GHR RECHTSANWÄLTE

GHR ***beyond*** - Africa Edition

2nd Issue - March 2023

Burkina Faso

GHR beyond is our informative newsletter on intercontinental topics. In the Africa Edition, we provide concise information once a quarter on important key figures of a destination country in Africa and what entrepreneurs should consider from here to there and from there to here. In this edition we want to put the flashlight on Burkina Faso.

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Overview

Not many people are aware that Switzerland is, based on value, the largest trade partner of Burkina Faso, as much as imports from Burkina Faso to Switzerland amount to one of the highest of all African nations.

In 2021, Switzerland imported a total of about 427 tonnes of goods from Burkina Faso with a total value of about CHF 3.1 billion, while exports to Burkina Faso amounted to about 910 tonnes and a total value of about CHF 3.3 million.

Major import goods from Burkina Faso are, as the value compared to volume already shows, precious metals mainly in the form of gold, which is imported for further processing (approx. CHF 3.08 billion). Apart from precious metals, no further exports from Burkina Faso are currently significant. However, imports of fresh and processed fruits recently increased (approx. 350 tonnes with an import value of approx. CHF 1.5 million). Major exports to Burkina Faso are pharmaceuticals (approx. CHF 750,000), as well as machinery incl. agricultural vehicles and other instruments (approx. CHF 1.6 million).

About 80 Swiss nationals live in Burkina Faso, while about 345 Burkinabe nationals live in Switzerland.

Political issues with considerable governmental instability, having had its latest peak with the coup on 30 September 2022, cause relevant economic uncertainty and reservations with regard to the rule of law. These circumstances are main obstacles for private companies to make substantial investments or re-investments in Burkina Faso.

Therefore, this issue of the GHR beyond shall have a major focus of current status of Burkina Faso with regard to legal aspects relevant for substantial foreign investments and travel activities.

To Burkina Faso from Switzerland

Burkina Faso is known for its rich gold reserves and other raw materials (especially cotton) and comparatively low debt and currency risks, as the CFA franc is pegged to the Euro. Negative factors are the high economic cluster risks, the landlocked location and - associated - higher logistics costs, as well as the structural and political challenges. Purchasing power in the country is comparatively low, which is why many investors mainly focus on export potential.

Despite a legal tradition influenced by continental France, Burkina Faso's legal system is genuine, and local conditions must be taken into account in the context of investments. A regular focus for foreign investors is the possibility of holding a (majority) stake in a local company and acquiring land.

Burkina Faso and OHADA

In the area of business law, the unified law of the Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'harmonisation en Afrique du droit des affaires*, OHADA) applies to a large extent. OHADA is an international organization of African states founded in 1993. The aim of OHADA is to create a common commercial law for a common economic area. The participating states are the fourteen countries of the CFA Franc Zone, which includes Burkina Faso, as well as the Comoros and Guinea. A total of 170 million people live in the OHADA member states.

OHADA has introduced uniform legal provisions in the area of business law (Uniform Laws), which have been ratified by Burkina Faso. One of these is the Uniform Law on Company Law (*Acte uniforme relatif au droit des sociétés commerciales et du groupement d'intérêt économique*, AUSCGIE), which seeks to regulate certain issues relating to domestic and foreign investors.

Foreign Direct Investment

OHADA has introduced uniform legal provisions in the area of business law (Uniform Laws), which have been ratified by Burkina Faso.

According to the AUSCGIE, foreign investors are not prohibited from owning a company in Burkina Faso. On the contrary, the AUSCGIE already states in Article 3 that "all persons, irrespective of their nationality, who wish to establish a company in the territory of one of the Contracting States must choose from among the forms of company provided for in this Uniform Act one that is suitable for the activity envisaged".

In this respect, Burkina Faso has invited foreign investors to participate in Burkina Faso's economic life by ratifying this OHADA treaty. The complete control of a Burkinabe company by foreigners (whether from its foundation or in the case of a subsequent acquisition) is generally possible - but with restrictions in certain sectors.

As far as sectoral restrictions are concerned, it should be noted that certain sectors are exclusively reserved

for certain national entities. Apart from this, however, it is generally indispensable for any foreigner or foreign company to obtain a permit to carry out an activity by means of an application. In concrete terms, this means, for example, that a notary public is already obliged to disclose a copy of the acknowledgement of receipt of the application to commence business in Burkina Faso during the incorporation process or before depositing the documents.

Titles of ownership, tenancy and leasehold established under the old government remain valid and enforceable after the change of government.

Due to increased sensitivity, activities in certain areas require special authorisation. Examples are the marketing of tobacco products or mining.

The question of the domicile of the legal representatives of a foreign company is not mandatory in Burkina Faso. It is therefore up to each administrator or head of a corporation to know how to organise himself in order to carry out his activity in Burkina Faso in the best possible way. As far as local companies are concerned, especially limited liability companies, the existence of a director or representative resident in Burkina Faso is in principle not necessary. Representative offices and branches of a foreign company without legal personality, on the other hand, require the appointment of a local representative.

Acquisition of Land

Depending on the location and type of use of a plot of land, different laws apply that regulate the acquisition possibilities (by foreigners or locals). Land acquisition is generally possible. In addition to the acquisition of land for ownership, land allocation by the competent authorities is possible, as is renting or leasing. The possibilities are to be clarified according to the concrete individual case.

A foreign company wishing to acquire land in Burkina Faso can therefore, depending on the project it wishes to submit to the Burkinabe authorities, apply for that part of the land be allocated to it for its activities. It can also, depending on its means, acquire land for this purpose. Lease is also possible and even necessary to register a company, whether it is a foreign company or not, as the company needs a physical domicile to establish itself.

Recognition and Protection of Property

There is an investment protection agreement between Switzerland and Burkina Faso that has been in force since 1969 and was neither restricted nor revoked with the change of government in September 2022. In general, the change of government has neither changed nor legally restricted the rules for the protection of property in Burkina Faso, regardless of the goods and sectors involved. The change of government has not called into question the legal validity in Burkina Faso - property, rental and lease titles established under the old government are still valid and enforceable after the change of government.

On Travel Warnings

The Federal Department of Foreign Affairs (FDFA) publishes travel advice on all countries of the world. These travel advices draw attention to general circumstances and special risks. Depending on the political and social situation of a country, the FDFA may issue travel warnings, i.e. advise against travelling to the country in question. Such travel warnings exist for a significant number of African nations - including Burkina Faso.

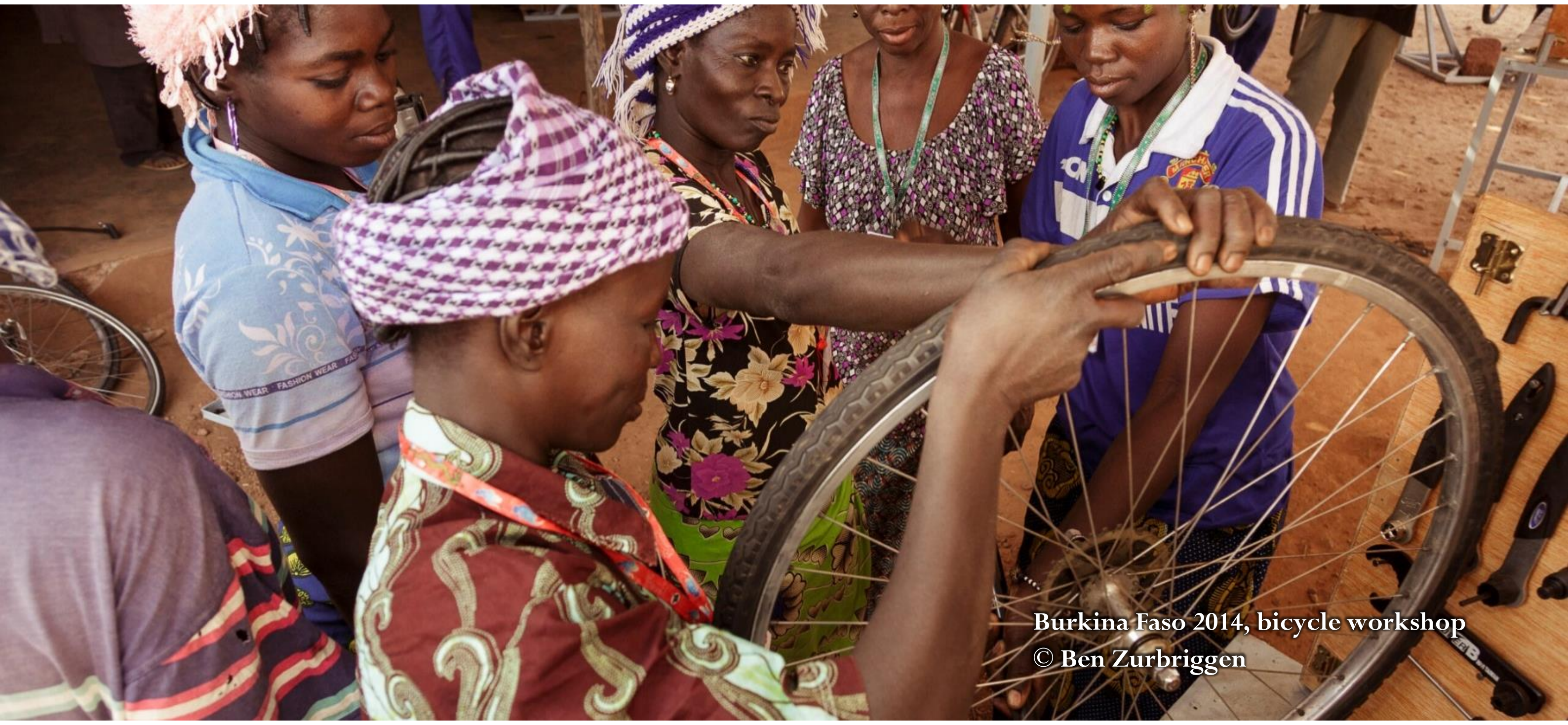
Depending on the risk situation, the FDFA issues specific travel warnings ("tourism and other non-urgent travel is not advised") or general travel warnings ("travel is not advised"). There is a general travel warning for Burkina Faso and a specific travel warning for the region around the capital Ouagadougou. What does this mean?

Consequences of a Travel Warning

In a travel warning, the FDFA points out increased dangers in a country. The main purpose of these travel warnings is to make Swiss citizens aware of local dangers and to urge them not to put themselves in danger unnecessarily (e.g. in the case of increased danger to life any physical integrity, or a high risk of kidnapping).

Switzerland can take financial, diplomatic or consular support measures for its citizens in the event of an emergency. However, there is no statutory obligation to assistance, and assistance from the FDFA can only be considered if the persons endangered have made every reasonable effort to overcome the emergency situation themselves, either organisationally or financially. Furthermore, assistance may be restricted or refused, or the costs of assistance may be passed on to the person concerned if he or she has acted negligently. Negligent behaviour in this sense occurs in particular if a person has not followed the official Swiss recommendations, namely the travel advice and the individual recommendations of the FDFA.

In short, anyone who fails to follow the FDFA's travel warnings runs the risk of receiving no or limited assistance in the event of an emergency in the country concerned. In addition, there is a high financial risk, as the persons concerned may have to bear all the costs (repatriation, intervention, etc.) themselves - standard travel insurance policies, as well as standard accident insurance, generally refuse to cover any costs in the



Burkina Faso 2014, bicycle workshop
© Ben Zurbriggen

event of an emergency in a country with a travel warning.

Urgent Travels

A trip is considered urgent if it cannot be postponed, e.g. due to the signing of contracts, participation in conferences or family emergencies. Neither the FDFA nor the Swiss Federal Supreme Court define urgency in any further detail. The FDFA generally refers to personal responsibility - it is up to the traveller to decide whether a trip is really necessary in view of the expected risks and the possible precautionary measures, or whether it cannot be postponed or cancelled.

When a trip is urgent can thus hardly be determined. A contract can also be signed digitally, or the signature pages can be sent by post, or an authorised representative can be appointed to sign on-site. At the latest since the Corona pandemic, digital conferences are also no novelty. It is therefore hardly possible to determine with sufficient legal certainty whether a trip is "urgent" or not, and the assessment of travel risks and thus the weighing of whether a trip is "necessary" or not in view of the risks has a certain subjective value.

> ***It is hardly possible to determine with sufficient legal certainty whether a trip is "urgent" or not.***

Business Travel Insurance

Since, on the one hand, it is unclear when a trip can be considered "urgent" and thus exempt from the travel warning, and, on the other hand, there is a high personal and financial risk for the person concerned if the authorities or courts deny the urgency despite all arguments and precautionary measures taken, the FDFA recommends to conclude appropriate travel insurance.

Standard travel insurance policies only cover general travel risks, excluding trips to countries with a travel warning. It is necessary to conclude a special travel insurance policy that also covers travel to countries with increased risk. Private individuals may have difficulties to find such insurance - corresponding insurance solutions are reserved for companies (so-called business travel insurance). With business travel insurance, it is not an individual trip that is insured, but the general business travel activity. Repatriation costs, foreign legal protection, private liability and kidnapping assistance may also be insured (so-called crisis assistance). For the calculation of the insurance premium, the expected annual travel days per year in total (with different reporting of travels to risk countries) must be fairly disclosed.

We checked with an insurance company: For a company with 20 employees and 1,000 travel days per year, including 5 employees with each 50 travel days per year to two risk countries, a premium of approx. CHF 150 per year and employee, as well as another approx. CHF 150 per year and specified traveller for the GEO tracking of the employees with travel activities to risk countries.

Depending on the insurance company and the travel destination, the insurance company also requires precautionary measures to be taken, GEO tracking if necessary and, if applicable, pre-announcement of the trip with definition of the exact itinerary. Typical providers of business travel insurance are ERV, AXA Intertours, Allianz Global Assistance, and TSM (the latter specialises in travel to crisis and war zones).

Conclusion

For trips to high-risk countries for which there is a general or specific travel warning, a risk assessment must be made. In any case, it is advisable to take out business travel insurance, as the definition of when a trip is "urgent" is not sufficiently clear. The conclusion of a merely general travel insurance policy is not sufficient. Appropriate precautions must be taken even if business travel insurance is available, and the FDFA makes general recommendations here. The best precautionary measure is to be accompanied by a local person of trust.

How it is in Practice

Knowing the legal requirements for intercontinental business relations is only one side of the coin. It is at least as important to get involved in local everyday life and to be able to deal with the particularities and customs.

@ nikolai.raeber@velafrica.ch

www.velafrica.ch
www.sinnovativ.ch

We met Nikolai Räber for an interview and asked him for his impressions. Nikolai Räber is co-managing director of Velafrica. Velafrica successfully combines integration work in Switzerland with development cooperation in Africa. Since 1993, the non-profit organisation has been collecting discarded bicycles, repairing them in social institutions in Switzerland and then exporting them to partner companies in seven African countries. One of Velafrica's focus countries is Burkina Faso.

As a ZEWO-certified foundation, Velafrica finances its activities mainly through donations in kind and money.

May you introduce yourself to our readers?

My name is Nikolai Räber. I have been working for Velafrica in different roles for about 8 years. It all started with a study on the socio-economic benefits of bicycles in rural Tanzania as part of my Master's thesis. I was impressed by the multiple benefits of bicycles for families. Shorter distances, more loads, faster to school. Back in Switzerland it was clear to me: I want to get involved with Velafrica. Today I am responsible for setting up Velohubs (social enterprises) in East and West Africa and am part of the co-management.

How did it come about that you became active with Velafrica in Burkina Faso?

Velafrica has been supplying bicycles to Bur-kina Faso since around 2010, mainly to small dealers. In 2015, we strategically reoriented ourselves and decided to expand the value creation around the bicycle in the respective countries. This is how we came up with the concept of the "Velohub" with workshop and training. In 2015, we founded the ABC Bicycle Company in Tanzania. This was followed in 2019 by FasoVelo in Ouagadougou, a bicycle shop, distribution channel and bicycle workshop with training places for young people, together with existing local partners. The hub creates fair, well-paid jobs, trains young people and already brings more than 5,000 bicycles from Switzerland into circulation every year.

What do you particularly like about this activity, where do you see opportunities?

The idea of repairing bicycles in Switzerland as part of integration programmes, which then form the basis for social enterprises in Africa, is unique, innovative and challenging at the same time. With our supply chain we are active in different markets and professional fields -

integration work, global trade, development cooperation or start-up promotion - each market has its own dyna-mics and challenges. Adjustments at one point in the chain have an immediate impact on other parts.

What are your biggest challenges with Burkina Faso? Did the coup in 2022 change the situation?

I was impressed by the many uses of bi-cycles for families. Shorter distances, more loads, faster to school.

Nikolai Räber

The political insecurity and terrorism in the country makes life and business difficult, that is clear. For us at Velafrica, this means that we have had to adapt our cur-rent vocational training project to these conditions and instead of carrying out training in six regions as planned, we are now limiting ourselves to regions around the capital. Nevertheless, we can train the number of young people as planned. However, we know that there is a demand and a great need for pro-fessional bicycle mechanic training, especially in rural areas, so the geographical re-striction is a pity. Nevertheless, this approach allows us to test the train-ing programme and, depending on the political situation, to expand it later.

What do you think is im-portant to bear in mind when doing business between Swit-zerland and Burkina Faso?

Based on our experience, it is im-portant to make precise clarifications of the legal and economic conditions in the sector where we are active with bicycles. We also always try to understand the lo-cal needs and competencies and to set up our products or projects together with the implementing partners. This also means consulting with the local authorities to see whether investments in the bicycle sector are de-sired and supported. In principle, we have had good experiences in this way.

Burkina Faso 2021, vocational training
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Each issue of *GHR beyond* is intercontinental, but also very local. We always prepare content with one of our local partners, with whom we collaborate on legal issues with local relevance. We sincerely thank our partners for this tremendous effort and the opportunity to build intercontinental bridges with local expertise on this side and the other.

This edition of *GHR beyond* - Africa Edition has been produced by the following authors and law firms. Please contact the authors at any time if you have any questions or require further information on a particular topic.

For content related to Swiss law

For content related to Burkinabe law

RECHTSANWÄLTE

GHR Rechtsanwälte AG

Tavelweg 2
3074 Bern Muri
Switzerland

Seidengasse 13
8001 Zurich
Switzerland

www.ghr.ch

Me Ida Geneviève Sanyan

Avenue du Général de Gaulles, Rue 4.51 (en face de DCI Bobo IV)
01 BP 2023 Bobo-Dioulasso 01

+226 20 98 02 86

Stephan A. Hofer
Partner

stephanhofer@ghr.ch

Ida Geneviève Sanyan
Notary and Legal Consultant

info@notairesanyan.com