



The Legal 500 Country Comparative Guides

Ivory Coast INVESTING IN

Contributor

Houda Law Firm



Andy Lionel Biau

Lawyer – Managing Associate | andy.biau@avocatshouda.ci

Marine Quintric

Senior Legal Counsel | marine.quintric@avocatshouda.ci

Saria AbouKhalil

Senior Legal Counsel | saria.aboukhalil@avocatshoudaci.com

Tess Roussel

Senior Legal Counsel | tess.roussel@avocatshouda.ci

This country-specific Q&A provides an overview of investing in laws and regulations applicable in Ivory Coast.

For a full list of jurisdictional Q&As visit legal500.com/guides

IVORY COAST INVESTING IN



1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Côte d'Ivoire has enjoyed dynamic, strong and stable economic growth with average annual growth of between 6% and 7% for the last three years.

The government's strategy around national development plans in recent years (especially plan 2021-2025), focuses on a policy of attracting domestic and foreign private investment and making private investment a motor of the country's economic growth. Several measures have been implemented, which have enabled Côte d'Ivoire to reach 110th position in the Doing Business ranking in 2020 (177th in 2012).

According to UNCTAD's [2022 World Investment Report](#), the country attracted USD 1.38 billion in FDI inflows in 2021, a strong rebound from the low USD 713 million achieved in 2020 in the context of the global health and economic crisis.

FDI are predominantly made into specific industries such as in infrastructure, energy, mining and agro processing. Thanks to stable political climate since the 2011 crisis, Cote d'Ivoire has been ranking well when it comes to overall governance (based on the criteria of security and rule of law, participation and human rights, economic and sustainable development, and human development).

Across 2020 to 2022, Cote d'Ivoire has received 25, 16, and 22 Greenfields investments, here corresponding to the creation of subsidiaries ex-nihilo by the parent company.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b)

acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

Regulation No. 09/2010/CM/UEMOA/ On External Financial Relations of Member States of The West African Economic and Monetary Union (WAEMU) defines a **direct investment** as

- the purchase, creation or expansion of businesses, branches or any other personal enterprise;
- all other operations when, singly or in multiples, concurrently or successively, they have the effect of enabling one or more persons to acquire or increase control of a company carrying on an industrial, agricultural, commercial, financial or real estate activity, whatever its form, or to ensure the expansion of such a company already under their control.

However, a "direct investment" does not include a holding of less than ten percent (10%) in a company's capital.

Foreign under that same regulation is defined as countries other than those belonging to the Franc zone. The term "foreign" applies to countries outside of WAEMU as regards to the supervision of the position of credit institutions in relation to foreign countries and the processing of the following transactions:

- domiciliation of exports abroad and repatriation of income from export proceeds,
- issuance and sale of foreign securities,
- imports and exports of gold, investment and loan transactions abroad, and
- physical exports of instruments of payment and securities through the post or parcel services.

For the purposes of statistics involved in the compilation

of the balance of payments of a given WAEMU member state, all countries other than the state concerned shall be considered foreign.

An investment is a transaction enabling foreign investors to acquire or increase control of a company engaged in any form of industrial, agricultural, commercial, financial, or real estate activity, or to expand a company already under their control. When it exceeds 10% of the company's capital, it qualifies as Foreign Direct Investment (FDI).

These include all funds received from non-residents with a view to a lasting interest, notably the profitability and future development of the company receiving the investment.

Non-residents are natural persons having their primary area of interest abroad, foreign civil servants serving in a WAEMU member state and foreign subsidiaries of national or foreign legal entities.

The regulation defines **primary area of interest** as the location where a natural person carries out his or her main economic activity. Consequently, no one may have more than one primary area of interest. This criterion, in addition to the concept of habitual residence, requires an assessment of the economic activity of the operator.

All forms of FDI listed in the question occur frequently in Ivory Coast, however Greenfield investments are predominant, where parent companies create subsidiaries. Most of the FDI in Cote d'Ivoire are acquisitions of business or minority interests in existing companies.

The choice will also depend on the strategy and the industry in which the investor would like to settle in. Some industries require partners and shareholders to be of ivorian nationality, or require of a company to be either ivorian, with 51% held by ivorian citizens, whereas some industries only require the creation of a company registered in Cote d'Ivoire, but which can be held by foreigners.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Yes, in principle they are allowed to own 100% of a domestic company. However, depending on the industry in which they would like to invest in, there may be laws and rules on the ownership of the company. For example, industries including but not limited to cacao, mining, oil and gas, maritime or pharmaceutical are

specifically regulated to favor the local industry and the local workers.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Foreign investors can in principle invest and hold the same class of stocks and equity securities as domestic shareholders, subject to the above reservation.

Common stock are the ones often used in Cote d'Ivoire, i.e., those who usually grant partial ownership in the company with the shareholders getting the right to receive a proportional share of the value of any the assets if the company is dissolved.

For company on the stock market, there is no regulation impeding on foreign investors to buy any class of actions. The requirement however is to follow the procedure prescribed by the *Bourse Régionale des Valeurs Mobilières* ("**BRVM**").

To invest on the BRVM, the applicant must follow these rules:

- Contact an authorized intermediary (SGI, SGO, SGP, SG OPCVM, etc.);
- Open a securities account;
- Choose a portfolio management method;

The function of authorized financial intermediary is regulated on the regional stock market of the West African Economic and Monetary Union (WAEMU). These are SGI, SGO, SGP, SG OPCVM. However, only the "*Sociétés de Gestion et d'Intermédiation*" (SGI) are authorized to trade in securities listed on the BRVM. Accounts are opened through authorized intermediaries. The account is opened by signing an agreement and an account opening form. Each intermediary is free to set its own rates, but the rates applied are approved by the *Conseil Régional de l'Epargne Publique et des Marchés Financiers* (CREPMF), the market's supervisory authority.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Some Ivorian companies have predominantly Ivorian management bodies, while others include foreigners in their management.

In this respect, and as already mentioned above, some

business sectors require compliance with certain legal or regulatory requirements of local content.

This is the case, for example, for companies operating as shipping agents: in addition to being at least 25% owned by Ivorians, they must have at least one Ivorian on the management board (either the managing director, deputy managing director or administrative and financial director for limited companies, or the manager or administrative and financial director for all other types of company).

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Commercial companies are governed in Côte d'Ivoire by the Uniform Act on the Law of Commercial Companies and Economic Interest Grouping, published on 30 January 2014 ("**AUSCGIE**"). The most commonly used commercial forms are listed below.

The limited liability company (« *société à responsabilité limitée* » or « **SARL »),**

The SARL is the most straightforward of commercial companies. The liability of the shareholders is limited to contributions and may be established, and managed, by one or more natural or legal person. It does not require any minimum share capital for its creation and its capital is divided into shares. It is often characterised by a fairly strong *intuitu personae*, which is why transfers of shares are often governed by specific authorisation rules.

The shareholders of the SARL meet in either an ordinary (each year for the approval of the accounts of the closed financial year) or an extraordinary assembly (for any modification of the articles of association). This form is a corporate form adapted to greenfield project as well as commercial activities and services.

The joint stock company (the « *société anonyme* » or « **SA »)**

The SA under the AUSCGIE may be held by a single shareholder. The founder(s) must choose in the articles of association for the management and administration between either an SA with a board of directors (from one shareholder); or an SA with a managing director (up to three shareholders). The minimum share capital of an

SA is XOF10 million and must be fully subscribed by the shareholders. They may be paid up by at least one quarter upon incorporation. The founders of an SA must appoint a statutory auditor, and an alternate auditor, chosen from among experts who are members of the Order of Chartered Accountants of Côte d'Ivoire.

- **The SA with a board of directors** is composed of a minimum of three persons and a maximum of 12 members, shareholders or not. The board of directors decides the direction and implementation of the company's activity. It controls and verifies the proper functioning of the company and settles company matters through deliberations.
- **The SA with a managing director (*administrateur général*)** - The managing director has under his responsibility, the administration and general management of the company. He or she represents the company in front of third parties, convenes and chairs the general meetings of shareholders. He is vested with the broadest powers to act in all circumstances on behalf of the company and exercises them within the limits of the corporate purpose. This exercise is subject to the powers expressly attributed to shareholders' meetings by the AUSCGIE and, where applicable, by the articles of association.

The SA is a suitable form of company for joint ventures and companies with significant investments to make or those engaged in regulated banking or financial activities.

The simplified joint-stock company - (« *société par actions simplifiée* » or « **SAS »)**

The SAS is a company set up by one or more shareholders whose articles of association freely provide for the organisation and operation of the company, subject to certain mandatory rules. The liability of the shareholders is limited to the contributions and there is no minimum share capital to create an SAS. It can also be created by a single shareholder ("single-person simplified joint-stock company" or "**SASU**").

The articles of association determine the decisions that must be taken collectively by the shareholders in the forms and conditions they stipulate.

This form of commercial company is appropriate for companies with different profiles of shareholders such as investors and project leaders, equity companies and companies operating in the field of services and new technologies.

In addition to the main commercial companies listed above, investors often use other types of company to manage their business portfolios, or to cautiously initiate an investment project in a new geographical area.

These are the holding company and the branch, both of which have specific characteristics :

i. The holding company

A holding company is a company whose purpose is to own shares in subsidiaries or holdings of companies in which it intervenes to control the management or direct the activity. It is also a holding company whose business is to invest in a portfolio of securities in order to generate a satisfactory return over the long term.

ii. The branch

A branch is a commercial, industrial or service establishment belonging to a company or individual, with a degree of management autonomy. It has no independent legal personality, distinct from that of the company or individual owner.

The rights and obligations arising from its activity or existence are included in the assets and liabilities of the company or individual owner.

The branch may be the establishment of a foreign company or individual. Subject to international conventions or legislative provisions to the contrary, it is subject to the law of the State party in which it is located.

It must be registered in the Trade and Personal Property Credit Register in Côte d'Ivoire, in accordance with the provisions governing this register.

Where the branch is owned by a foreign person, it must be transferred to a company incorporated or to be incorporated in one of the Contracting States, no later than two (2) years after its creation (unless an exemption is granted by ministerial order of the Minister of Commerce of the Contracting State in which the branch is located).

Which form is preferred by domestic shareholders?

The choice of type of company will take into consideration tax implications, which depend on the nature of the activity carried out as well as:

- any local ownership/directorship requirements applicable to the sector of activities or the type of company;
- structure/control of the management;

- share capital ;
- type of investment (merger or acquisition of shares in an existing company, or company to be created); and
- any approval required from regulators in order to operate.

Preference may eventually be given to SARL by domestic shareholders, as this is the corporate form that can be considered the simplest to set up and manage. However, SA and SAS can be chosen as they allow high amounts of share capital for financing costly investments and provide for a better governance inside the company.

Which form is preferred by foreign investors/shareholders?

Again, the choice of type of company will take into consideration tax implications, which depend on the nature of the activity carried out as well as:

- any local ownership/directorship requirements applicable to the sector of activities or the type of company;
- structure/control of the management;
- share capital ;
- type of investment (merger or acquisition of shares in an existing company, or company to be created); and
- any approval required from regulators in order to operate.

SA and SAS can be chosen for financing costly investments and providing for a better governance inside the company.

Indeed, building a business in some industries will require the investors to follow specific rules as prescribed by the laws and regulations, which might automatically impose the legal form to be used.

For example, to open a university, the investors will be required to create an SA, joint stock company. This is also the case in the banking sector, where the only legal form authorized for credit institutions is that of a Société Anonyme with a Board of Directors.

What are the reasons for foreign shareholders preferring one form over the other?

Foreign and domestic investors or shareholders may select any of these companies depending on the industry, the aim and strategy of the company as well as the investment. As previously explained, depending on the industry, there may be some specific requirements regarding the form of the company.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Which governmental entities have to give approvals?

The Ivorian State has set up a one-stop shop, CEPICI (Investment Promotion Centre in Côte d'Ivoire), where all company creations are filed, whether or not they are monitored by the Notary.

Companies are therefore created through the CEPICI and are required to register with the Trade and Personal Property Credit Register (RCCM) at the court where the head office is located.

What is the process for forming/incorporating a domestic company?

The Ivorian State has set up a one-stop shop, CEPICI (Investment Promotion Centre in Côte d'Ivoire), where all company creations are filed, whether or not they are monitored by the Notary.

In this respect, for the creation of a SAS (simplified joint stock company) and SA (joint stock company), the recourse to a notary public is mandatory in order to obtain notarized articles of association and the notarial declaration of subscription and payment (DNSV). However, for the creation of a SARL (limited liability company), the recourse to the notary is not compulsory, provided that the client is able to open a bank account and provide a bank certificate of deposit of capital. The Notary's fees as well as the registration and registry fees vary according to the amount of the company's share capital.

Thereafter, the company's share capital must be transferred at the latest on the date of signature of the Articles of Association. This share capital can be paid into a special account opened in an Ivorian bank or into the Ivorian notary's account.

The incorporation deeds are then filed with the CEPICI.

Thereafter, the CEPICI issues a "RCCM", i.e. the trade

register.

The company shall also register before the tax authorities whereas a *Declaration fiscale d'existence* (DFE) is issued and shall proceed with the CNPS registration.

What is a required capitalization for forming/incorporating a company?

The capitalization will depend on the form of the company.

Minimum share capital - SARL	No minimum in Côte d'Ivoire
Minimum share capital - SA	10 million FCFA divided into shares whose nominal values is set out by the articles of association.
Minimum share capital - SAS	No minimum- it is set out by the articles of association.

How long does it take to form a domestic company?

In practice, the registration period for SA and SAS is about 5-6 weeks from the date of filing the documents at CEPICI. For SARL, the timeline is shorter, and we have been able to register companies within 2 weeks. However, this is an indicative timeframe that may be longer or shorter depending on the situation of the authorities.

How many shareholders is the company required to have?

All three forms of companies can be constituted by one or more natural or legal persons.

Is the list of shareholders publicly available?

Yes, anyone can obtain the list of shareholders from the RCCM.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

There are no specific governmental requirements or approvals for a foreign investor when acquiring shares in a private company, except in certain sectors where the company conducts a regulated activity and shall inform/obtain approval of the regulator of/for any change in the shareholding or ownership of such, including acquisition by foreigners. Also, in accordance with article 10 of Regulation No. 09/2010/CM/UEMOA, all foreign investments and transfers of investments between non-residents are subject to an obligation to make a statistical declaration to the Directorate in charge of

External Finances and to BCEAO, in the case of direct investments.

As for the acquisition of assets, it depends on the type of assets in question and the applicable laws. But in all cases, statistical declaration to the Directorate in charge of External Finances and to BCEAO is applicable.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

A foreign investor doesn't need a specific approval in either situation presented above, unless specifically provided for in the company's articles of association. Once the acquisition is made, the company must record the movement of shares between shareholders.

However, as explained above, to purchase the shares listed on the stock market and to public tenders, one must go through the process prescribed by the BRVM, which is to open an account through an SGI and fill out the subscription form.

Article 8 of the regulation prescribes the modalities for the issuance and sale of securities, soliciting for foreign investments, subscriptions to foreign-based real estate construction operations.

Indeed, prior to the authorization of public offerings within WAEMU by the Regional Council for Public Savings and Financial Markets (CREPMF), the following operations must be authorized by the BCEAO acting on behalf of the Authority in charge of regulating external financial relations:

- the issuance, exposure and sale of securities of any kind by foreign states, foreign public authorities or companies, or international institutions;
- solicitation of residents with a view to constitution of deposits of funds with private individuals or institutions abroad;
- any publicity by means of posting, press releases or advertisements in publications produced in WAEMU member state for the purposes of foreign investments or subscriptions to foreign-based real estate construction operations.

The modalities for the delivery of these authorizations are prescribed by the BCEAO instruction

n.09/07/2011/RFE regarding the authorization of the authority in charge of the regulation of exterior financial relations of WAEMU member states, to non-resident entities that wishes to proceed with public offering within the WAEMU.

Purchases, by WAEMU residents, of foreign securities authorized for issue and sale in WAEMU member states by the CREPMF, must comply with the provisions of Article 10, paragraph one of the present Regulation.

An authorization from the CREPMF will then have to be granted.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

There is no specific requirement for a mandatory tender offer if a foreigner was acquiring a share in a public company. However, again note that depending on the industry, a foreign investor may not be allowed to be a majority shareholder in the company.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

The area must be approved, and a permit must be obtained. This permit is delivered for a year and signed by the Ministry for Urbanism. It's mandatory for any building being constructed, extension of a building built, works if they change the aim and use of the building, and any work impacting the urban environment.

The building permit application is addressed to the Mayor or the Minister of Construction of Housing of Sanitation and Urbanism and accompanied by a file including:

- A title deed, which may be a letter of allocation or an "**Arrêté de Concession Définitive**" (ACD).
- A topographical extract issued by the administration or an **approved surveyor**. It must be endorsed by the Domaine Urbain or the *Conservation Foncière*, the water distribution company (SODECI), the electricity distribution company (CIE) and the Urban Sanitation Department;
- A Certificat d'Urbanisme (CU) issued by the Direction de l'Urbanisme (DU). This document provides information on the owner and the

land and sets out the planning regulations to be respected in the area where the project is located. It is a useful document for the architect or designer;

- The designer's technical file, which includes:
 - Site plan and ground plan;
 - Construction drawings on a scale of 1:50
 - A summary estimate and descriptive note
- Any explanatory notes

Buildings must comply with the rules and environmental standards of urban planning, architecture, construction, sanitation and drainage accepted in the Republic of Côte d'Ivoire.

The legal entity or individual, must have a plot of land for his project with a title deed in his name and a set of composition documents including technical studies that he submits to an ad hoc commission in charge of deliberating.

Building permit applications are processed by the "*Guichet Unique du Permis de Construire*" (GUPEC), a one-stop building permit office, in accordance with a procedure laid down by decree at the proposal of the Minister of Construction.

FOR INDUSTRIAL LAND

The **Agence de Gestion et de Développement des Infrastructures Industrielles** ("AGEDI") is the agency governing the allocation of industrial land. It is responsible for evaluating applications, but all procedures are handled directly by CEPICI.

1. Apply for a letter of authorization to develop industrial land;

In order to receive the letter of authorization, the applicant must use the model documents to be filled out from the CEPICI website under the heading "*Guichet Unique des terrains industriels*", and then assemble all the documents required to complete the application.

This file must be submitted to the CEPICI and the applicant must pay the administrative processing fee of around €76. The AGEDI will then receive, evaluate and process the file. It will then be signed by the Minister of Commerce and Industry.

After a maximum of 30 working days, the applicant receives a letter from CEPICI authorizing the work or rejecting of the application.

- If authorization is granted, the file must be

completed for the building permit application.

- In the case of land for industrial use, AGEDI initiates the building permit application with the Ministry of Construction, Housing and Urban Planning.
- Once the building permit for the industrial site received, the applicant has 2 years to complete the development of the land (installation of infrastructure and a functional production facility).
- During the 2-year development period, AGEDI carries out periodic assessments of the development's progress. At the end of the 2-year period, AGEDI draws up a report on whether development has been completed.

2. Obtaining a land-use permit for industrial use.

This stage is launched automatically by AGEDI once the development report has been drawn up.

It takes 20 working days to obtain the occupation order. Once validated by AGEDI and the Minister of Commerce and Industry, it is transmitted directly to CEPICI, which informs the economic operator. The occupancy order offers a 10-year occupancy right.

3. Obtaining an emphyteutic lease.

The application file is drawn up according to a model defined by the Minister of Commerce and Industry and the Minister of Construction, Housing and Urban Planning. It must be collected at and submitted to CEPICI. Fees and terms of payment are specified by joint order of the Ministers in charge of Commerce and Industry, Construction, Housing and Urban Planning, the Budget and the Economy and Finance.

The application must be processed within 45 working days.

The registered lease is then forwarded to the CEPICI, who informs the operator. The lease is valid for 30 years. One year before the lease expires, the operator may apply to renew the lease.

In all cases, environmental authorizations pertaining to each sector must be obtained following the process applicable for each industry.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or

another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

According to Article 27 of the *Ordinance No. 2008-646 on the Investment Code*, access to foreign currency is not restricted. No restriction may be placed on investors to obtain the foreign currency necessary for their activities.

Investors, provided they comply with foreign exchange regulations, have free access to foreign exchange, in particular to

- To ensure current payments;
- To finance their supply and various services provided to foreign individuals and legal entities.

From these provisions, we conclude that there is no restriction in Côte d'Ivoire concerning the use of foreign currencies under the condition of scrupulous respect of the exchange regulations.

Also, Ivorian laws do not strictly require that customers be billed in the local currency (i.e. FCFA).

Furthermore, please note the following:

FCFA and Euros accounts for offshore entities (*Compte étranger en francs ou en euros pour les non-résidents*) in the WAEMU Zone :

Foreign accounts in francs may be freely credited with foreign currency, with sums from another foreign account, with payments made by a resident to a non-resident; these accounts may also be debited to credit another foreign account, to make payments to a non-resident (Articles 13 and 14 of the *BCEAO - Instruction n°08/07/2011/RFE of July 13, 2011 on the conditions for*

opening and operating foreign accounts of non-residents, domestic foreign currency accounts of residents and accounts of residents abroad).

US Dollar accounts (*Compte étranger en devises pour les non-résident*) for offshore entities in the WAEMU Zone:

Pursuant to Article 3 of *Instruction n°08/07/2011/RFE*, before opening a foreign currency account, other than in euro, for the benefit of a non-resident, authorised intermediaries are required to obtain the prior authorisation of the BCEAO.

Furthermore, the authorisation to open a foreign currency account, other than in euros, for the benefit of a non-resident, is issued by the BCEAO for a period of two (2) years renewable.

Finally, it is prohibited to supply foreign currency accounts by deposits of BCEAO banknotes or those of an issuing institute that has an operating account with the French Treasury.

Foreign currency accounts (*comptes intérieures en devises de résident*) for onshore entities

Pursuant to Article 7 of *Instruction n°08/07/2011/RFE*, the opening of domestic foreign currency accounts for the benefit of residents is subject to the prior authorisation of the Minister in charge of Finance, after consent (*avis conforme*) of the BCEAO.

Furthermore, pursuant to Article 8 of *Instruction n°08/07/2011/RFE*, the authorisation to open a foreign currency account for residents is limited to 1 year and is renewable.

Finally, please note that the authorisation of the Minister of Finance sent to the applicant specifies the operations that may be credited or debited to the foreign exchange account concerned, depending on the reasons for the request.

In any event, the account referred to above may not be credited with payments of notes denominated in FCFA or by debiting an account in FCFA.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- in an acquisition, or

A: This can be agreed between the parties, provided they comply with foreign exchange regulations. Please note that our answers under section 12 should be taken into consideration.

• to pay to contractors, or

A: This can be agreed between the parties, provided they comply with foreign exchange regulations. Please note that our answers under section 12 should be taken into consideration.

• to pay salaries of employees?

A: Salaries must be paid in domestic currency only, except agreements with the employee (e.g., expatriates).

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

A: Please refer to our answers under section 12.

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

A: For a bank transfer, there is no specific approval requirements or limit on the amount of foreign currency to transfer into the country. However, the financial institutions through which the transfer is being made may require justificative documents regarding the transaction if it is above a certain amount.

Regulation No 09/2010/CM/UEMOA of 1 October 2010, on the external financial relations of the member states of the WAEMU, lists the following obligations. There is an **intermediation obligation**, indeed for foreign exchange transactions, capital movements (issuance of transfers and/or receipt of funds) and settlements of any kind between a WAEMU member state and a foreign country, or within the WAEMU between a resident and a non-resident, it may only be carried out through the intermediary of the BCEAO, the administration or the post office, an authorized intermediary or an authorized manual exchange agent.

In addition, Annex II of the regulation prescribes that By virtue of the principle of free circulation of currency signs within the WAEMU, no declaration is required for the manual transport of banknotes issued by the BCEAO by residents for their movement within the Member States of the WAEMU.

However, travelers to non-WAEMU member states are required to declare any foreign currency they are carrying when the amount exceeds the equivalent of one million (1,000,000) CFA francs.

Is there an approval requirement and a limit on how much domestic currency a foreign investor

can buy in the country?

A: There is no specific legal approval requirements or limit on the amount of domestic currency to buy in the country.

Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

A: The investor is free to buy domestic currency outside of the country and transfer into the country for an acquisition. However, buying currency in cash is limited, see answer above. **A:** This can be agreed between the parties, provided they comply with foreign exchange regulations. Also, our answers under section 12 should be taken into consideration.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

The banks emitting and receiving the transfers will be the one governed by these regulations and subject to such requirements.

Regulation No 09/2010/CM/UEMOA of 1 October 2010, on the external financial relations of the member states of the WAEMU, lists the following obligations regarding the transfer of currency.

- There is an **intermediation obligation**, indeed for foreign exchange transactions, capital movements (issuance of transfers and/or receipt of funds) and settlements of any kind between a WAEMU member state and a foreign country, or within the WAEMU between a resident and a non-resident, it may only be carried out through the intermediary of the BCEAO, the administration or the post office, an authorized intermediary or an authorized manual exchange agent (Article 2 of the Regulation).
- Foreign currency held in a WAEMU member state **must be transferred or deposited with an authorized intermediary** or, where

applicable, with the BCEAO, whether these assets belong to a resident or a non-resident.

- **Another obligation is one of domiciliation** where residents are obliged to have a registered address locally for import and export transactions with an authorized intermediary.
- As described previously, there is an **obligation to inform, for statistical purposes, the Directorate of Finance and the BCEAO** in the event of the constitution of foreign investments in a WAEMU member state, the transfer of investments between non-residents, loans abroad, repayment by purchase and transfer of foreign currency or by crediting foreign accounts in francs or euros of any loan abroad, etc.

The principle of freedom states that this is subject to the presentation of supporting documents to the intermediary concerned in the context of current payments abroad.

In addition, there are some requirements for any current payments to foreign countries. Current payments to foreign countries are carried out according to the principle of freedom, by the intermediaries prescribed by the same regulation. In this regard, subject to the presentation of the appropriate supporting documentation to the intermediary concerned, the following are generally authorized:

1. granting of tourist allowances to residents who are travelling;
2. the opening, operation and closing of foreign accounts in Francs or Euros, in strict compliance with the regulations governing such accounts;
3. transfers of amounts not to exceed five hundred thousand (500,000) CFA Francs. In such cases, no supporting documentation is required for the transaction. Licensed intermediaries must ascertain the identity of the originator and the recipient of the transfer;
4. settlements to foreign countries pertaining to the following transactions:
 - a) payments for the delivery of goods; b) charges for port services, warehousing fees, storage costs, customs clearance charges, customs fees and all other incidental charges pertaining to freight transportation; c) ground-handling revenue from foreign ships in WAEMU member states or ground-handling fees paid abroad by ships from WAEMU member states; d) expenses and profits arising from the transit trade; e) commissions,

brokerage, advertising fees and business entertainment expenses; f) insurance and reinsurance (premiums and claims); g) salaries, wages and fees, social insurance contributions and allowances, pensions and annuities arising from a labour, employment or service contract or considered as a public debt; h) patent, licence, and trademark fees and royalties, copyright fees, audiovisual royalties, etc.; i) taxes, fines and court fees; j) tuition fees, hospitalization fees, maintenance and alimony; k) interest and dividends, shares and profits from companies or partnerships, interest on mortgages or properties, housing rent and land rent, operating income from businesses, pensions and annuities arising from life insurance contracts as well as any other regular return on capital; l) transfers from emigrants and returnees, inheritances and dowries; m) all other current payments that, by their nature, may be assimilated with the categories listed above.

Investment and loan transactions and, generally, all movements of capital between WAEMU member states are free and unrestricted, in conformity with the WAEMU Treaty.

Licensed intermediaries¹ are authorized to carry out the following types of payments to foreign countries, under their responsibility and upon presentation of the necessary supporting documentation:

- transfers of the necessary sums for contractual redemption of debts as well as the reimbursement of short-term credits granted to finance trade or industrial transactions;
- transfers of the proceeds from the liquidation of investments or the sale of foreign securities by non-residents;
- settlements required for foreign exchange derivative transactions or commodity derivative transactions.

Payments to foreign countries for capital transactions other than those stipulated in the foregoing paragraph are subject to foreign exchange authorizations, which may be granted by the Minister of Finance upon application. Each application for authorization must be accompanied by supporting documentation certifying the nature and genuineness of the transaction.

Whose approval is required?

A: Foreign exchange authorization must be submitted to the **Directorate of Finance** for the repayment of medium and long-term loans.

How long does it take to get the approval?

The law does not provide for a specific timeline to

receive such approval.

Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

They are authorized to carry up to the equivalent of two million (2,000,000) CFA francs per person in banknotes other than those issued by the BCEAO.

Resident travelers are free to import franc zone banknotes or means of payment denominated in foreign currency. These means of payment must be declared when their value exceeds the equivalent of one million (1,000,000) CFA francs.

See question 12 and its sub-questions.

Is the approval required for each transfer or can it be granted for all future transfers?

A: This will be for each transfer.

Footnote: ¹ **Licensed intermediary:** any credit institution established on the territory of a WAEMU member state that has been granted licensed intermediary status by the Minister of Finance.

14. Is there a tax or duty on foreign currency conversion?

Yes, according to article 395 of the General Tax Code: "Banking transactions, with the exception of leasing and money transfer transactions, are subject to the tax on banking transactions.

In addition, article 339 of the same CGI stipulates that: "The supply of goods and services for consideration by a taxable person acting as such, excluding salaried and agricultural activities, is subject to value-added tax".

From a combined reading of these two provisions, we understand that the provision of services and banking activities may be subject to either VAT or TOB, depending on whether the service provider is a financial institution.

Thus, if the currency conversion activity is carried out as part of a banking operation or service provision, VAT or TOB may be applicable.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

Please see answer 14.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

Transfers of shares are subject to registration duty on the value of the rights transferred or the transfer price, where this does not result in the disappearance of the company or the creation of a new legal entity.

Registration with the tax authorities must be completed within 1 month, failing which penalties will be applied from the date of signature of the deed.

The tax base for registration duties is the market value of the shares or the stipulated price. The applicable rate for the transfer of shares is 1%, and stamp duty of 500 FCFA per sheet is also payable.

In principle, registration duties are payable by the transferor (art.764 bis). However, when the transferor uses an intermediary established in the CI to transfer his corporate rights, the latter is primarily liable for payment of the duty.

Similarly, the transferee may be required to pay duty when the transferor or intermediary is not established in CI.

It should be noted that transfers made by foreign individuals or legal entities to Ivorian individuals or legal entities, relating to the corporate rights they hold in companies operating in CI, are exempt from registration duty. The same applies to

- transfers of shares in companies listed on the Bourse régionale des Valeurs mobilières (BRVM);
- transfers of corporate rights in other companies by companies whose business consists in the acquisition, management and transfer of said rights (art.764 bis of the CGI).

In addition, the tax treatment of an asset acquisition depends on the nature of the asset, so registration may be compulsory or optional.

As a guide, please note the following rates:

- transfer of leasehold rights: 10% ;
- transfer of goodwill (i.e.: clientele + sign; clientele + trade name; or all three): 10%;
- transfer of ownership or usufruct of real estate: 4%;
- transfer of furniture: fixed duty of 18,000 F CFA.

17. When is a stamp duty required to be paid?

According to article 827 of the CGI, all papers, originals, copies, extracts and copies of the following acts and writings are subject to stamp duty on account of their size:

1. Deeds, repertoires and registers of public or ministerial officers;
2. Bailiffs' deeds that are not already subject to the tax instituted by article 549 of the present code, and the copies and expeditions they issue;
3. All other deeds and writings which are subject to compulsory registration, or which are submitted voluntarily to this formality.

From this article we understand that stamp duty is paid on all deeds that are compulsorily or voluntarily subject to the formality of registration.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

The Uniform Act on Commercial Companies and Economic Interest Groups stipulates that, in principle, shares are freely transferable.

All share transfers must be recorded in writing.

The share transfer is not enforceable against the company until one of the following formalities has been completed:

1°) service of the transfer on the company by bailiff or notification by any other means that can be used to establish actual receipt by the addressee;

2°) acceptance of the transfer by the company in a notarial deed;

3°) deposit of an original copy of the deed of transfer at the registered office against presentation of a certificate of deposit.

The transfer can only be enforced against third parties once one of the above formalities has been completed and the transfer has been published in the Trade and

Personal Property Credit Register. Share transfer costs are borne by the transferee, unless otherwise agreed between the transferor and the transferee.

The Articles of Association may stipulate certain limitations on the transfer of shares, under the following conditions:

- Limitation clauses are only valid if all shares are registered;
- The bylaws may stipulate that the transfer of shares to a third party outside the company, either free of charge or for a consideration, is subject to the approval of the Board of Directors or the Ordinary General Meeting of Shareholders;
- Limitations on the transfer of shares may not apply in the event of succession, liquidation of community property between spouses, or transfer to a spouse, ascendant or descendant.

Can the shares be held outside of the home jurisdiction?

A company incorporated under Ivorian law may, in principle without restriction, be wholly or partly owned by a foreign shareholder, unless the activities carried out by the said company are subject to compliance with specific local legal requirements regarding shareholding (such as in the cacao, oil and gas, or maritime sectors), or if the bylaws provide for such a requirement.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

A priori, as indicated above, shares are freely transferable, unless such transfer has been specifically limited by the Articles of Association.

Are changes in shareholding publicly reported or publicly available?

Changes to in the shareholding must be registered before the tax authorities and published before the commercial register in order to issue a new RCCM.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a

transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

In accordance with article 10 of Regulation No. 09/2010/CM/UEMOA, all incorporation of foreign investments and transfers of investments between non-residents are subject to **an obligation to make a statistical declaration to the Directorate in charge of External Finances and to BCEAO, in the case of direct investments.**

With which agency is it required to be made? NA

The declaration should be addressed to the Directorate in charge of External Finances (FINEX) and to BCEAO.

How long does it take to obtain an FDI approval? NA

There is no legal deadline for completing this formality. From our experience, the response from the FINEX on the conformity of the declaration when it is filed is either immediate or may take up to two (2) weeks.

The Central Bank, on the other hand, is notified by email and in our experience, we receive neither an acknowledgement of receipt nor a formal reply.

Under what circumstances is the mandatory FDI filing required to be made?

The declaration for statistical purposes is required in the case of a foreign investment in a WAEMU member state, and in the case of a transfer of investments between non-residents in that state, when direct investments are involved, as defined by Regulation No. 09/2010.

The letter of declaration must be accompanied by the resident company's articles of association, incorporating documents, notarized declaration of subscription and payment, and the minutes of the general meeting authorizing the capital increase.

As and when the funds are received in the company's

account, it will produce to FINEX the credit notes corresponding to the transaction, issued by the bank, as well as form No. 49 (reports on the execution of a foreign investment in Côte d'Ivoire), and any other supporting documents that may be requested by FINEX or BCEAO.

As to the sanctions in respect of this declaration requirement, any violation of the provisions of the above-mentioned WAEMU Regulation, particularly in the case of failure to comply with reporting obligations, constitutes an infringement of the regulations on external financial relations.

The sanctions are as follows:

- Any natural person who is guilty of or an accomplice to a violation of the regulations on foreign financial relations shall be punished by imprisonment for a term of one to five years, and a fine of at least the amount of the sum or value involved in the violation, up to a maximum of five times the said sum or value.

- Any legal person, other than a credit institution, on whose behalf or for whose benefit an infringement of the regulations has been committed by an organ or representative, shall be punished by a fine of at least the amount of the sum or value to which the infringement relates, up to a maximum of five times the said sum or value.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

A priori, if the transaction in question does not fall into the category of operations that must be reported for statistical purposes, there is no reason that it could be blocked by the administration.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction?

- Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

A priori, such a transaction will not be subject to reporting requirements for statistical purposes, as it is not a direct investment in a WAEMU member state.

20. What are typical exit transactions for foreign companies?

A foreign company that has acquired a stake in a local Ivorian company and wishes to withdraw has several options, depending on the strategy adopted by the company in question:

- Transfer its shares to another existing shareholder or to a third party (through the share transfer process described above);
- Close the company, which implies going through a dissolution or liquidation process and redundancy of employees.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

Companies based in Côte d'Ivoire are listed on the Bourse Régionale des Valeurs Mobilières (BRVM), a WAEMU financial institution, based in Abidjan.

In this regard, note that Ivorian companies account for 42% of the BRVM index.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

In our experience, contracts governing mergers & acquisitions, joint ventures and foreign investments generally contain an international arbitration clause (commercial or investment arbitration). This is also our recommendation when reviewing such contracts in favor of foreign investors.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

Disputes relating to the performance or termination of commercial contracts brought before the commercial courts take approximately :

- 3 months before the Commercial Court, not including the one-month period generally allowed for expert appraisals ordered by the Court; and
- 3 months also before the Court of Appeal, in the event of an appeal by either party, taking

into account any expert appraisal ordered by the Court.

Delays before the Cour de Cassation / Common Court of Justice and Arbitration (CCJA) are not predictable. They generally depend on the speed with which the higher courts handle the case. However, time limits before the CCJA are generally shorter.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

We confirm the reliability of national courts in this area. However, preference may be given to international arbitration (commercial or investment), as mentioned above, due to the presence of foreign criteria.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Generally speaking, Côte d'Ivoire boasts solid economic assets, offering investors numerous opportunities as well as a high level of protection.

To achieve its economic objectives, Côte d'Ivoire has embarked on a continuous process of improving its business climate, regularly praised by the World Bank's "Doing Business" study, which resulted in the country's second-place ranking among French-speaking Sub-Saharan African countries in 2020.

Indeed, several reforms carried out in recent years have been aimed at strengthening investor protection, with an increase in the ease of shareholder lawsuits index and the management liability index.

In this regard, in terms of indexes, the latest detailed report "Doing Business in OHADA Member States 2017" indicated that Côte d'Ivoire is the country where insolvency resolution there is the fastest, and where secured creditors recover the largest share of their investment at the end of insolvency proceedings. Côte d'Ivoire is also the leader on the contract enforcement indicator, thanks to the adoption of a number of international best practices in legal proceedings.

It is also one of the 11 OHADA economies where a trial lasts one year or less, one of the 6 economies with a small claims court, and applies best practices in its judicial system, according to the quality of judicial procedures index.

26. Are international arbitral awards recognized and enforced in your country?

An arbitral award can only be enforced by virtue of an exequatur decision issued by the national court, which presupposes recognition of the arbitral award itself.

Foreign arbitral awards are enforceable on the basis of the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, to which Côte d'Ivoire has been a party since 1991. This Convention establishes the principle of recognition and enforcement of foreign arbitral awards.

The recognition and enforcement of awards rendered in another OHADA member state are governed by the provisions of the Uniform Act on Arbitration, article 34 of which also lays down the principle of recognition of arbitral awards within the OHADA area, as follows:

"Arbitral awards rendered on the basis of rules other than those laid down in this Uniform Act shall be recognized in the Contracting States, under the conditions laid down in any applicable international conventions, and failing that, under the same conditions as those laid down in the provisions of this Uniform Act".

However, the Uniform Act on Arbitration Law leaves it up to each State party to organize this recognition and enforcement procedure.

The recognition or exequatur of arbitral awards in Côte d'Ivoire is governed by a 2012 ordinance determining the intervention of the State judge in arbitration proceedings, to which both article 34 of the aforementioned Uniform Act and the New York Convention refer.

In addition to these basic texts, the recognition and

enforcement procedure is also governed by a 2001 Order of the Minister of Justice concerning arbitral awards rendered under the aegis of the CCJA arbitration center, and by the Code of Civil, Commercial and Administrative Procedure, as regards arbitral awards rendered under the aegis of the International Centre for Settlement of Investment Disputes (ICSID), in accordance with the enforcement procedure provided for by this Convention signed by Côte d'Ivoire.

27. Are there foreign investment protection treaties in place between your country and major other countries?

In addition to its membership of the African Union, ECOWAS and UEMOA, Côte d'Ivoire is a party to several multilateral and bilateral agreements.

The country has agreements with the EU, China, India, the USA (AGOA, MCC), and with many other states under bilateral or multilateral investment treaties.

Côte d'Ivoire has signed 20 Foreign Investment Promotion and Protection Agreements (APIE) with its partners, 16 of which are currently in force.

Below is the list of bilateral investment treaties (BITs) signed by Côte d'Ivoire :

Signatory country	Signature (date)	Status (date)
Switzerland	1962	In force (1962)
Netherlands	1965	In force (1966)
Sweden	1965	In force (1966)
Germany	1966	In force (1968)
Italy	1969	Not in force
Tunisia	1995	Not in force
United Kingdom	1995	In force (1997)
Ghana	1997	Not in force
Belgium-Luxembourg economic union	1999	In force (2013)
China	2002	Not in force
Singapore	2014	Not in force
Canada	2014	In force (2015)
Turkey	2016	Not in force
Mauritius	2016	Not in force
Qatar	2018	Not in force
Portugal	2019	Not in force
Japan	2020	In force (2021)
United Arab Emirates	2021	Not in force

Contributors

Andy Lionel Biaou

Lawyer - Managing Associate

andy.biaou@avocatshouda.ci



Marine Quintric

Senior Legal Counsel

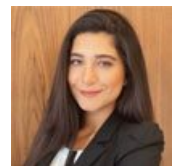
marine.quintric@avocatshouda.ci



Saria AbouKhalil

Senior Legal Counsel

saria.aboukhalil@avocatshoudaci.com



Tess Roussel

Senior Legal Counsel

tess.roussel@avocatshouda.ci

