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Bank Restructuring and the Protection of Shareholders' Rights under CEMAC Banking Regulations

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Abstract:
This paper sets out to explore how the disruption of corporate governance arrangements within a restructured bank can alter the legitimate rights of bank shareholders (owners). The study investigates how much protection the law in the Economic and Monetary Community of Central African States (CEMAC) affords shareholders within a context of diminished shareholder control over the bank, and additional intrusion into bank management and control by external parties. It has been established that though shareholders have ownership rights in a bank, when the corporate entity is at the brink of collapse, a curtailment of shareholders' rights is inevitable, for its return to normalcy. Moreover, other stakeholders such as bank customers, creditors and the economy as a whole have interests in the restructured bank which out-scale the sole interest of shareholders. As such, the right balance must be found among these competing interests for bank restructuring to be fair to all stakeholders.

Keywords: *Bank restructuring, credit establishment, provisional administrator, shareholders' rights*

1. Introduction

Shareholders have aptly been described as the "citizens" of a company[i], and like the citizens of every country are endowed with certain rights.[ii] However, these rights do not enjoy the same degree of protection at all times. A bank restructuring regime requires regulators to have the authority and instruments to interfere with the bank's operations if its failure threatens the stability of the financial system or undermines other regulatory objectives, such as depositor confidence[iii]. Such regulatory action which seeks primarily to protect depositors and creditors[iv], may affect shareholder rights in the restructured bank and possibly reduce the economic value of their ownership interests[v]. The credit crisis of 2007–2009 demonstrated the importance of having a resolution regime that balances the rights of shareholders against the objectives of prudential regulation and crisis management. The constraints of corporate insolvency regimes can be too cumbersome for effective resolution of a banking enterprise, especially during a financial crisis[vi]. Bank resolution regimes must be designed not only to protect shareholders and creditors[vii], but also to achieve other regulatory objectives that are vital for the efficient operation of the economy. Jurisdictions all over the world strive, to balance the interests of the principal parties in restructuring through regulatory framework and policy initiatives.[viii] The 2014 CEMAC[ix] Regulation[x] on the treatment of credit establishments in difficulties provides an almost comprehensive[xi] framework for bank corporate restructuring and insolvency proceedings, it endows COBAC[xii] with sweeping powers to restructure a bank in difficulty[xiii], seriously affecting shareholders' rights in the process. It creates a mechanism to suspend corporate governance rules that usually involve obtaining shareholder approval if the bank is required to take a course of action that may diminish shareholder control rights or their economic rights. This raises important issues regarding the protection of property interests in a restructured bank. This article examines the bank restructuring regime of the above 2014 Regulation, analyses the relevant legal issues it raises, in particular whether the law strikes the right balance between public interest in a quick and effective resolution and shareholder's rights. A careful perusal of the 2014 Regulation and other relevant legal instruments reveals that bank shareholders have rights whose safeguard the law is strongly concerned with; however, the law also allows for the interference with these rights during restructuring for policy reasons and for the protection of greater interests.

2. The Nature and Scope of Bank Shareholders Rights

Structurally, corporate law embodies the norm of shareholder primacy,[xiv] in this light, the OHADA[xv] Uniform Act on Commercial Companies and Economic Interest Groups (UACCEIG)[xvi] provides that, the company is created for the common interest of shareholders.[xvii] According to this line of reasoning, one will be correct to say that, the company is the belonging of shareholders[xviii] and has as principal aim to maximize the investments of shareholders.[xix]Generally the rights of bank shareholders are those set out in general company law[xx]. Shareholders' rights can broadly be classified into three categories. They include pecuniary/financial rights, control/governance rights and procedural rights.

2.1. Pecuniary or Financial Rights

They are otherwise known as the ownership rights, and include the right of ownership on shares, the right to share in dividends, to have pre-emption during capital increase and to participate proportionately as the residual claimants for any value remaining after the satisfaction of creditors in case of insolvency. Company shares have been accepted to be a piece of property which is to be enjoyed and exercised in the owners own interest.[xxi] Thus to every share held in the company, is attached a right to dividends proportional to the

fraction of the registered capital it represents.[xxii] When dividend has been declared, it becomes a debt of the company and enforceable by law as any other debt.[xxiii] In this light, any provision in the Articles of Association excluding a partner from the sharing of benefits is deemed as void[xxiv]. According to article 146 of the UACCEIG, the company has a maximum period of nine(9) months following the end of the financial year to pay dividends, except the president of the competent court accords an extension.[xxv] Financial rights during capital increase are designed to repair the multiple prejudices that befall shareholders during capital increase, which comprises a reduction of their rights on reserves[xxvi], the sharing of benefits among a larger number of shareholders and even the "political risk"[xxvii] linked to the entry of new shareholders. The UACCEIG[xxviii] as well as the 2014 Regulation[xxix] recognise and protect the shareholder's right of pre-emption during capital increase. This right is only applicable to transfers and the only exception to this right is that the shareholder himself waives the right[xxx] or that under certain conditions the extra-ordinary meeting of shareholders decides otherwise[xxxi]. If the company finally goes into liquidation, if possible, each shareholder has a proportionate right over the residual amount, after the settlement of liabilities.

In banking groups, shareholders' rights and duties are limited to the individual group member in which they have invested, and do not extend to the group as a whole. Shareholders are normally protected by the principle of separate legal personality and limited liability, i.e. they are not liable for the bank's debts with their personal property, and are only liable to contribute up to the value of their shares. This means that as a matter of law, group companies are not liable for each other's debts just because of their group connection, and as such, the shareholders of one group member cannot generally be expected to absorb losses which relate to another group.

2.2. Control and governance rights or political rights

Otherwise referred to as the right to participate in management[xxxii] i.e. rights to decide on certain important issues concerning the company and which consequently have an impact on shareholders' rights or interests[xxxiii]. This category of shareholders' rights arises from their common aim of making interest from a common venture better described by the latin maxim affectio societatis[xxxiv]. It is the position of the UACCEIG that each partner shall have the right to participate in collective decisions and that any contrary provisions in the articles of association shall be null and void. It also provides for punitive sanctions in article 891(3) against anyone who prevents shareholders from attending general meetings. The political rights of the shareholder are materialized through the right to vote in the general meeting of shareholders[xxxv]. It is stipulated in article 129 of the UACCEIG that the voting rights of each partner shall be proportional to the company shares acquired, which signifies equal capital equal vote.[xxxvi]

Another set of governance rights has to do with control over directors. Shareholder rights here include the right to elect and dismiss directors and to issue directions to the board of directors. Shareholders have control over the company's affairs, as there is a wide range of issues for which shareholder approvals may be required under company legislation[xxxvii]. Shareholder approvals are required for important decisions which alter the company's statutes, such as capital variations, mergers, scissions, and the decision to wind up in case of serious loss of registered capital[xxxviii]. Shareholder approvals are also required for significant acquisitions from connected persons, and large transactions or related party transactions or regulated agreements[xxxix]. Also, in order not to suffer undesirable dilution of their stakes, shareholders have pre-emption rights on any new shares issued.

This category of shareholder rights has aspects that aim at protecting shareholders from other shareholders (most often minority shareholders against majority shareholders). The acquirer of shares which exceeds a certain percentage is obliged to make a mandatory bid to all the other shareholders. Shareholders who are in the same class are entitled to the equal treatment. Where there are several classes of shares, decisions are subject to separate vote in each class concerned. In order to protect minority shareholders, certain decisions require an increased majority vote. In addition, when exercising its voting rights, the majority is required to consider the interests of all the shareholders. Finally, minority shareholders who are subject to unfair prejudice may have rights of redress under the law.

2.3. Procedural Rights

To every share held in the company is attached a voting right, proportional to the fraction of the registered capital it represents, and every share gives the right to at least one vote[xl].In order to fully exercise their political or governance rights, shareholders are entitled to information.[xli] The right to information has aptly been described as a source of a power of checks and balances for shareholders.[xlii] It serves to orientate the shareholders in the exercise of their voting rights and their rights to control the management of the company.[xliii]Thus shareholders have the right to examine all corporate records, and a permanent right to be informed on the affairs of the corporation prior to the holding of general meetings and also to have access to all documents pertaining to the meetings.[xliv] In addition, any shareholder who is not a member of the board of directors can send written questions twice a year to management regarding anything that can jeopardize the continuation of the company's activities. A reply must be given to this request within one month and a copy sent to the auditor where the company has one.[xlv]

3. Actions Contributing to the Preservation of Shareholders' Rights during Bank Restructuring

It can hardly be disputed that the restructuring of a corporate entity can seriously disrupt the role that is ordinarily played by shareholders in the affairs of the enterprise. This is because bank restructuring in particular, calls for the intervention of actors and procedures other than those ordinarily involved in the governance of a bank. This is the case with the role of the provisional administrator, whose presence may warrant the eviction of the board of directors, management and even the suspension of the general meeting of shareholders during special restructuring. The above notwithstanding, the shareholders of a bank under restructuring still have quite a number of roles to play which can go a long way in the preservation of their rights. They include the following.

3.1. Bank Restructuring and Shareholder Consent

During both provisional administration[xlvi] and special restructuring[xlvii] where a provisional administrator could be appointed to manage the affairs of the bank for a fixed period of time[xlviii], the shareholders are required to lend him support. During provisional administration, the ad hoc manager must exercise his powers within the limits of the corporate objective[xlix] and subject to those expressly attributed to the general meeting of shareholders[l]. In this model of provisional administration, bank owners retain their rights, although in a restricted form.

The CEMAC legislator acknowledges the rights of shareholders to actively participate in provisional administration[li], and to support the provisional administrator, in the search for appropriate exit solutions. The legislator seems to approve the position of the European

Court of Justice (ECJ) in Panagis pafitis andothers v. Trapeza Kentrikis Ellados AE and others[lii], according to which a provisional administrator appointed by a supervisor, cannot exercise powers in disregard of shareholder rights. Shareholder consent must be obtained for all acts where such is normally required by company law[liii]. The provisional administrator can only carryout acts of alienation of property after obtaining the authorisation of the general meeting of shareholders, except in cases of special restructuring. Though it has been advanced that the requirement of full shareholder participation as laid down under company law creates additional obstacles to the swift restructuring of a bank on the verge of failure,[liv] it can be submitted that where restructuring measures are initiated early enough, shareholders are likely to be enthusiastic about a favourable outcome of the process and to actively accompany the provisional administrator in the search for appropriate solutions. In this light, the general meeting of shareholders convened by the provisional administrator creates the appropriate forum, for shareholders to exercise their decision-making rights in the company, and lend much needed support to the provisional administrator, whose mission is to guarantee the greater good (including that of shareholders). The blueprint of the provisional administrator's mission is contained in the restructuring plan, which he must draft and submit for the sanctioning of the extra-ordinary meeting of shareholders[lv] and the banking supervisor. The adoption of the draft restructuring plan by the shareholders is indeed a strong safeguard for the rights of shareholders, as the plan sets out the measures that will either make or mar the objective of financial stability[lvi]. As such, it provides the opportunity for shareholders to be actors and not mere spectators in the guarantee of their economic interests.

In addition, the procedural rights of the shareholders must be respected during the convening of the general meeting of shareholders. As such the provisional administrator must put the relevant documents at the disposal of the shareholders, at least, fifteen days prior to the extraordinary general meeting. Such documents include the summary financial statements reflecting faithfully the financial situation of the credit establishment[lvii] and the draft restructuring plan explaining the anticipated direction to be followed and detailly setting out the conditions envisaged from the financial and legal standpoints.

3.2. Recapitalization and Shareholders' Rights of Pre-Emption

The gist behind shareholders' right of pre-emption is that additional shares shall not be issued without first offering to all existing shareholders having similar rights a reasonable opportunity to take, upon terms prescribed by the directors, rateable amounts of the additional shares, and that shares thus offered to the shareholders, but not taken by them, shall not thereafter be issued to others upon terms more favourable to them than the terms previously offered to the shareholders[lviii]. The preferential right of pre-emption operates to strike a balance between the restructuring process and some rights that are likely to be lost by shareholders[lix]. This is because the entry of new shareholders into the company especially on a large scale is to likely offset the internal balance of the company,[lx] leading to a serious drop in the value of old shares as well as a reduction of the portion of profits accruing to each shareholder.

As a measure to redress some of the problems that may be detected during surveillance, the credit establishment's shareholders may be asked by COBAC, to present appropriate solutions such as financial support for its stabilization. This measure could imply an increase in registered capital, or any other support as well as a schedule for its implementation[lxi]. According to article 40 (1) of the 1992 Convention on the Harmonization of Banking Regulations in Central Africa "when the situation of a credit establishment so justifies, the president of the Banking Commission invites[lxii] the shareholders of the concerned establishment to look for solutions that the situation warrants". Indeed, it has been submitted that an increase in registered capital is one of the measures shareholders may adopt and could be critical in ensuring that the credit establishment regains a good standing[lxiii].The advantage of this procedure which is enshrined in the 2014 Regulation is that it may be initiated by both the COBAC president and by the shareholders themselves. This power given to shareholders is of critical importance, as they are indeed the real owners of the company, and will be more preoccupied than any other stakeholder in the implementation of any restructuring measure. Shareholders are partners in business with depositors and as such, they are to find a financial solution to difficulties at the onset[lxiv]. Where such a procedure is initiated, the shareholders will have priority in the subscription process

3.3. Protecting Shareholders against Shareholders: The Exclusion of Fraudulent Shareholders from Subscription during Recapitalization

The 2014 Regulation provides for circumstances under which a shareholder may also be excluded from the process of capital subscription within a credit establishment under restructuring, in a bid to secure the recapitalization process and further protect the interests of shareholders. This is the case where a shareholder is known to have used his influential position within the credit establishment to obtain a direct or an indirect commitment from the latter in violation of the regulatory limits[lxv]. Furthermore, where a shareholder is known to have significantly contributed to the degradation of the situation of the credit establishment, he shall also be excluded from the subscription process, as well as prohibited from taking up new shares in any CEMAC credit establishment. This provision does not say exactly how to identify the latter shareholder, and therefore, it is feared that it may be used to exclude undesired shareholders from the subscription process. To remedy this difficulty, it is suggested that such a shareholder should be one who has been found to satisfy the above description by any competent jurisdictional authority within CEMAC.In order to guarantee the expeditiousness of the process, the Regulation[lxvi] provides that shares directly or indirectly subscribed for the purpose of increase in registered capital within the process of restructuring or special restructuring should immediately and entirely be paid up. Increase in registered capital aims at strengthening the financial standing of the credit establishment as such, article 76 of the 2014 Regulation prohibits all subscription of shares in kind in the event of restructuring or special restructuring.

Apart from shareholders, measures also exist to keep away other persons with fraudulent financial records within the CEMAC banking market from this exercise[lxvii] and equally, to render the process more expeditious. In the first case, the Regulation provides in its article 74 that any person against whose signature the CEMAC banking system directly or indirectly makes a reproach for having contracted a doubtful debt[lxviii], is excluded from a direct or an indirect subscription within the framework of an increase in registered capital. Such a prohibition is general, as it does not only apply within the framework of special restructuring, but equally extends to subscription for capital in any context within a credit establishment. In order to guarantee the expeditiousness of the process, the Regulation[lxix] provides that shares directly or indirectly subscribed for the purpose of increase in registered capital within the process of restructuring or special restructuring should immediately and entirely be paid up. Increase in registered capital aims at strengthening the financial standing of the credit establishment as such, article 76 of the 2014 Regulation prohibits all subscription of shares in kind in the event of restructuring or special restructuring.

4. Modes of Interference with Shareholders' Rights during Special Restructuring

A bank which is put under restructuring is generally under the threat of insolvency and several far-reaching and very intrusive measures are employed to remedy its difficulties and restore financial stability to the enterprise[lxx]. At this level, interference with shareholders' rights is much more extensive than in previous phases of stabilization, and can even result in termination of shareholders' rights. Restructuring can therefore affect shareholders' property rights, governance rights and procedural rights.

4.1. Interference with Shareholders' Property Rights

Article 64(g) of the 2014 Regulation makes way for using the registered capital to directly cushion the adverse effects of losses incurred in the running of the bank. Shares are an expression of the ownership rights of shareholders over the company[lxxi]. These shares can serve to cover the losses or liabilities of the company within the framework of a legal mechanism best known as shareholders variation of capital[lxxii]. In this case, the restructuring authority is allowed to write down the existing shares, in proportion to the losses and against the payment of no compensation. In effect, this mechanism is prejudicial to shareholders from a double perspective, firstly it reduces the share value of each shareholder and secondly it reduces the registered capital of the company[lxxiii]. The reduction of registered capital may be conducted through two main mechanisms[lxxiv]; either by reducing the face value of shares or by reducing the number of shares[lxxv]. In this light, the reduction of shares must respect the principles of the equality[lxxvi] and proportionality among shareholders. This principle may only be derogated upon with the consent of shareholders, probably in the AOA, since general meetings no longer hold during this procedure.

In addition, the same article 64(g) allows for the conversion of the bank's liabilities into shares, hence, converting the bank creditor's claims into equity. In order to this, the restructuring authority can either cancel existing shares and issue new shares to creditors or severely dilute existing shares by directly converting creditor claims to equity. This conversion of debt instruments into capital may seriously dilute the ownership and control rights of the shareholders, thereby, depriving them of their ownership rights in the course of restructuring.

Another instance of interference with shareholders' property rights is the prohibition for shareholders to sell their shares[lxxvii] following the publication of the special restructuring decision[lxxviii]. The rationale for this is difficult to see at first view as the sale of shares does not directly affect the capital of the company. However, it can be thought that where a credit establishment is in serious difficulties, a massive sale of shares is likely to occur within the company for fear of future losses and the adverse effects of a worsening crisis. Furthermore, a massive withdrawal of shareholders will spell doom for the share value of such a company on the stock exchange market plunging it deeper into crisis.

4.2. Interference with shareholders' control and governance rights

Restructuring authorities have the power to take control over the bank and assume all prerogatives ordinarily conferred on management, the board and shareholders. Of course, the strongest manifestation of this power conferred on restructuring authorities particularly during special restructuring is the ability to apply restructuring measures without shareholder authorization after their discharge, following the approval of the draft restructuring plan. In addition, restructuring meddles with shareholders' rights in that it defeats their ability to exercise control over management, as they have littlecontrol over the restructuring authority and cannot directly remove him. Important decisions can, therefore, be taken without need for shareholder approvals, including capital increase, imputation of losses on registered capital and corporate reserves, annulment of shares to recoup on losses, business sale transactions,issuance of new shares, capital reductions, mergers and the financial restructuring of some of the bank's activities[lxxix]. Pre-emption rights cease to exist during the capital increase or the issuance of new shares during special restructuring.

4.2. Interference with Shareholders' Procedural Rights

Under provisional administration, the ad hoc manager would always require shareholder approval to carry out all acts where such is normally the case under company law. However, under special restructuring, the exercise of powers by the restructuring authority is not subject to any notification or procedural requirements towards shareholders[lxxx].

5. Conclusion

Shareholders are the owners of the company since the company exists due to their contributions which make up its registered capital. As such, whenever a bank is in difficulties it spells serious consequences on them, and its subsequent insolvency can hold even more disastrous repercussions for them. As such, the law finds it imperative to endow shareholders with certain rights within the bank, including, financial, governance and procedural rights. In the exercise of these rights, shareholders can better ensure that they minimize the risk of insolvency by ensuring that the bank's operations are run in conformity with legal prescriptions, and that the management does not indulge in excessive risk-taking. However, at times, the efforts of the shareholders notwithstanding, the bank still goes into difficulties and restructuring becomes inevitable. This requires the replacement of bank management and its control organs with the provisional administrator over which the shareholders do not exercise the same degree of oversight as with the former. This poses the problem of shareholder rights protection during restructuring. CEMAC law does not totally divest shareholders of their rights during this period, but rather ensures that these rights are curtailed to the level that is necessary for an expeditious and efficient restructuring. This is because the bank has many other stakeholders, and therefore, shareholders need not be protected to the detriment of bank customers, creditors and the economic system that could be effectively compromised by the collapse of the bank. The law, therefore, must protect the interests and rights of shareholders, in cognizance of the greater interests of other bank stakeholders. Potential practical implications from the perspective of bank shareholders include reduced interest in long-term investments in banks, or exacerbation of shareholder moral hazard as a bank approaches the triggers for restructuring. Taking this into account, caution is called for in the designand application of provisions which impact shareholder rights in the recovery and resolution framework.

[i] Cozian (M.) et Viandier (A.), Droit des affaires, Tome 1, Droit commercial général et sociétés, 7eédition, Paris, Economica, 1992, p.144.

[ii] Notue (C.N.), Le gouvernement d'entreprise dans les établissements bancaires de l'espace CEMAC, Revue Trimestrielle de Droit Africain, Avril-Juin 2017, p.174.

[iii] Kern (A.), "Bank resolution regimes: balancing prudential regulation and shareholder rights", Journal of Corporate Law Studies, April 2009, p.61.
[iv] Kelese Nshom (G.), Regional integration laws and banking security in Cameroon, PhD Thesis, University of Dschang, 2014, p.472. See also Kwati Baninjoyoh (E.), The treatment of the creditor in insolvency proceedings under OHADA, Juridis Periodique, No.99, Juillet, Aout, Septembre 2014, p.91.
[v] Hupkes (E.), "Special bank resolution and shareholders' rights: balancing competing interests", Journal of financial regulation and compliance", July 2009, p.277.
[vi] Valia Babis (S.G.), "Bank recovery and resolution: what about shareholder rights?", Legal studies research paper series, No.23/2012, September 2012, p.2.
[vii]Attinga (B.J.), "Crisis Management and Bank Resolution: Quo Vadis Europe?", European Central Bank Legal working paper series, No.13, December 2011, p.9.
[viii] Kwati Baninjoyoh (E.), op.cit., p.92.
[ix]This is the French acronym for the Economic and Monetary Community of Central African States. Member States include: Cameroon, Central African Republic, Chad, Equatorial Guinea, Congo and Gabon, as provided for by the preamble of the Ndjamena Treaty of 16 March 1994 establishing CEMAC as revised on 25 June 2008 in Yaoundé, and 30 January 2009 in Libreville. According to article 2 of the above Treaty, "the essential mission of the community is to promote peace and harmonious development of member states, within the framework of institutions of two unions: an economic union and a monetary union. In each of these two unions, member states intend to establish a single union, likely to carry to completion, the process of economic and monetary integration".
[x]Regulation No. 02/14/CEMAC/UMAC/COBAC of 25 April 2014, relating to the treatment of credit establishments in difficulties with the Economic Community of Central African States.
[xi]The Regulation is not completely self-contained since it makes reference to the use of certain rescue techniques, completely governed by ordinary law. See for instance article 85 authorizing ordinary law provisions relating to preventive settlement, administration and to an extent liquidation, as contained in the Uniform Act on Collective Debt Clearing Procedures to be applied to credit establishments in difficulties.
[xii]COBAC is the French abbreviation for the Banking Commission of Central African States, created by the Convention of 16th October 1990. It has as mandate to survey and control the CEMAC banking system, and also to sanction defaulting subjects, so as to guarantee the efficiency of its action. See Sunkam Kamdem (A.), « Reflexion sur le système de régulation institutionnelle de l'activité bancaire dans la CEMAC », Revue libre de Droit, 2014, p.134-148, see also Njoya Nkamga (B.), « La COBAC dans le système bancaire de la CEMAC », Annales de la Faculte des Sciences Juridiques et Politiques, Université de Dschang, Tome 13, 2009, p.85 et seq.
[xiii]See Kalieu Elongo (Y.R.), « La restructuration des établissements de crédit dans la CEMAC : Entre spécificité et efficacité du droit des défaillances bancaires », Annales de la Faculte des Sciences Juridiques et Politiques, Tome 18, 2016, pp.1-21. See also Kalieu Elongo (Y.R.), « Le nouveau regime de traitement des difficultes des établissements de crédit en zone CEMAC », Juridis periodique, No.105, pp.141-147.
[xiv] Velasco (J.), "The fundamental rights of the shareholder", University of California Davis Law Review, Vol.40, 2006, p.466.also available online at https://lawreview .law.ucdavis. edu/issues/40/2/ articles/Davis Vol40No2 _Velasco.pdf. last consulted on 29/12/17.
[xv]This is the French acronym for the Organization for the Harmonization of Business Law in Africa (Organisation pour l'Harmonisation en Afrique du Droit des Affaires). OHADA is a pan-African organisation created in 1993 to facilitate commercial activities in its member states through the establishment of a uniform legal framework governing business activities. The OHADA system provides important guarantees to international investors. Indeed, OHADA legislates through "Uniform Acts", the provisions of which are directly applicable and binding in the member states. The OHADA system covers a 17-country zone: 7 countries in Central Africa (the CEMAC States and DRC (since 2012), 8 countries in western Africa (Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Guinea, Mali, Niger, Senegal, Togo), and the Comoros.
[xvi] Article 4(2).
[xvii] It has, however, being argued that the paramount interest in a corporation is the company interest, but this notwithstanding, the company interest simply means the extension of the existing interest in the corporation beyond shareholders to include the interest of other corporate stakeholders such as workers, creditors, and suppliers of the company. See Boye (M.), L'administration provisoire des sociétés commerciales en OHADA, Revue Trimestrielle de Droit Africain, No. 895, Avril-Juin 2016, p.895.
[xviii]The European Court of Human Rights (ECHR, the Strasbourg Court) has also addressed the nature of shareholder rights. In Olczak v Poland, the court recognised that a share was "a complex object" and that a shareholder in a company had corresponding rights which encompassed "a share in the company's assets in the event of its being wound up, and other unconditioned rights, especially voting rights and the right to influence the company's conduct".
[xix] Tchami Nya (N.M.), La contribution aux pertes sociales dans les sociétés commerciales OHADA, Thèse de Master, droit des affaires et de l'entreprise, Université de Dschang, 2012, p.26.
[xx] Valia Babis (S.G.), op.cit., p.2.
[xxi]Kwei Nyingchia (H.), Shareholding in commercial companies: The OHADA experience, DEA Dissertation, University of Dschang, 2008, p.90.
[xxii] Article 754 UACCEIG.
[xxiii] Nah Fuashi (T.) & Kwei Nyingchia (H.), "An overview of shareholding in commercial companies and economic interest groups within the OHADA zone", Juridis Periodique, No.81, Janvier-Fevrier-Mars 2010, p.79.
[xxiv]Article 54 UACCEIG.
[xxv]Ibid.
[xxvi] See articles 142 and 144 of the UACCEIG which allows the company to constitute reserves from which finances can be drawn to water down the adverse effects of a financial crisis within it.
[xxvii] Merle (P.H.), Droit commerciale, societes commerciales, 8e Edition, Dlloz, 2001, p.316, cited by Nah Fuashi (T.) and Kwei Nyingchia (H.), op.cit., p.79. see also Roudaut (Y.), Ne renoncez pas a votre droit preferential de souscription!", JDF HEBDO, www.jdf.com, last consulted 10/09/18, p.1.
[xxviii] Article 573.
[xxix] Article 46.
[xxx] Article 593 UACCEIG
[xxxi] Article 586, Ibid.
[xxxii] Nah Fuashi (T.) & Kwei Nyingchia (H.), op.cit., p.81.
[xxxiii] Richard Nolan (C.), "Shareholder rights in Britain", European Business Organization Law Review, No.7, 2006, p.551.
[xxxiv] See Pipa Tabanga (G.), « L'affectio societatis en Droit OHADA », Thèse de Master, Université de Dschang, 2014, pp.9-21.
[xxxv] Colleen Dunlavy (A.), "Social conceptions of the corporation: insights from the history of shareholder voting rights", Washington and Lee Law Review, Vol.63, Issue 4, 1996, p.1369.
[xxxvi] Anoukaha (F.) et al, OHADA, societe commerciale et GIE, Bruyant, Bruxelles, 2002, p.74. It must be noted that this equality is limited by the possibility of the creation of different classes of shares with special, see articles 53, 543 and 751 UACCEIG.
[xxxvii]See the provisions of articles 456, 551 and 555 of the UACCEIG for the attributes of the various general meetings.
[xxxviii] Article 551, Ibid.
[xxxix]See regulated agreements entered into with corporate executives under article 502-505 UACCEIG.

[xl] Article 751 UACCEIG.
[xli] Muka Tshibende (L-D.), « L''information des actionnaires, source d'un contrepouvoir dans les sociétés anonymes du droit français et du périmètre OHADA », PUAM, 2009, p.18.
[xlii] Tsopbeing (M.W), « L'information des associes, une exigence fondamentale du droit des sociétés OHADA ? », Revue de l'ERSUMA, No.6, Janvier 2016, p.227.
[xliii] Ibid.
[xliv] See articles 344, 345 and 525 UACCEIG.
[xlv] See articles 150, 157 and 158 of the UACCEIG.
[xlvi] According to section 27 of the 2014 CEMAC Regulation on the treatment of credit establishments in difficulties, "Provisional administration is a measure applicable to credit establishments in difficulties, when it is necessary for a re-establishment of normal conditions of functioning to proceed in a provisional manner with the replacement of the board of directors and the management by an adhoc manager.."
[xlvii]Special restructuring is a body of reorganizational measures that has been enshrined in the 2014 Regulation, and is destined for the stabilization of credit establishments of a systemic importance. The Regulation in article 56 introduces the concept of credit establishments of systemic importance into CEMAC banking law (See Kalieu Elongo (Y.R.), « Le nouveau régime de traitement des difficultés des établissements de crédit en zone CEMAC », op.cit., p.144.), though this concept is relatively known in international banking circles (See the 2015 Basel Committee principles for identifying and dealing with weak banks). The 2014 Regulation does not define a credit establishment of systemic importance, but simply goes ahead to provide in its article 56(2) that,
"a credit establishment of systemic importance is identified based on such indicators as, size, interdependence of their activities, the absence of direct substitutes or financial infrastructure for the rendering of their services, their activities at the sub-regional, regional and global level, and their complexity".
[xlviii] The restructuring authority during provisional administration is the provisional administrator. However, the 2014 Regulation mostly makes allusion to the legal representative of the credit establishment as the person empowered to carryout special restructuring. The expression "legal representative" should be understood in a generic manner to include the statutory company executives or any ad hoc company executive such as the provisional administrator. This generic expression is used by the legislator because special restructuring may be carried out under the authority of a statutory company executive or that of a provisional administrator, see article 62 of the 2014 Regulation.
[xlix]This notwithstanding, it is submitted that the company will still be bound by acts committed by the provisional administrator, not falling within the corporate objects, provided the 3rd party acted in good faith and could reasonably overlook this fact. See article 122 UACCEIG on powers of corporate executives.
[l]See the position under English law contained in the Special Resolution Code of Practice of the Banking Act of England 2009, article 73(9). Here the administrator is given the powers of senior management, BOD, and shareholders.
[li] See article 33 of the 2014 Regulation, according to which the powers of the provisional administrator are exercised subject to of those expressly conferred upon the general meeting of shareholders.
[lii]Panagis Pafitis and others v. Trapeza Kentrikis Ellados AE and others (Case C-441/93) CMLR, 9 July 1996.
[liii] See article 35 of the 2014 Regulation.
[liv] Hupkes (E.), op.cit., p.20.
[lv] See article 47 of the 2014 Regulation
[lvi]This solution is a clear response to the problems of the former regime of provisional administration which marred the proceedings of provisional administration as was the case of Amity bank, see Kalieu Elongo (Y.R.), "Le noveau regime de traitement des difficulties des etablissements de credit en zone CEMAC", Juridis periodique, no.105, Janvier fervriermars 2016, p.144. see also Arret nº 010/CJ/CEMAC/CJ/09 du 13 novembre 2009, Affaire Sielenou Christophe et autres c/ Decision COBAC nº. D-2008/52, Amity Bank Cameroon PLC, Autorité monétaire du Cameroun, note kalieu Elongo (Y.R.), Juridis Périodique, nº 83, Juillet Aout Septembre 2010, p.25 et seq.
[lvii] Article 48(a) of the 2014 Regulation.
[lviii] Morawitz (V.), "The pre-emptive right of shareholders", Havard Law Review, Vol.42, No.2, December 1928, p.186.
[lix] Koagne (J.C.), Le droit préférentiel de souscription dans la société anonyme OHADA, Thèse de master, Droit des affaires et de l'entreprise, Université de Dschang, 2012, p.14.
[lx]The old shareholders are likely to become the minority, i.e. in the position of shareholders with no real power with shares representing no significant commercial value as was the case in Greece as was reported in the case of the European court of Justice of 24 march 1992, Vasco S.A et consorts Sotiropoulos c/ Etat hellenique et OAE, as commented by DANA- DEMARET (S.), in Revue des societies, 1993, chroniques, p.111 et seq.
[lxi] Article 13, Ibid.
[lxii] It has been submitted that the president of COBAC is bound to invite the shareholders to suggest action, see Kalieu (Y.R.), « Le contrôle bancaire dans la zone de l'union monetaire de l'Afrique centrale » op.cit., p.462.
[lxiii] Nguihe Kante (P.), op.cit., p.70.
[lxiv] Mendamkam Toche (S. J.), La sécurité du déposant dans le système bancaire de la CEMAC, Thèse de Master, Université de Dschang, 2008, p.37.
[lxv] In this regard, article 1 of the COBAC Regulation R-93/13 relating to the commitments of credit establishments in favour of their shareholders, board members, managers and personnel as revised by COBAC Regulation R-2001/05 of 7 May 2001, the above commitments include loans and guarantees. Such commitments must be subject to the approval of the Board of Directors and notified to auditors, and any person benefiting from such a commitment cannot take part in the process of risk evaluation relating thereto and also in the final decision whether or not to grant the commitment, see articles 2 and 3 of the Regulation.
[lxvi] Article 77.
[lxvii] See article 27 of the 1992 Convention, particularly article 27(5).
[lxviii] A doubtful debt has been defined as all forms of loans, even those backed by a guarantee which present a probable risk of partial or total non-reimbursement. See detailly article 5 of COBAC Regulation R-98/03 relating to the accounting and coverage of bad debts and doubtful commitments.
[lxix] Article 77.
[lxx]Hupkes (E.), "Special bank resolution and shareholders' rights: Balancing competing interests" op.cit, p.284.
[lxxi]Almami dit Fa Diawara, « La variabilité du capital social en droit Ohada », Revue trimestrielle de droit africain, no.898, janvier-mars 2017, p.20.
[lxxii] Tchami Nya (N.M.), op.cit., p.45.
[lxxiii]Ibid.
[lxxiv] Article 371, UACCEIG.
[lxxv] Article 627, Ibid.
[lxxvi] The equality envisaged in this perspective is not an arithmetic equality but a proportional equality.
[lxxvii]The right to sell shares represents the shareholders' right to exit their relationship with the company. See Velasco (J.), op.cit., p.458.
[lxxviii] Article 66 of the 2014 Regulation.
[lxxix]Article 64, Ibid.

[lxxx] Ibid.

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