SMEs in need, which compromises

[185] G Railienė & L Ivaškevičiūtė Re-evaluating the supply side of finance availability for Lithuanian SMEs. Social Sciences (2014) available at https://www.socsc.ktu.lt/index.php/Social/article/view/6605 (accessed 20 August 2025).
[186] M Hossain and others "Sustainable Financing Strategies for SMEs: Two Alternative Models," (2023)15 *Sustainability* 8488.

their general accessibility.[187] Additionally, a rigid legal mandate, which will be analysed in detail in Chapter 4, can nullify another otherwise valid document due to a minor technical error as observed in various legal interpretations within the OHADA jurisdictions. Regarding the procedures for requesting, handling, and presenting compliant documents for demand guarantees, SMEs also face knowledge gaps. Targeting capacity-building programs and creating customised financial literacy initiatives are necessary to close this gap and equip Cameroonian SME owners and employees with the knowledge and abilities they need.[188]

3.9 CONCLUSION

In summary, the demand guarantees created by the OHADA Uniform Act serve as legal and financial instruments with the primary objective of harmonising and modernising commercial law practice in Africa, thereby promoting and facilitating SMEs in Cameroon's access to trade finance and their effective engagement with regional and international markets. Harmonisation of the OHADA law facilitates legal certainty and predictability among its member states, bolstering integration efforts such as the AfCFTA. To investigate and address the practical barriers that SMEs face, such as institutional and legal rigidity, the complicated formation of demand guarantees, when is needed by SMEs and a lack of awareness, it is necessary to maximise the impact of this financial instrument. By addressing these gaps, there exists a profound opportunity to harness the transformative potential of OHADA bank guarantees as enablers of inclusive trade and SME development in Cameroon and beyond.

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[187] AN Berger & K Schaeck 'Small and Medium-sized Enterprises, bank relationship strength, and the use of venture capital' (2011) 43 *Journal of Money, Credit and Banking* 461–490.

[188] C Floros and others "Does Trading Volume Drive Systemic Banks' Stock Return Volatility? Lessons from the Greek Banking System," (2021)9 *International Journal of Financial Studies* 24.

CHAPTER 4

LEGAL AND INSTITUTIONAL BARRIERS AFFECTING THE EFFECTIVENESS OF BANK OR DEMAND GUARANTEES FOR SMES IN CAMEROON

4.1 INTRODUCTION

The introduction of the OHADA Uniform Act was widely celebrated as a progressive step in modernising business law across francophone Africa. The Act provided a harmonised legal framework governing secured transactions, guarantees, and credit instruments across the OHADA member states, including Cameroon. In theory, its provisions and trade finance. Yet, despite the presence of this framework, demand guarantees, which should operate as an efficient, autonomous, and reliable instrument of payment, have not fully achieved their intended purpose for SMEs in Cameroon.

This is because, beyond the uniform law, a range of legal and institutional barriers continues to undermine the practical utility of demand guarantees. They appear in the surrounding institutional challenges, which have been identified, such as restrictive banking practices. These excessive collateral requirements are intended to discourage SMEs from approaching banks when they need trade financing, due to judicial inconsistency and low levels of financial literacy, as well as limitations in the legal text itself, such as strict nomenclature requirements, ambiguities in documentary demands, and restrictions on who may issue guarantees.[189]

The problem is compounded by the regulatory ecosystem in which banks operate. The COBAC Text of 17 January 1992, which harmonises banking regulations across the six BEAC states, including Cameroon, imposes prudential standards that indirectly restrict SME access to guarantees by setting high lending thresholds and requiring strict compliance with documentation.[190] The risk faced by SMEs in Cameroon is increased by the more recent Law No. 2019/021 of December 2019 on credit activity in the banking and microfinance sector, which has ambiguous standards for civil and criminal penalties against bad-faith debtors.[191] Together, these measures reinforce a culture of caution and

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[189] AM Nkongho 'A Legal Analysis of the Challenges in Obtaining Bank Credits by New SMES in Cameroon (2022) 2 *International journal of legal developments and allied issue* 83-102.

[190] Commission Bancaire de l'Afrique Centrale (COBAC), Règlement COBAC R-92/01 relatif au contrôle des établissements de crédit (17 janvier 1992).

[191] Act 54-47 of Law No. 2019/021 of 24 December 2019 on Credit Activity in Cameroon.

exclusion in Cameroon's banking sector rather than promoting innovation in trade finance.

This chapter delves deeply into these concerns, starting with the inherent rigidities of the OHADA framework and institutional challenges, and then examining delays and uncertainties in document examination. After that, the argument for this dissertation turns to Cameroon's banking practices, with a high degree of low financial literacy for particular legal provisions and awareness, uneven judicial interpretation, and the wider economic consequences for SMEs. An evaluation of the impact of these obstacles on Cameroon's preparedness to engage in meaningful AFCFTA participation is presented in the chapter.

4.2 LEGAL RIGIDITY IN THE OHADA FRAMEWORK

The OHADA Uniform Act was created with the aim of harmonising and modernising securities law among OHADA member states, including Cameroon. However, specific provisions related to demand guarantees revealed a rigid approach if we are to consider the goal of harmonising business law in Africa, which is the main reason why OHADA law was created. Moreover, this chapter contains provisions concerning the legal barriers that SMEs in Cameroon face in utilising legal instruments as tools to access trade finance. Surprisingly, the law is detached from international best practices or standards and fails to reflect the realities of SME financing needs in Cameroon.

Three significant characteristics demonstrate this rigidity :(i) the prohibition on natural persons as guarantors, (ii) strict nomenclature formalism, and (iii) ambiguity in demand and documentary conditions.

4.2.1 Restriction on natural persons as guarantors

Article 40 of the Uniform Act stipulates that only legal persons, such as banks and licensed financial institutions, are permitted to issue demand guarantees. Natural persons are expressly prohibited from issuing a demand guarantee.[192] While the rationale is to protect individuals from the financial risks of issuing potentially unlimited obligations, the effect in Cameroon has been to exclude SME owners, many of whom operate as sole

[192] OHADA Uniform Act Organising Securities (2010) art 40.

proprietors or in family-owned structures, from providing guarantees to secure their transactions at both the domestic and international levels.

This restriction is particularly problematic given Cameroon's economic structure, which is mainly comprised of the informal sector, where SMEs' activities are dormant. This economy is primarily comprised of private, family-run businesses or those closely tied to the owner's personal reputation. In such circumstances, a sole proprietor's ability to personally issue a guarantee can be decisive in securing a supply contract, a trade credit facility, or participation in public procurement.[193] The prohibition, therefore, strips SMEs of one of the few tools available to them for signalling their creditworthiness to banks or business partners. An investigation conducted by Enonchonge argued that the OHADA rules reflect a "one-size-fits-all" approach that fails to account for commercial realities in francophone Africa, including Cameroon.[194]

Lessons to be drawn from the UN Convention and the ICC Uniform Rules for Demand Guarantees (URDG):

International instruments such as the URDG and the UN Convention appear to recognise that an individual may issue a demand guarantee. Thus, Article 2(a) of the URDG stipulates that a demand guarantee may be issued "by a bank, insurance company or other body or person". Similarly, Article 2(1) of the UN Convention states that an independent guarantee may be issued "by a bank or other institution or person". The word "person" in both instruments is, of course, wide enough to include a natural person. Nowhere in either instrument are individuals excluded from issuing demand guarantees. However, consumer protection safeguards apply. This comparative flexibility enables owners of SMEs to leverage their personal credibility while still protecting against potential abuse.

Lessons drawn from the French code:

In other legal systems, such as the French Civil Code, individuals are not automatically barred from issuing guarantees.[195] In the case of France, even before the introduction of Article 2321, the French courts had accepted that a demand guarantee issued by an

[193] Enonchonge (n 15) 91.
[194] Enonchonge (n 15) 69.
[195] N Enonchong *The Independence Principle of Letters of Credit and Demand Guarantees* 203.

individual was valid.[196] Thus, in Treben v Compagnie Générale de Location et d'Équipement, the Paris Court of Appeal enforced a demand guarantee issued by the director of a firm in his personal capacity to support a transaction that the company had entered into between his company and the beneficiary of the demand guarantee.[197] Similarly, a case still pending in France, Époux Jonville v The SA Ranger, has been recognised by the Versailles Court of Appeal as valid. The court recognised the validity of individual demand guarantees issued by a husband and wife in support of a credit facility to their company by a supplier.[198] In a more recent case, the Cour de Cassation ruled that a demand guarantee issued by an individual is valid and enforceable.

The franchise example illustrates why legal rigidity in the OHADA legal framework, even when intended as protective, can actually exacerbate financial exclusion. SMEs, already marginalised by banks' risk-averse practices, in fact exacerbate financial exclusion. SMEs, already marginalised by banks' risk-averse practices, are further denied access to guarantees by law.[199] This illustrates the importance of modifying the legal framework to accommodate emerging domestic commercial realities in the field, rather than imposing rigid models, as seen in the case of the OHADA Uniform Act on Secure Transactions, Article 40, as mentioned in Chapter One in the problem statement above.

4.2.2 Nomenclature for Formalism and Risk of Nullity

A second rigidity of the provisions within OHADA is found in Article 41 of the Uniform Act on Secure Transactions, which is an obligation that the demand guarantees should be explicitly titled as a 'first demand letter of guarantee.' Failure to use this exact terminology renders the guarantee null and void, regardless of its substance.[200]

This rigidity with the OHADA law creates a risk of formalistic invalidation. In *Société Ivoirienne de Banque v Société CORECA,* the Abidjan court of appeal invalidated an instrument that clearly operated as a demand guarantee because it was labelled as a "suretyship."[201] Such a ruling undermines the principle that legal instruments should be

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[196] Kelly-Louw (n 76) 124.
[197] Treben v Compagnie Générale de Location et d'Équipement (CA Paris, 7 February 1989), cited in Tajeldin Eissa Saleh Elhouderi]The law and practice of demand guarantees and standby letters of credit in civil and common law jurisdictions' PhD thesis, University of Westminster ,2010 152.
[198] Époux Jonville v The SA Ranger (CA Versailles, 20 October 1994)
[199] Kelly-Louw (n 76) 131.
[200] OHADA Uniform Act Organising Securities (2010) art 41.
[201] Enonchong (n 15) 20.

interpreted based on their substance rather than their form. For SMEs, the consequence is heightened legal risk: a minor drafting error could invalidate their security and jeopardise the financing of their contracts.

Lessons drawn from URDG 758 and English law:

In international best practice, it does not impose such strict nomenclature requirements. The ICC URDG 758 emphasise the substantive autonomy of the instrument, allowing parties to choose their own terminology.[202] Similarly, English courts have consistently emphasised the principle of substance, as seen in *Esal (Commodities) v Oriental Credit Ltd*, where an instrument's practical effect determined its classification.[203] The OHADA approach, therefore, isolates SMEs in Cameroon from international best practice standards, making OHADA bank guarantees less recognisable and enforceable abroad, which affects SMEs' ability to conduct business at the global level.

For SMEs that conduct their daily activities, including both domestic and international transactions, with limited legal and financial knowledge, this stringent requirement creates an additional barrier. Their reliance on dubious templates or inexperienced local lawyers may lead to ineffective demand guarantees as a financial tool for SMEs to promote trade, which could result in issues with the legal framework governing secure transactions. This highlights the need for OHADA reform to adopt a "substance over form" standard that aligns with international best practices.

4.2.3 Ambiguity in demand conditions and documentary requirements

A call for payment must be accompanied by the documents listed in the guarantee and must specify the principal debtor's default, according to Article 45 of the Uniform Act. specifically subject to these documents. Suppose this provision is interpreted broadly, regarding how it should be applied in the operations of SMEs when seeking to access trade finance. In that case, it erodes the autonomy of demand guarantees, effectively transforming them into conditional suretyships, which is a legal uncertainty which is a problem. This is inconsistent with the international understanding of guarantees as instruments payable "on first demand" without requiring proof of underlying default.

202 ICC URDG 758 (2010) art 2(a).
203 Enonchonge (n 15) 23.

Lessons drawn from the URDG, Civil Code, and the United States:

The URDG 758, for example, does not make default a mandatory requirement, but it does explicitly permit parties to agree on documentary requirements.[204] Comparative jurisdictions such as France and the United States have evolved towards greater contractual freedom. While demand guarantees are recognised by Article 5 of the Uniform Commercial Code, Article 2321 of the French Civil Code allows independent guarantees. However, OHADA's ambiguous language discourages foreign banks and investors, who may believe that guarantees originating from Cameroon are not entirely independent of the country's interests. This implies that SMEs will have less access to international funding. Foreign trading partners may demand guarantees governed by a foreign legal framework rather than OHADA law for SMEs wishing to participate in both intra-African and global trade. This can add to the costs and complexity of undertaking such a task.

4.3 DELAY AND UNCERTAINTY IN DOCUMENT EXAMINATION

Another barrier related to the timelines of documentation is found in Article 35 of the Uniform Act, which states that issuers have a "reasonable time" to examine and document before honouring a demand.[205] unlike UCP 600 Article 14(b), which sets a clear five-day maximum, an open-ended reasonable time standard in OHADA law introduces uncertainty and allows banks to delay the payment mechanism. This vagueness opens the door to delays and potential abuse. By contrast, UCP 600 (Article 14(b)) governs demand guarantees and sets a maximum of five banking days for examination.[206] The goal of the guarantee as a quick payment method is undermined because banks in Cameroon can postpone fulfilling demands under the pretext of "document review" due to the lack of a comparable clause in OHADA law.

A close examination of Article 46, which requires that banks that are issuers notify the account party and forward demand documents "for information" before making payment, further complicates the situation. The OHADA Uniform Act, however, does not outline the penalties for noncompliance. The guarantee provisions are silent on the subject of notification failures and their repercussions, in contrast to Article 19(2), which deals with

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204 URDG 758 art 20(a).
205 OHADA Uniform Act Organising Securities (2010) Art 46.
206 ICC UCP 600 Uniform Customs and Practice for Documentary Credits (2007) art 14(b).

suretyship. This ambiguity increases the risk of litigation by creating uncertainty. In practice, these delays unfairly harm SME when they are about to use the demand guarantees as a tool for financing inclusion, who rely on the speed and certainty of guarantees to maintain liquidity and meet contractual obligations. Late payments can harm the reputations of multinational companies, hinder the capacity of SMEs to conduct domestic and international business, and even result in insolvency.[207] As a result, the guarantee's ability to support trade finance is compromised.

Lessons drawn from the UCP 600:

The examination period is limited to five banking days under UCP 600 (Article 14(b)), which regulates demand guarantees and documentary credits.[208] Another vital lesson is Article 14(b) of the UCP 600, which sets a clear five-day maximum. In contrast, an open-ended, reasonable time standard in OHADA law introduces uncertainty and allows banks to delay the payment mechanism.

4.4 INSTITUTIONAL BARRIERS AND BANKING PRACTICES IN CAMEROON

While the OHADA Uniform Act provides a harmonised framework, the effectiveness of bank and demand guarantees for SMEs in Cameroon is severely hampered by national institutional and banking practices. These barriers manifest primarily in collateral requirements, procedural complexity, corruption, and the limited acceptability of banks to SMEs.

4.4.1 Excessive collateral demand

Despite the independence and abstract nature of demand guarantees under OHADA law, Cameroonian banks continue to impose collateral obligations that go beyond the scope of the Uniform Act.[209] Practically, most commercial banks require SMEs to provide either cash cover (ranging from 100% to 120% of the guarantee value) or immovable property as security.[210]For instance, Afriland First Bank's conditions for credit access require extensive documentation, including a pay slip, proof of employment, prior client history,

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207 Tawah (n 27) 34, 37.
208 ICC UCP 600 Uniform Customs and Practice for Documentary Credits (2007) art 14(b).
209 OHADA Uniform Act Organising Securities (2010) arts 40-41.
210 Nkongho (n 189)87, 90–92.

a business plan, and compulsory insurance subscription.[211] By permitting a variety of collateral types under the OHADA Uniform Act, such as pledged assets and future assets, these requirements essentially prevent new SMEs from expanding their access to credit.[212]

Furthermore, COBAC prudential regulations, notably regulation No. R-2001/01 on credit risk concentration limits a bank's exposure to a single borrower to 45% of its equity, while exposure exceeding 15% of capital is capped cumulatively.[213] With the intention of mitigating systemic risk. These thresholds disproportionately disadvantage SMEs, which are perceived as inherently riskier. The combined effect guarantees that guarantees become inaccessible to smaller enterprises, which are ironically the very businesses that OHADA reforms sought to empower.

Lessons drawn from URDG 758 and UCC :

Globally, demand guarantees are not instruments that require a high level of security; instead, they serve as substitutes for collateral. Banks provide guarantees under URDG 758 and UCC Article 5 primarily based on the applicant's creditworthiness, rather than requiring full cash cover. In contrast, Cameroonian banks often require a 100–120% cash cover or immovable property, which undermines the developmental purpose of guarantees.[214]

4.4.2 Multiple procedures and documentary requirements

Lengthily, the bureaucratic process also characterises Cameroonian banking practice. SMEs seeking guarantees must fulfil numerous requirements, ranging from notarised applications to proof of an existing account with the issuing bank.[215]Afriand First Bank illustrated this tendency, demanding a Prior account history of at least one to three months, employment certificates for individuals, a business plan and financial projection for enterprises, and subscription to risk insurance schemes.[216]

[211] Nkongho (n 189) 90–91.
[212] OHADA Uniform Act Organising Securities (2010), arts. 44-45.
[213] Art 12 COBAC Règlement R-2001/01 relatif au contrôle des risques bancaires (2001).
[214] Enonchonge (n 15) 529.
[215] Nkongho (n 189) 92.
[216] Nkongho (n 186) 90–91.

Such requirements, although compliant with Law No. 2019/021 on credit activity,[217] Create procedural complications for SMEs when trying to access financing for their day-to-day activities, particularly in international commerce. This process further inflates transaction costs, undermines the speed of trade finance, and contradicts the very essence of demand guarantees, which are designed to function as swift, autonomous undertakings.

4.4.3 Corruption and informal costs

Another institutional issue in Cameroon is corruption in the financial sector. According to a 2022 study, companies in high-corruption jurisdictions, such as Cameroon, had loan application rejection rates of over sixteen per cent because their owners, especially small and medium-sized enterprises, do not personally know or have a connection to the top management of the bank. This is in contrast to nine per cent for companies in low-corruption contexts that have strong ties to bank decision-makers or other financial institutions. [218] In reality, and based on my observations in the cities of Buea, Yaoundé, and Douala, SMEs often claim that they must pay unofficial fees to obtain favourable terms or expedite loan approvals. This keeps people out, especially businesses without social or political capital.

The problem is compounded by weak regulatory oversight. While COBAC has the authority to sanction banks for unethical practices, enforcement remains conflicting.[219] The outcome can be seen physically as SMEs are caught in a vicious cycle of mistrust between banks and borrowers, further marginalising their role in trade finance.

4.5 LIMITED AWARENESS AND FINANCIAL ILLITERACY

Beyond what is done in other institutions around the world, SME owners in Cameroon lack knowledge and financial literacy, which limits the effectiveness of bank guarantees. Less than 15% of SME owners are confirmed not to have ever used a bank guarantee, according to the World Bank's Cameroon Enterprise Survey (2021). [220]Both supply-side and demand-side factors contribute to this low uptake. SMEs believe that guarantees are complicated, costly, and exclusive to large companies. Banks rarely reach out to SMEs

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217 Arts 2-11 Law No. 2019/021 of 24 December 2019 on Credit Activity.
218 Nkongho (n 186) 91.
219 COBAC, Règlement COBAC R-92/01.
220 World Bank *Enterprise surveys what businesses experience Cameroon 2024, Country Profile* https://www.enterprisesurveys.org/content/dam/enterprisesurveys/documents/country/Cameroon-2024.pdf (accessed 21 September 2025) 43–45.

on the supply side to inform them about the availability and benefits of trade finance instruments, especially those owned by women. [221]These issues have been made worse by gender dynamics, especially the marginalisation of women entrepreneurs, who make up nearly half of Cameroon's unorganised SME sector. Studies show that less than 10% of women have bank accounts. [222]Women are disproportionately affected by collateral requirements related to land ownership due to long-standing property laws and inheritance restrictions.

Demand guarantees provide SMEs with numerous opportunities to secure funding; however, their practical use is hindered by business owners' limited knowledge and financial literacy. In emerging markets, most formal jobs are generated by SMEs, which create 7 out of 10 jobs. Nevertheless, access to finance remains a significant barrier to SME to participate in international trade and intra-African trade because of the inability to understand the legal instruments provided by the OHADA Uniform Act by a greater percentage of SMEs in Cameroon.To empower SMEs, facilitate easier financing, and strengthen the economy overall, these gaps must be addressed through targeted educational programmes and improved financial literacy initiatives.

4.6 JUDICIAL INTERPRETATION AND INCONSISTENCY

For judicial interpretation to be valid, it must adhere to the principles of demand guarantees as set out in Article 52 of the OHADA Uniform Act; only then will their autonomy be fully realised. However, the distinction between demand guarantees and suretyship has often been blurred by Cameroonian courts.[223] For example, courts in Cameroon and other OHADA member states continue to violate the principle of independence in several cases by requiring proof of the debtor's default before enforcing a guarantee.[224] These discrepancies in the application of the OHADA law on secure transactions are caused, in part, by judges' inadequate knowledge of OHADA securities law and, in part, by French civil law traditions, which place a strong emphasis on suretyship.

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[221] FT Asah & P Hove-Sibanda Formal financial institutions' financing of women-owned small and medium enterprises in South Africa: a supply-side perspective. (2024) 17 *Qualitative Research in Financial Markets* 2023-0031.
[222] Nkongho (n 189) 93.
[223] OHADA Uniform Act Organising Securities (2010) art 52.
[224] Tawah (n 27) 34, 37.

Lessons to be drawn from the ICC's URDG 758:

Comparative jurisprudence highlights the risks of such irregularities. In Esal (Commodities) *v* Oriental Credit Ltd, the English court emphasised the autonomy to demand guarantees, ruling that banks must pay against compliant demands, regardless of disputes arising from the underlying contract.[225] Similarly, ICC's URDG 758 confirms that demand guarantees have clear duties that must be respected upon request by the beneficiary, provided all the necessary documentation is submitted.[226]SMEs cannot rely on guarantees as trustworthy instruments for trade finance if Cameroonian courts do not consistently enforce them.

4.7 ECONOMIC IMPLICATIONS FOR SME GROWTH

The legislative rigidity of the OHADA Uniform, as mentioned in the problem statement in Chapter One above, the excessive collateral requirements imposed by Cameroonian banks and other financial institutions, financial illiteracy, ineffective judicial enforcement, and corruption all have a significant combined effect. SMEs in Cameroon continue to face challenges when attempting to utilise demand guarantees to secure funding, enter new markets, or fully participate in AfCFTA value chains. There are broader economic implications for the limitations of SMEs.

It prioritises credit access for large businesses and politically connected elites, restricts job creation, and maintains informality.[227] It also undermines regional financial integration within CEMAC, given Cameroon's leading role in the bloc's banking system. Except when reforms are introduced, demand guarantees will remain underutilised in Cameroon, particularly when SMEs need to utilise them, thereby limiting the transformative potential of OHADA's legal framework.

4.8 CONCLUSION

This chapter has demonstrated that although the OHADA Uniform Act on Secured Transactions establishes a strong legal basis for demand guarantees, its impact in Cameroon is undermined by legal, institutional, and practical barriers. These include

225 Esal (Commodities) v Oriental Credit Ltd [1985] 2 Lloyd's Rep 546, 550.
226 ICC URDG 758 art 2.
227 SM Ellé (2019). Financial and human capital of microentrepreneurs and financing by microfinance institutions (MFIs) in Cameroon (2021)4 *Journal of Finance and Banking Review 98-107.*

prohibitive provisions excluding natural persons, rigid formalism in nomenclature and documentary conditions, open-ended timeframes for assessing demands presented to the bank, excessive collateral requirements imposed by banks, bureaucratic loan procedures, corruption and informal costs, judicial inconsistency, and limited awareness among SMEs.

Dealing with these legal and institutional challenges, which SMEs face when trying to use this financial instrument, requires a dual approach. To ensure clarity and predictability, the Cameroonian government must strengthen regulatory enforcement by developing judicial expertise in commercial law, simplifying banking procedures, encouraging demand guarantees, and promoting financial literacy. The OHADA secretariat should consider revising its rules to cut bureaucracy and better align with global best practices, such as URDG 758.

CHAPTER 5:

FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

This chapter presents the findings, recommendations, and conclusions, which are outlined in four sections. Beginning with a detailed analysis of the findings, this approach focuses on the main research question and its specific objectives. These findings are drawn from comparative and doctrinal analysis discussed in the previous chapters, particularly Chapter Four. Secondly, the chapter presents legal and policy recommendations drafted to address the identified gaps and to align the OHADA Uniform Act with the global standard of demand guarantee and other best practices in different jurisdictions. Thirdly, the dissertation provides an assessment of the contribution that this research would make to the broader economic and legal discourse on trade finance by institutions such as Afrixembank, the World Bank, the African Development Bank, and regional integration under the AfCFTA agenda. Finally, it concludes by restating the significant insights, highlighting the importance of legal reform, and affirming the relevance of bank guarantees as a crucial trade finance instrument for SMEs in Cameroon.

5.2 FINDINGS

The findings of this dissertation are structured around the main research question and the four specific research questions, where each of the questions is being addressed in different sub-sections, as will be elaborated below, drawing from doctrinal analysis of the OHADA legal framework governing secure transactions and from the international best practice standard of demand guarantee.

5.2.1 Main Research Question:

How does the legal regime governing OHADA bank guarantees affect the ability of SMEs in Cameroon to access trade finance?

The revised Uniform Act on Securities (2010) gives a structure and codified legal framework for bank guarantees, which are outlined in Articles 39 to 47[228]. The legal framework was established to ensure certainty, predictability and alignment with the international best practices. Notwithstanding, in practice, its impact on SMEs has been

[228] OHADA Uniform Act Organising Securities (2010) Arts 39 -49.

mixed, particularly in Cameroon. On the other hand, it is characterised by the legal recognition of independent bank guarantees as autonomous financial instruments, which are different from suretyship. Therefore, promoting the use of guarantees in trade transactions through legal rigid formal requirements, strict compliance provisions in the Uniform Act, and the prohibition on natural persons issuing guarantees has significantly limited the accessibility and practical utility of demand guarantees by SMEs. A good number of SMEs in Cameroon often operate in a highly informal manner, with limited capital and a credit-constrained business environment. SMEs have been disproportionately harmed by the OHADA Act's strict formalities, which include the need for fixed amounts and strict nomenclature.

Compared to other legal systems, particularly English law and the ICC's URDG 758, this approach adopts a more adaptable framework for business or commercial transactions, taking into account "all-monies" guarantees, revolving facilities, and greater contractual freedom.[229]Therefore, even though OHADA has been successful in creating a regional legal framework, its unduly strict features contradict its professed objective of making financing more accessible. The central finding is therefore that OHADA's current legal regime, while conceptually sound, is too rigid and formalistic to meet the financing needs of SMEs in Cameroon. This hinders SMEs from fully utilising bank guarantees as trade finance instruments.

5.2.2 Specific Research Question 1:

What are the core legal provisions under OHADA's Uniform Act on Secured Transactions governing bank guarantees, and how are they applied in Cameroon?

The Uniform Act has several provisions governing bank guarantees, which are primarily located in Articles 39 to 49. The Act distinguishes bank guarantees from traditional suretyship, affirms their autonomous nature, and sets out specific requirements relating to form, nomenclature, amount, and enforcement.

Article 39 requires that guarantees state a fixed amount, Article 40 prohibits natural persons from issuing guarantees, and Article 41 requires guarantees to be titled a "first demand letter of guarantee." It stipulates the maximum amount, Articles 45–46 deal with

[229] URDG 758 arts 1, 2, 14 & 21

notification and payment procedures, and Article 38 addresses expiry, but without clarity on non-working days. The courts in Cameroon, as well as banks and other financial institutions, are frequently characterised by uneven enforcement and limited judicial guidance for SMEs to utilise this instrument. Banks reject guarantees that do not strictly adhere to formal requirements because they tend to interpret the provisions conservatively. This approach restricts the adaptability and creativity of trade finance products.

When compared with other jurisdictions of best practice in the world, such as French law in its Article 2321 of the Civil Code and English law, which emphasise the independence of demand guarantees while adopting a substance-over-form approach. The ICC's ISP98 and URDG 758 offer comprehensive procedural guidelines that decrease litigation and increase certainty. The experience of Cameroon demonstrates that SMEs encounter significant challenges in navigating the OHADA regime due to the absence of comprehensive guidance.

The finding here is that the core legal provisions under OHADA are comprehensive in scope. However, they are applied in Cameroon in a rigid and conservative manner, which limits their practical utility, especially for SMEs with limited legal capacity.

5.2.3 Specific Research Question 2:

To what extent do the formal requirements for bank guarantees under OHADA accommodate the structure and financing needs of SMEs in Cameroon?

There is a need for the OHADA Uniform Act Organising Securities to create a legal framework with clarity and predictability, as reflected in the formal requirements, including strict written form, a fixed amount, and precise nomenclature. Nevertheless, these provisions fall short in meeting the financing needs of SMEs. SMEs often require flexible arrangements, revolving credit lines, and continuous performance guarantees, which can be challenging to incorporate into the OHADA framework, which is based on fixed amounts.

As demonstrated by instances where the lack of precise nomenclature has rendered otherwise valid instruments invalid, the insistence on rigorous compliance has resulted in the nullity of guarantees for minor technical errors. These formalities serve to exclude

SMEs from using the instrument, in addition to a lack of legal expertise to understand and interpret the instrument. When we compare our legal system with other legal systems and adapt them, "All-monies" principles, for example, guarantee that guarantees are treated under English law to favour SMEs in meeting varying obligations. Regarding the amounts specified in the Uniform Act, their extensions, and the various procedural mechanisms, the ICC URDG 758 allows for flexibility. The strictness of the OHADA Uniform Act, consequently, restricts innovation and deters SMEs from utilising guarantees as a financing instrument, which they are supposed to use without any difficulties, as has been practised in other jurisdictions applying the ICC standard. Thus, the finding is that the formal requirements under OHADA prioritise certainty and predictability but fail to accommodate the practical financing needs of SMEs. This reduces the relevance of guarantees as a viable instrument for small businesses in Cameroon.

5.2.4 Specific Research Question 3:

What legal and institutional barriers prevent SMEs from effectively utilising OHADA-compliant bank guarantees for trade finance?

This study identifies both legal and institutional barriers:

Legal barriers: Prohibition on natural persons acting as guarantors in Article 40 of the revised Uniform Act, strict formalities (fixed amount, mandatory nomenclature), lack of clarity on key issues such as expiry on non-working days, “extend or pay” requests, and the effective date of issue, and absence of fallback provisions for currency of payment.

When we talk of institutional barriers, these include a lack of expertise in the judicial interpretation of financial instrument when needed by SMEs most layers in Cameroon do not understanding the nature of demand guarantee and also a conservative banking practices that overemphasise formal compliance, a lack of awareness among SMEs of the existence and utility of bank guarantees, and limited engagement by financial institutions in offering tailored products to SMEs.

The combined effect of these barriers is that SMEs in Cameroon rarely use OHADA-compliant bank guarantees despite their potential benefits. Comparative jurisdictions demonstrate that flexible rules, judicial training, and proactive financial institutions can mitigate these barriers. The finding is that SMEs in Cameroon face significant legal and institutional obstacles in accessing trade finance through OHADA bank guarantees, which limit their integration into regional and international trade.

5.2.5 Specific Research Question 4:

What legal reforms and policy recommendations could enhance the effectiveness of OHADA guarantees in improving trade finance access for SMEs in Cameroon?

This dissertation's analysis reveals that several reforms are necessary to enhance access to trade financing for SMEs and align OHADA law with global best practices. Articles 39 and 41 must be amended to permit variable or determinable amounts and to prevent nullity resulting from minor mistakes. Second, clarify Articles 45–46 regarding notification, deadlines, and payment processes, and amend Article 40 to permit private individuals, such as the founders of SMEs, to provide guarantees under certain protections. According to URDG 758 and ISP98, amend Article 49 to adopt a business-day rollover rule, add provisions on "extend or pay" requests, define rules regarding the currency of payment and the date of issue, provide judicial training and encourage SME financial literacy, and expand SME trade finance through Afreximbank and AfCFTA programs.

The findings suggest that the effectiveness of the OHADA guarantee can be enhanced by combining legal reforms with institutional and policy changes. This will enable Cameroonian SMEs to access trade finance and benefit from regional integration.

5.3 RECOMMENDATIONS

Based on the findings of this research, several reforms are necessary to enhance the effectiveness of OHADA bank guarantees and align them with international standards. The following recommendations are proposed:

Reform of Articles 39 and 41: Flexibility in Amounts and Nomenclature: The requirement in the OHADA Uniform Act regarding the usage of bank guarantees by SMEs, which stipulates that guarantees must specify a fixed maximum amount when issuing the demand-complaint and use the precise label of “first demand letter of guarantee”, is overly rigid. This provision is inflexible or rigid, and it has excluded arrangements such as revolving credit facilities or “all monies” guarantees that SMEs need for their day-to-day transactions. To make the OHADA law align with English law and URDG 758, these clauses could be amended to permit determinable amounts. Further, a substance-over-form approach could also be where minor technical errors will not nullify guarantees.

Amendment of Article 40, Participation of Natural Persons: Article 40 prohibits natural persons from issuing demand guarantees. This exclusion prevents SME founders from personally supporting their businesses, despite this being a common practice in many informal economies.[230] Furthermore, SMEs would be empowered, and individuals would be protected from abuse, if the clause allowing natural persons to issue guarantees were amended to include protections such as mandatory risk disclosures or liability caps.

There is a need for clarification of Articles 45 and 46, Specifically Regarding the Notification and examination periods. The Uniform Act governing demand guarantee is also unclear regarding the procedure for document examination and the consequences of not informing the account party, as well as whether payments can be made before the account party is notified. As a result, uncertainty and disagreements arise from these ambiguities. OHADA should clearly outline the repercussions of non-notification and establish reasonable examination periods (such as five business days), drawing on UCP 600 and URDG 758 see the case in a construction contract as evidence in Dormell Properties 282 CC v Renasa Insurance Co Ltd and Others 2011 1 SA 70 (SCA) where it was said that the guarantee was wholly independent of the underlying building contract and whatever disputes subsequently arose between the employer and the contractor were irrelevant to the guarantor's obligations under the warranty.[231]

Amendment of Article 49, Expiry on Non-Working Days: The OHADA Uniform Act is silent on what happens if a guarantee expires on a non-business day, such as on a weekend or a public holiday. This uncertainty can result in disputes and unfair outcomes. A reform adopting the business-day rollover rule, as found in URDG 758 and the UN Convention, would ensure fairness and predictability.

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230 OHADA Uniform Organising Securities art 40.
231 C Lupton & S Huneberg Issuance of independent guarantees by insurance companies (2023)48 *Journal for Juridical Science* 16.

Recognition of "Extend or Pay" Requests: The 2010 revised OHADA Uniform Act Organising Securities does not validate "extend or pay" demands, despite their practical contribution to global trade. Introducing a provision recognising such requests, consistent with URDG 758 and ISP98, would bring OHADA into line with international standards of demand guarantee and enhance commercial flexibility at all levels that businesses find themselves.

The definition of the date of issuance is not provided in Article 43, which does not define "issuance," but it does mention that guarantees take effect upon issuance. Suppose SMEs engage in business transactions that involve courier or electronic delivery. In that case, this will ultimately lead to an increase in uncertainty, prompting them to utilise demand guarantees as a means of securing financing for their operations. Unexpected disputes could be avoided by adopting the following definitions from the best practice across the globe, the International Chamber of Commerce's (ICC) Uniform Rules for Demand Guarantees (URDG 758), the ICC-endorsed International Standby Practices (ISP98), and the United Nations Commission on International Trade Law's (UNCITRAL) United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (UNCITRAL Convention.[232]

Specification of Currency of Payment: The currency of payment may result in litigation because the OHADA Uniform Act does not specify the currency of payment. It would increase certainty and be in line with URDG 758 to amend Article 41 to require the payment currency to be specified explicitly, with fallback provisions in the event of exchange controls.

Judicial Training and Institutional Support: Legal reform alone is insufficient without institutional strengthening. Training programmes for judges and arbitrators would promote consistent interpretation of guarantees. Financial literacy campaigns targeting SMEs would also raise awareness of the role and utility of guarantees.

Promotion of SME-Focused Trade Finance Products: The legal system in the OHADA region should enable banks to be incentivised to design guarantee products tailored to SMEs' financial needs by using the demand guarantee principle. The collaboration of

232 As above.

various institutions, such as OHADA, Afreximbank, and the AfCFTA Secretariat, could create regional programmes to expand SME access to trade finance using OHADA-compliant guarantees, benchmarked against international best practices and what other jurisdictions consider best practices globally.

5.4 CONTRIBUTION TO LEGAL AND ECONOMIC DISCOURSE

This paper contributes to the growing body of knowledge on international commercial law systems, aiming to promote economic growth. It emphasises the need for reforms that go beyond legal certainty to embrace flexibility, inclusion, and commercial realism by bridging the gap between doctrinal legal analysis and the economic realities of SMEs. By connecting Cameroon's SME trade finance barriers with the OHADA law, this will help close the gap in the lack of trade finance. The dissertation thus closes a significant gap. It illustrates that reforms to OHADA guarantees can serve not only to ensure legal certainty, but also to include financial inclusion, economic growth, and regional integration.

5.5 CONCLUSION

This dissertation has demonstrated that while the OHADA Uniform Act on Secured Transactions provides a solid legal foundation for bank guarantees, its rigid formalism, legal ambiguities, and institutional weaknesses limit its effectiveness for SMEs in Cameroon. The research analysis, which is comparative, shows that there are other flexible jurisdiction systems, such as those in France and England, as well as under ICC instruments, that offer models that better accommodate the needs. Therefore, there is a need to modernise the OHADA legal framework governing demand guarantees and better align it with global best practices, thereby enhancing access to trade finance for SMEs in Cameroon. The proposed reforms encompass legal, institutional, and policy changes.

Further, the promise of the AfCFTA would be realised with the help of such reforms, as it would also enable SMEs to integrate into regional and global markets and unleash their full potential as growth engines. Ultimately, the efficacy of OHADA bank guarantees depends on what the law says, its application, interpretation, and the extent to which it considers the realities of African SMEs. The path forward is straightforward to make bank guarantees truly inclusive instruments for trade finance and development in Cameroon. This issue has compromised the efficacy of the OHADA law governing trade finance, so OHADA needs to shift its approach from rigid formality to flexible functionality. The risk that SMEs will continue to be financially excluded if this issue is not resolved will increase inequality with financial service providers and make it more difficult for Cameroon to align with the regional goal of the AfCFTA. As a result, the OHADA bank's legal framework must be reevaluated, with an emphasis on improving institutional interpretation, reforming restrictive clauses, and educating SMEs about trade finance as a means to meet their financial needs.

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