

# THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

## Disciplinary Control and the Regulatory Compliance of Corporate Governance Stakeholders under CEMAC Banking Laws

Ngum Meeky Ebjaff

Faculty of Law and Political Science, University of Dschang, Cameroon

### Abstract:

*This work examines bank regulation through the use of disciplinary powers, as a mechanism of strengthening the governance apparatus of banks in the Economic and Monetary Community of Central Africa (CEMAC). The exercise questions the appropriateness of disciplinary control in containing the phenomena of misconduct and noncompliance by corporate governance stakeholders in a banking enterprise. It is established that the imposition of disciplinary sanctions on a bank and its corporate officers should seek to maintain regulatory compliance, but at the same time, must guarantee their rights to a due process and fair treatment by the banking regulator. Therefore, regulators must be flexible enough to administer disciplinary sanctions that meet the need of instilling order and focus in the bank's corporate government, but not too zealous as to harass governance stakeholders out of focus, hence defeating the very purpose of regulatory control.*

**Keywords:** Bank, disciplinary powers, disciplinary procedure, COBAC, CEMAC, regulation

### 1. Introduction

Banks are economic institutions that play a predominant role in the economy of every country<sup>1</sup>, especially developing countries like those of the Economic and Monetary Community of Central Africa (CEMAC).<sup>2</sup> Banks play the important role of financial intermediation<sup>3</sup>, thus mobilizing capital for much needed investment<sup>4</sup> which serves to stimulate economic growth and development. From the foregoing, healthy banks are of cardinal importance for a country's economy<sup>5</sup>. The integral role that banks play in the economy is demonstrated by the robust corporate governance arrangements of banks on the one hand, and the almost universal practice of states in regulating the banking industry on the other hand. While the corporate government of the bank (the management, the board of directors, general meeting of shareholders, the auditors, and internal control units) are endowed with the direction and control of the bank, the bank regulator supervises and sanctions their actions. In practice, management is generally under a mandate from owners to pursue the objective of wealth maximization, and in so doing, may jeopardise the bank's franchise value and threaten the stability of the banking system through excessive risk taking. While such misconduct should normally be checked by the board of directors (BOD), auditors or internal control organs, it is also the full responsibility of the bank regulator to ensure that such a reckless manner of conducting banking business is properly checked. This cannot be farfetched, as the internal control of banks could at times be defiant, complaisant or even guilty of conspiracy with management and owners in intentional banking misconduct. In this light, the banking regulator is generally regarded as the watchdog of every banking system. This is the role that has been confided to the Banking Commission of Central Africa<sup>6</sup> (COBAC). In implementing its mandate, COBAC exercises administrative and disciplinary authority over banks and their senior officers. It is the exercise of disciplinary powers by the banking regulator that comes under our searchlight in this work.

<sup>1</sup> Hupkes E. (2003), "Insolvency-Why a special regime for banks", Current Developments in Monetary and Financial Law, Vol.3, Washington, p.8.

<sup>2</sup> 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. It was established in replacement of the Central African Customs Union (UDEAC). The ambition of member states is to develop together all their human and natural resources and to put all these at the service of the wellbeing of their people. This is done through a harmonization of policies and legislation among member states, in order to achieve integration. 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...".

<sup>3</sup> Shelagh H. (2005), *Modern banking*, London, John Wiley & Sons Ltd, p.18.

<sup>4</sup> Bonneau V.T. (2005), *Droit bancaire*, 6<sup>e</sup> édition, Paris, Monchrestien, p.6.

<sup>5</sup> Basu S. (2003), "Why do banks fail?", International Review of Applied Economics, Vol.17, No.3, July, p.232.

<sup>6</sup> Created by the Convention of 16 October 1990, by UDEAC member states (which became CEMAC in 1994). COBAC has the mandate to survey and control the CEMAC banking system, and also to sanction defaulting subjects, so as to guarantee the efficiency of its action.

Discipline can be regarded as punishment intended to correct or instruct; especially a sanction or penalty imposed after an official finding of misconduct<sup>7</sup>. The power of sanction against defaulting banks and their corporate officers has been considered as an inherent component of the regulatory<sup>8</sup> powers endowed upon COBAC<sup>9</sup>. COBAC is charged under the conditions fixed by the Annex to the Convention of 16 January 1990<sup>10</sup> to assure the respect by banks of the legislative and regulatory provisions governing the banking business in CEMAC and to sanction any shortcomings that come to its knowledge. The Banking Commission, therefore, acts as a jurisdictional organ when the legal and regulatory provisions governing the business of banking are not respected by the subjected stakeholders. In accordance with the proviso to article 16 of the 2014 CEMAC Regulation on the treatment of credit establishments in difficulties, the disciplinary procedure which is to be instituted by COBAC is aimed at sanctioning all shortcomings that are attributed to natural and juristic persons, subject to its authority. Disciplinary sanctions can only be applied to defaulters at the end of a disciplinary procedure instituted and conducted by the regulator. At this juncture, it is germane, to paint the role of the different actors of a corporate government, to analyse the pertinence of disciplinary sanctions and the disciplinary procedure made use of by COBAC, in a bid to combat regulatory noncompliance and misconduct in the CEMAC banking market.

## 2. The Structure and Functioning of the Corporate Government of a Bank

The harmonious functioning of a bank, like any other company, calls for the participation of a number of corporate actors. Their intervention assures both the private objective of profit maximisation and the public objective of compliance with the law. The most important members of the corporate government and their roles are highlighted below.

### 2.1. The Board of Directors

The role of the board of directors (BOD) in internal control is provided for by article 4 of the 2001 COBAC Regulation relating to the internal control in credit establishments (hereinafter referred to as the 2001 COBAC Regulation). The BOD is in charge of developing and approving significant commercial strategies and policies within the bank<sup>11</sup>. They also periodically review their implementation and take measures to establish and maintain an efficient internal supervision<sup>12</sup>. In compliance with the provisions set out in the 2001 Regulation on internal control of banks, the BOD is expected to ensure that the banks organizational structures expressly correspond to the internal supervision system and risk management, involving risk identification<sup>13</sup>, limiting the level of risk, raising defenses against such identified risk. The BOD therefore, has a significant overlook over the internal control function performed by the senior management, internal audit units, and all the risk management groups<sup>14</sup>. It also verifies whether or not the recommendations of external auditors for improvement of internal supervision systems are acted upon. The board therefore, has oversight over the bank's internal control and reports shortcomings to the regulator. The internal control function of the board is discharged by the audit committee. In fact, this committee is the specific emanation of the board specifically charged with assuring the control mission endowed upon it. According to the 2001 COBAC Regulation on internal control<sup>15</sup>, the audit committee is in charge of assuring the reliability and clarity of financial information, prepared by the executive organ and external auditors, and to give its appreciation on the pertinence and permanence of the accounting methods adopted for the establishment of accounts. For this reason, it is forbidden for members of the executive organ, the internal audit officer, or auditors to be part of the internal audit committee<sup>16</sup>, since the latter is meant to review their performance. The 2001 COBAC Regulation<sup>17</sup> provides that "the putting in place of an audit committee is obligatory for credit establishments, whose turnover exceeds 50 billion francs" by deduction it is optional for banks with a lower turnover.

### 2.2. The Bank Management

Bank managers are persons who assure its day to day running, in accordance with article 18 of the Annex to the Convention of 17 January 1992<sup>18</sup>. With the importance of their missions, the bank manager is expected to act with care and diligence<sup>19</sup>. The

<sup>7</sup> Campbell H.B. (2014), Black's Law Dictionary, 8<sup>th</sup> Edition, Dallas, p.496.

<sup>8</sup> The concept of regulation has been regarded as vague and uncertain. In fact, the word regulation is subject to multidimensional use in the legal field. It is identified with the law and appears to be one of its most important function. It can be understood as a limit imposed upon the exercise of a prerogative, in order to balance those prerogatives with the general interest. See generally, Chevalier V.J. (2001), "La régulation juridiques en question", Droit et Société, No 49, p.827.

<sup>9</sup> Achille Sunkam K. (2014), « Réflexion sur le système de régulation institutionnelle de l'activité bancaire dans la CEMAC », Revue libre de Droit, pp.134-138. Available online at <http://www.revue-libre-de-droit.fr/revue>. Last consulted on 28/11/2017.

<sup>10</sup> Article 7(2).

<sup>11</sup> Article 4 (a) of the 2001 COBAC Regulation.

<sup>12</sup> Article 4d of the 2001 COBAC Regulation

<sup>13</sup> Article 4 (b) and (c) of the 2001 COBAC Regulation.

<sup>14</sup> Chareaux G. (1997), « Le gouvernement des entreprises: Théories et faits », Paris, Economica, p.79.

<sup>15</sup> Article 2 (4).

<sup>16</sup> Article 2(5) of the 2001 COBAC Regulation.

<sup>17</sup> Article 2 (5) of the 2001 COBAC Regulation.

<sup>18</sup> Also see article 2 of Regulation No 04/08/UMAC/CEMAC/COBAC relating to the corporate governance of credit establishments within CEMAC.

<sup>19</sup> Tientcheu N. (2013), « La responsabilité du banquier pour crédit abusif : une étude de la jurisprudence camerounaise et française », Cahiers Juridiques et Politiques, Université de Ngaoundéré, p.57.

banker also has to act in respect of professional ethics, deontology, and respect for professional secrecy.<sup>20</sup> The management acts on behalf of the bank and carries out acts in fulfillment of the corporate objective and as such commits the corporate entity in this respect.

Also known as the executive organ, it is the body of persons that assure the general management of the credit establishment in conformity with article 18 of the Annex to the 1992 Convention on the Harmonization of Banking Regulations in Central Africa<sup>21</sup>. This executive organ must implement the policies and strategies of control adopted by the board and implement processes relevant for the prevention and discovery of risky conduct within the bank. The management must therefore ensure that staff in decision making and risk taking, respect management norms, legislative and regulatory provisions. In this light, they have a duty to identify<sup>22</sup> and an obligation to report any risky conduct or activity within the credit establishment.

### 2.3. The Shareholders

Shareholders have fundamental rights in the company, which include the right to information, right to participation and vote on company decisions, except otherwise provided for by the UA<sup>23</sup>. These rights have been considered as the mechanism through which shareholders penetrate the corporate structure<sup>24</sup>, which is vital in ensuring that shareholders can control the corporate operations. The general meeting of shareholders provides the forum for them to effectively participate in the management and control of the bank. Within the framework of these meetings, shareholders are allowed to appoint the board members, managers, auditors, and also to evaluate the functions performed by them and to decide whether or not their mandates should be renewed. In addition, the general meetings have the powers to dismiss from the various functions to which they appoint, where the person is found wanting in the performance of their task.

Apart from their participation in general meetings, special procedures exist to guarantee shareholder participation in the company and include; shareholder early warning procedure and management evaluation. Under OHADA UACCEIG (articles 157 and 158), shareholders have the right to initiate an early warning or alert procedure. This process is meant to enlighten them on the state of the company, be it financial or managerial. But unlike with statutory auditors the alert procedure is optional and not obligatory<sup>25</sup>. In a PLC and consequently in every credit establishment, each shareholder can twice a year address written questions to the BOD, to the chairman and managing director or to the administrator general as the case maybe on any matter likely to jeopardize the continued operations of the company<sup>26</sup>. The management official or the BOD are bound to respond in 15 days, and within the same dateline are bound to forward a copy of the response to the auditor<sup>27</sup>. In this case it will be required for the auditor to forward same to COBAC to take necessary action if need be. The law has also given the possibility for the shareholders to seek and obtain expert opinion as to the performance of the company management. This is done through management evaluation. It is not specifically governed by banking law and therefore recourse is made to ordinary law particularly articles 159 and 160 of the OHADA UACCEIG. It is provided for as follows:

One or more partners holding at least one-tenth of the company's registered capital may either individually or as a group formed in any manner, petition to the president of the competent court of the registered office of the company, to designate one or more experts to make a report on one or more management operations<sup>28</sup>.

Management evaluation has been described by doctrinal writers as a measure destined to reinforce the capacity of the shareholders to control the management of the company<sup>29</sup>. In this light, the expert intervenes for a precise and pre-determined mission, who cannot be concerned with all management operations, and such an intervention can only be justified when suspicion exists with regards to the operation in question.

### 2.4. The Auditors

The role of the auditor is to control the operations of the company<sup>30</sup>. Unfortunate events in the life of companies like financial deterioration most often results from excesses of the management, hence the need for the latter to be checked by auditors<sup>31</sup>. They certify the annual accounts of the bank, assure and attest the exactitude and sincerity of information destined

<sup>20</sup>Bequin J.M. and Arnaud B. (2008) , *L'essentiel des Techniques Bancaires*, Editions d'Organisation Groupe Eyrolles, Paris, p.265. Available online at [www.editions-eyrolles.com](http://www.editions-eyrolles.com). Last consulted on 18/05/2016.

<sup>21</sup> Article 2(1) of the 2001 Regulation.

<sup>22</sup> Article 5 (b) of the 2001 Regulation

<sup>23</sup> Other rights of the partners include: the right to share in the company's profits, right to share in the company's net assets during distribution etc.

<sup>24</sup> Le Cana P. (2002), *Droit de sociétés*, Paris, Monchrestien, p.520.

<sup>25</sup> Mokom K.P. (2009), The protection of the principle of legal personality against management abuse: a comparative study of the common law and OHADA law, Masters Thesis, University of Dschang, p.16.

<sup>26</sup> Article 158(1) UACCEIG.

<sup>27</sup> Article 158(2).

<sup>28</sup> Article 159 UACCEIG.

<sup>29</sup> Pougue P.G. et al., (2009), *Traite et actes uniformes commentés et annotés*, p.375, cited by Kalieu (Y.R.) in notes sous TPI de Bafang Ordonnance de référé n° 27/ORD/CIV/TPI/2007, *Affaire sieur Noubicier Leon c/ Sieur Ngamako Michel*, *Juridis Périodique* n° 78 Avril-Mai-Juin, p.33.

<sup>30</sup> This role is so important that the auditor is considered under common law as an officer of the company. See the cases of, *Kingston Cotton Mill v. London General* (No.2)(1896) 2 CH 279 and *R v. Shacter* (1960), All E.R. 61.

<sup>31</sup> Ngomo A-F. (2014), « Le commissaire aux comptes coïncé entre les obligations de faire et de pas faire pénalement sanctionné dans l'espace OHADA » *African Journal of Law* No.2, p.62.

for the public<sup>32</sup>. Their role is so important that article 19 of the 1992 Convention provides that at least 2 auditors are required within a credit establishment, whose turn over exceeds 50 billion francs. The designation of auditors is governed by statutory rules drawn from ordinary law and in particular the OHADA Uniform Act relating to Commercial Companies and Economic Interest Groups, particularly in its articles 710 to 717<sup>33,34</sup> which is in force within the CEMAC sub region. Auditors have to inform COBAC of all acts and decisions concerning the controlled entity, which they have gotten knowledge of in the exercise of their activities, which are likely to violate regulations applicable to the establishment and may have significant effects on its financial situation, its performances or assets, threaten the continuity of the entity, may justify its reserve, or refusal to certify its accounts<sup>35</sup>. Auditors are therefore subject to a duty of alert. The very obligation exists upon auditors exercising their activities under a mother company or a subsidiary, if he has knowledge of the acts or violations mentioned above<sup>36</sup>. They are equally prohibited from performing any other function within the bank which does not fall within its functions as expressly provided for by law.<sup>37</sup> The mission of auditor's rests upon 3 cardinal pillars viz the duty of control, the duty of information, and the duty of alert<sup>38</sup>.

### 2.5. *The Bank Regulator: The Watchdog of the Banking System*

The banking regulator in CEMAC is the Banking Commission of Central Africa (COBAC) and is vested with the power of surveillance over all the entire banking system and banking activities within CEMAC<sup>39</sup>. This is in line with article 7bis of the 1990 convention which provides "the commission is charged under the conditions fixed in the annex to ensure the respect by credit establishment of the legislative and regulatory provisions provided for by the authorities, by the bank or by itself and which are applicable to them, and to sanction any shortcomings". The supervisor generally has broad authority to take remedial action and to direct a bank to cease and desist from unsound and unsafe business practices<sup>40</sup>. Control exercised by COBAC over credit establishments is of a very wide scope. It includes the control of access to the banking profession<sup>41</sup>, and control during the exercise of the banking profession. The latter is of relevance to this work as it aims at ensuring that the bank remains in line with applicable laws and regulations.

Generally speaking, the control of banks is always apprehended from the view point of disciplinary power, which the control authorities have over banks that fail to comply with applicable regulations. This is indeed a partial view of the power of control, which does not take into account all the attributes of the control authority<sup>42</sup>. Though sanctions constitute a vital component of control it goes beyond this and is only an outcome of the surveillance of credit establishments in activity. In addition, sanctions can only be applied if they have proven necessary after the application of control through surveillance. Qualified as the concrete action of COBAC to maintain the stability of the banking system<sup>43</sup>, this form of control is also known as control through prevention<sup>44</sup>. This form of control may take 2 forms documentary control or on-the-spot control.

Documentary control consists in controlling the activities and the management of credit establishments through documents, information and data which COBAC requests from the bank<sup>45</sup>. It is founded upon the right of COBAC to the communication and transmission of documents requested<sup>46</sup>. There is no restriction as to the periodicity of transmission of the documents, or sources of information. This allows COBAC to proceed with this activity at any time, and the credit establishment concerned must show no form of resistance against COBAC in the course of this duty. On-the-spot control, is a form of control conducted within the premises of the controlled entity or subjected credit establishment, at its registered headquarters, or branches. It can equally be carried out in parent companies, as well as in subsidiaries of the institution. It aims at assuring the certainty and the accuracy of information that had earlier been transmitted by the credit establishment to COBAC, probably within the scope of documentary control, an alert procedure or any other form of communication between the two bodies. Such controls are expected to be limited to this objective, without which it becomes abusive in nature<sup>47</sup>. This allows the banking commission to control the conditions under which the credit establishments operate, to assure their

<sup>32</sup> Article 19 of the 1992 Convention on the Harmonization of Banking Regulations in Central Africa.

<sup>33</sup> These provisions fix rules relating to the choice and the nomination of auditors and their assistants, providing amongst other things the incompatibilities under which they are bound.

<sup>34</sup> Auditors practicing in CEMAC credit establishments are equally subject to the provisions of Act n° 5/-82-UDEAC-324 of 18 December 1982 relating to auditing and legal expertise in accounting.

<sup>35</sup> Article 4 of Regulation n° 04/03 CEMAC/UMAC/COBAC relative to the diligences of auditors in credit establishments, of 14 May, 2003.

<sup>36</sup> Gavada C. et Stoufflet J., « Droit bancaire-institutions-comptes, operations-services, op.cit. p.90.

<sup>37</sup> See *Affaire Ministère public et SIC c/ Belinga Gilles Roger et consorts* (unpublished) ; *Affaire ministere public et Crédit Foncier c/ Booto a Ngon et consorts*

<sup>38</sup> Ngomo (A-F.), op.cit., p.63.

<sup>39</sup> Given this key role, COBAC to properly function, must be an independent organ, from the point of view of its composition, finances and competence of its staff. See Kelese Nshom op.cit., p.241.

<sup>40</sup> Hupkes (E.), op.cit., p.14.

<sup>41</sup> Control of access to the banking profession operates through the licensing of credit establishments and the issuance of prior authorization to perform managerial and auditing duties within credit establishments, but also by way of laying down norms relating to the organization of the profession. See Kalieu (Y.R.) *Le contrôle bancaire dans la zone de l'Union monétaire de l'Afrique Centrale*, op.cit., p.449.

<sup>42</sup> Kalieu Y.R., « Le contrôle bancaire dans la zone de l'Union Monétaire de l'Afrique Centrale », op.cit., p.449.

<sup>43</sup> Sunkam Kamdem A. (2014), « Réflexion sur le système de régulation institutionnelle de l'activité bancaire dans la CEMAC », *Revue libre de Droit*, 2014, p.142. Available online at <http://www.revue-libre-de-droit.fr/revue>. Last consulted 16/12/17.

<sup>44</sup> *Ibid.*

<sup>45</sup> See Kalieu Y.R., op.cit., p.454; Njoya Nkamga B., op.cit., p.93.

<sup>46</sup> See article 36 of the 1992 Convention; article 9(3) of the 1990 Convention.

<sup>47</sup> Kalieu Y.R., « Le contrôle bancaire dans la zone de l'Union Monétaire de l'Afrique Centrale », op.cit., p.454.

financial stability, to ensure the respect of management norms etc.<sup>48</sup>On the spot investigation is totally indispensable for a proper understanding of the operational reality of a credit establishment<sup>49</sup>, and the banking legislator has laid down sanctions for anyone who impedes the realization of this control<sup>50</sup>.

### 3. Disciplinary Sanctions for Noncompliance with |Legal and Regulatory Enactments within CEMAC Banks

Depending on the corporate participant towards whom they are directed, disciplinary sanctions can be classified under two broad categories and include; sanctions affecting the bank itself, sanctions affecting the corporate governance stakeholders.

#### 3.1. Sanctions Directed Towards the Bank

The CEMAC legislator like the English Court in *R v. ICR Haulage Ltd*<sup>51</sup> acknowledges the setbacks that exist in holding corporations liable. However, situations arise in which a corporate entity could be held liable<sup>52</sup>. As such, the legislator has provided sanctions that should befall the bank in the event it violates any applicable regulations and fails to comply with any preventive measures. The first disciplinary sanction here is temporary suspension or prohibition from carrying out some activities.<sup>53</sup> From a consequential stand-point it will only be implemented when there is a serious violation of regulations in force. According to article 15 (2) of the 1992 Convention, when a bank has been granted an authorization to operate, the authorization indicates the activities the bank is authorized to carry out. If the institution carries out activities other than those indicated by in its license for example, this will constitute a serious violation of applicable regulation, hence warranting the banking commission to prohibit the exercise of the unauthorized activities. This is grounded on the fact that particular infrastructure and expertise must be possessed by any bank intending to operate particularly sophisticated services, and an authorization officially sought from COBAC to that end. Article 55 of COBAC Regulation R-2005/01<sup>54</sup>, in very imprecise terms provides that in cases of proven non-respect of internal control procedures and regulatory provisions by a subjected establishment, COBAC, is empowered to take the appropriate severe and public measures against such an establishment if need be. Thus, COBAC may suspend the activities of the credit establishment where it appears necessary to conduct a detailed inquiry in to any suspicious circumstance.

The second sanction here is the temporary or permanent prohibition to dispose of some or all of the assets of the credit establishment<sup>55</sup>. This sanction is very vital because of the major role it can play in the stabilization of banks in difficulties, since it is very likely that the controlling officers of a bank in difficulties may proceed with a sale of its assets, to reduce the pressure upon themselves or to dissimulate their misconduct through which the bank has entered into difficulties. In such circumstances, shareholders will have perverse incentives to assume excess risks, by authorizing asset sales, when they sense the bank approaching the triggers of difficulties. This can be understood from the dimension that shareholders' loss in case of insolvency is limited to their shares, whereas in case of success, the benefits are potentially unlimited.

Thirdly, the bank's business license can be revoked. License withdrawal is pronounced by the Monetary Authority<sup>56</sup>, under two distinct scenarios. Firstly, it could be a prudential withdrawal of license as is the case, when the credit establishment may no longer be able to conform to applicable prudential norms, despite all stabilization measures. Secondly, it could be a disciplinary withdrawal of license, where it is a sanction for the violation of applicable legislation by the credit establishment. The withdrawal of license could be made following a request of the bank, or automatically when the credit establishment no longer fulfils the conditions upon which the grant of the license was based. It may also be because the credit establishment has not made use of the license within 12 months of its grant or has ceased to exercise its activities for 6 months. Though it has been argued that disciplinary sanctions are not punitive in nature, but are conservative measures meant to pressurize the credit establishment to regularize its shortcomings, this particular sanction appears to be punitive against the credit establishment. If it affords protection to a category of persons, it will be to the banking system as a whole and to the customers of the bank who may still hope for a successful liquidation as a last resort.

#### 3.2. Sanctions Affecting the Corporate Governance Stakeholders

In modern corporate practice, participatory management is vital to ensuring best practices in corporate governance,<sup>57</sup> hence, the need for the active participation of different stakeholders in the management and control of a corporate body.<sup>58</sup>

<sup>48</sup> See article 1(2) of the 1990 Convention.

<sup>49</sup> Butsch J.L. (1996), « Le rôle des autorités de tutelle », Colloque de Deauville organisé les 8 et 9 Juin 1996, par l'Association Droit et Commerce, Revue de jurisprudence Commerciale, numéro spéciale, p.26.

<sup>50</sup> Article 46 of the annex to the 1992 Convention, provides for an imprisonment term of 1year, and damages of between 100,000 to 5000,000 francs or any of the 2, for anyone who intentionally constitutes an obstacle to COBAC controls.

<sup>51</sup> 1894, K.B. 551.

<sup>52</sup> *Cory Bros & Co.* (1927) 1KB 810.

<sup>53</sup> Article 19 (c) of the 2014 Regulation.

<sup>54</sup> Relating to the diligence of subjected establishments in the area of the fight against money laundering and the financing of terrorism in CEMAC.

<sup>55</sup> Article 19 (d).

<sup>56</sup> This sanction has been pronounced by COBAC on many occasions. Examples include that pronounced on BMBC on August 09 1996, and IBAC on July 03 1994. See Kalieu (Y.R.), « Le contrôle bancaire dans la zone de l'Union Monétaire de l'Afrique Centrale » op.cit., p.460.

<sup>57</sup> Agrawal A., Knoeber C. (1996), "Firm performance and mechanisms to control agency problems between managers and shareholders", Journal of Financial and Quantitative Analysis, Vol.31, No 3, p.8.

Participation naturally comes with responsibility, which in turn yields sanctions if not correctly executed. These sanctions can be directed either towards the management, the directors or board members, shareholders and auditors.

### 3.2.1. Suspension or Dismissal of a Bank Manager

Apart from the civil<sup>59</sup> and criminal liability<sup>60</sup> they are subjected to under law, they are equally subject to disciplinary sanctions from COBAC in the exercise of their duties. Management, therefore, plays a key role in credit establishments and their responsibility cannot be altered even during difficulties.<sup>61</sup> According to article 13 as revised by article 15 of the revised Convention of 1990, the sanctions that can be pronounced against the managers of a bank include suspension and dismissal. The 2014 regulation on the treatment of credit establishments in difficulties, however in its article 19(g), adds to the above, the disciplinary withdrawal of the license of a defaulting manager. This was the case in 2011 when COBAC withdrew the license of one manager<sup>62</sup>. Suspension is a temporary halt in the functions of a manager, whereas dismissal constitutes a permanent termination of the duties of a manager. These sanctions are applied for a serious disregard of banking regulations, especially when no improvement is noticed following a control of the bank and warning of the manager concerned. The Tasha Loweh Lawrence case is highly instructive in this regard. The latter was dismissed from his functions of board chairman and director general of Amity Bank Cameroon PLC<sup>63</sup>. COBAC, after carrying out several control missions within Amity Bank, had gained knowledge of serious regulatory shortcomings on the part of Mr. Tasha as board chair and general manager. COBAC enjoined the management through an injunction of 24 April 1997, to propose measures which they intended to take, in order to remedy the shortcomings and the poor financial standing of the institution<sup>64</sup>, but this yielded no fruits as the management failed to respond. But following a subsequent control, carried out in the bank COBAC noticed an increase in doubtful debts, and an increase in financial deterioration of the credit establishment. Tasha was given a warning by COBAC in these words "no error will be tolerated in the future"<sup>65</sup>. But before a new COBAC control mission could be carried out in the bank, the board of directors had dismissed Mr. Tasha from his position as board chair and general manager, for poor management, and for gross misconduct constituted by the dissimulation of the observations addressed to him by COBAC.<sup>66</sup> A new COBAC control mission revealed that the situation of the bank had worsened, and was characterized by degradation in management, serious deterioration of the financial situation and a serious threat of insolvency, loans granted without any advancement of security, and at times without any file at all, inexplicable direct withdrawals of huge sums of money, which were all imputed to him, and over which he thought he needed not show remorse to anyone. Faced with such refusal to cooperate from Mr. Tasha, he was put on disciplinary procedure by COBAC and eventually dismissed from his functions for grave violation of CEMAC banking regulations.

### 3.2.2. Dismissal of the Members of the Board of Directors

The corporate governance models applicable within CEMAC<sup>67</sup> devote a role of key importance to the Board of Directors, which is obligatory in banks<sup>68</sup>. According to article 2(5) of the CEMAC Regulation on corporate governance, the board of directors is in charge of the surveillance of the situation and the management of the bank on behalf of the shareholders. Every board member must exercise his activities in total objectivity, independence and competence, in the interest of the credit establishment. This brings to mind the question as to what the consequences of a board member will be failing to act in compliance with the above prescription. A suitable answer is to be found in article 19(h) of the 2014

<sup>58</sup> Agrawal A., Mendelker G. (1990), "Large shareholders and monitoring of managers: the case of anti takeover charter amendments", *Journal of Financial and Quantitative Analysis*, Vol.25, No 2, p.28.

<sup>59</sup> This is provided by articles 161-175 of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups as revised in 2014. The corporate managers are jointly and/or severally liable against third parties or against the corporate entity for loss that is attributed to them in the performance of their duties.

<sup>60</sup> See article 891 of the UACCEIG according to which managers who dissimulate the corporate name on documents destined for third parties, who do not indicate after the corporate name the company form, the amount of its capital, its registered capital and the mention of its registration on the Trade and Personal Property Credit Register, or the managers or local representatives of a foreign company, who do not align their companies with applicable laws as provided by article 120.

<sup>61</sup> CA Riom, 5 December 2001, *Adrillan c/ Caisse de Crédit Agricole Mutuel Centre France*, *Juridis- Data* n° 2001-183 479 du 13 Mars 2003, pp.533 et seq, see also *CA du Centre Arrêt n° 359/ADD/Civ du 1<sup>er</sup> Juin 2005 Affaire SGBC c/ Dame Nguiamjo Micheline Salome*.

<sup>62</sup> 2012 COBAC Annual report, p.61.

<sup>63</sup> This was following COBAC decision D-2000/22.

<sup>64</sup> This in line with article 12 of the 1990 Convention, according to which when the situation of a credit establishment so justifies, the Banking Commission can address to it an injunction, warranting it to take all necessary measures within a fixed deadline, to re-establish and reinforce its financial stability or to correct its management methods.

<sup>65</sup> Nemedeu R. (2003), *Observations sous*, Arrêt n° 003/CJ/CEMAC/CJ/03 du 03 Juillet 2003 *Affaire Tasha Loweh Lawrence c/ Decision COBAC D-2000/22 et Amity Bank Cameroon PLC, Sanda Oumarou, Anomah Ngu Victor*, op.cit., p.60.

<sup>66</sup> Under article 25 of the COBAC Corporate governance Regulation of 2008, the director general must transmit all relevant information to the Board of Directors.

<sup>67</sup> These models are those instituted by the OHADA Uniform Act on Commercial Companies and Economic Interest Groups as revised in 2014 and by Regulation n° 04/08/CEMAC/UMMAC/COBAC, relative to the corporate governance of credit establishments within CEMAC of 6 October 2008.

<sup>68</sup> According to article 414 of the ODAHA Uniform Act on Commercial Companies and Economic Interest Groups, a public limited company may be administered either as a public limited company with a board of directors or a public limited company with a managing director. However COBAC Regulation R-2009/02 in article 7 provides that a credit establishment must be managed as a public limited company with a board of directors. This provision is in acknowledgement of the delicate nature of credit establishments which warrants that its management be separated from the board of directors.

Regulation, which talks of the dismissal of a board member or board members<sup>69</sup>. It should be noted that the 2014 Regulation introduces an innovation in that in the past, COBAC had no powers to dismiss a board member or board chair of a credit establishment. This is because according to articles 18 and 20 of the annex to the Convention of 17 January 1992, only the managers could be dismissed by COBAC. Judicial evidence in support of this position is to be found in the decision of the CEMAC Court of Justice, in the Tasha affair<sup>70</sup>, when it declared that the dismissal of Mr. Tasha as board chair of Amity Bank by COBAC, constituted a “sufficiently characterized fault” on the part of COBAC, which lacked the *locus standi* to take such a decision, whose competence lied exclusively with the board of directors of the bank.

### 3.2.3. Revocation from Office and Withdrawal of Auditors' Licence

According to COBAC Regulation No 04/03/CEMAC/UMAC/COBAC relating to the diligence of auditors of credit establishments of 14 May 2003<sup>71</sup>, auditors must ensure that the information transmitted to COBAC, gives a faithful image of the accounting situation and assets of the establishment. Acts of noncompliance by auditors may include: refusal to reveal irregularities or inexact revelation of financial irregularities, certification of false accounts, reckless certification of figures presented by management or certification without reserves.<sup>72</sup> The sanctions applicable to the auditor include revocation and the disciplinary withdrawal of license.

The above Regulation<sup>73</sup> makes reference to the sanctions spelt out in article 13 of the Convention of 1990 on the creation of COBAC. The sanction provided for in this article is the revocation of the auditor, wanting in his responsibilities. Revocation is an act through which a person withdraws the power conferred upon some other person. It can be pronounced when serious shortcomings are noticed in the performance by an auditor of his duties as mentioned above. Never the less, the 2014 Regulation has mentioned a second arm of sanctions likely to befall a defaulting auditor, by adding the disciplinary withdrawal of license<sup>74</sup>. Besides being withdrawn for disciplinary reasons, the auditors of a bank may also lose their license when they no longer fulfill the conditions under which it was granted or following a request of the concerned credit establishment. To shed more light on the disciplinary sanctions that may befall a defaulting auditor a practical example will be appropriate. The PRICE WATER HOUSE affair<sup>75</sup> is greatly instructive. In this case, PRICE WATER HOUSE (an auditing firm) had been authorized to assume the role of first auditor of a Cameroonian bank (Credit Foncier du Cameroun). But following a COBAC control within the credit establishment, it was noticed that the auditors were irregular in two aspects. PRICE WATER HOUSE had furnished the credit establishment with two auditors belonging to the same network, which stands contrary to article 2 of Regulation No 04/03/CEMAC/UMAC/COBAC of 14 May 2003 relating to the diligence of auditors of credit establishments. These auditors had equally certified accounts which did not faithfully reflect, the financial situation of the credit establishment, and which constituted a violation of article 3 et seq of the same Regulation. As such, PRICE WATERHOUSE had its license revoked by COBAC, following these serious violations of applicable regulations.

## 4. The Procedure for the Administration of Disciplinary Sanctions: The Quest for Impartiality

Procedure can be regarded as a set of established forms or methods, of an organized body, for accomplishing a certain task or tasks. In the case of the discipline over banks and their corporate officers by COBAC, it can also be considered as a jurisdictional procedure. It is premised upon the general principle of law, according to which when a disciplinary measure is likely to have grave consequences on an individual, he must be given an opportunity to defend himself<sup>76</sup>. These jurisdictional rules applicable in the disciplinary procedure by COBAC are derived from two international sources notably, the Universal Declaration of Human Rights<sup>77</sup> and the African Charter on Human and People's Rights<sup>78</sup>. The opening of the disciplinary procedure aims in situations when breaches to professional regulations have been observed. The disciplinary procedure is

<sup>69</sup> In 2015, COBAC dismissed the entire board of directors of one Bank, See communiqué de presse de la réunion de la Commission Bancaire de l'Afrique Central (session ordinaire du 10 Novembre 2015). Available online at <http://www.sgcobac.org/upload/docs/pdf.2016>. Last consulted on 20/010/17.

<sup>70</sup> Arrêt n° 001/CJ/CEMAC/CJ/05 du 07/04/2005, *Tasha LOWEH LAWRENCE c/ CEMAC*.

<sup>71</sup> Article 3.

<sup>72</sup> The auditor who temporarily refuses to certify accounts must when he changes his mind, make sure that his decision depends on a new element which did not exist or which he had no knowledge of at the moment of his refusal to certify. See Pasqualini F. and Marain G. (2014), *Refus de certification et responsabilité du commissaire aux comptes*, note sous cour de Cassation (com.), 18 Février 2014 *Ste Hainaut Immobilier c/ Schotte* in *Revue des Sociétés*, 2014, p.517 et seq.

<sup>73</sup> Article 7.

<sup>74</sup> It should be noted that for an auditor to practice in a credit establishment within CEMAC, he has to be licensed. The decision to authorize an auditor, is taken by the National Monetary Authority under the conforming opinion of COBAC, and published in the official gazette of the state concerned.

<sup>75</sup> Arrêt n° 002/CJ/CEMAC/CJ/07, du 1/02/2007, *Affaire Société PRICE WATER HOUSE (FIDAFRICA) C/ Decision COBAC n° D-2006/132*.

<sup>76</sup> Ngassam S.R. (2004), *Le pouvoir disciplinaire de la COBAC*, Thèse de Master, Université de Dschang, p.24.

<sup>77</sup> This is to be found particularly in articles 8 and 10 of the declaration, adopted in Paris on 10 December 1948. Article 8 provides that “Everyone has the right to a remedy before the competent national tribunals, for acts violating the fundamental rights granted him by the constitution or the law”. Article 10 provides on its part that “Everyone is entitled in full equality to a fair and open trial before an independent and impartial tribunal in the determination of his rights and obligations, and of any criminal charge against him”.

<sup>78</sup> This Charter was adopted in Nairobi on the 27 of June 1981 and ratified by all African countries and provides in article 7(1) that *Every individual shall have the right to have his cause heard. This comprises:*

- a) The right to an appeal to competent national organs against acts of violating his fundamental rights, as recognized and guaranteed by conventions, laws, regulations and customs in force.
- b) The right to be presumed innocent until proven guilty by a competent court or tribunal.
- c) The right to defense, including the right to be defended by counsel of his choice.
- d) The right to be tried within a reasonable time before an impartial court or tribunal.

provided for by article 13 of the 1990 Convention, as revised by article 15 of its revised version. This provision is reinforced by COBAC Regulation R-92/01 of 22 December 1992, relating to the procedure of convening and hearing officers of credit establishments, as supplemented by COBAC Regulation R-93/14 modifying the provisions of article 3 of R-92/01 of 22 December 1992. These provisions are finally completed by article 16 et seq of the 2014 Regulation on the treatment of credit establishment in difficulties. From the above legal documents, it can be gathered that in the exercise of its jurisdictional prerogatives, COBAC becomes comparable to a court of law and certain principles must exist to guarantee the credibility of the outcome of its proceedings. These principles guarantee both the respect of the rights of the accused and the impartiality of the jurisdiction.

#### 4.1. *Respect of the Rule of "Audi Alteram Partem"*

The above Latin maxim is a key component of natural justice under English law<sup>79</sup> and encapsulates the idea that the individual to be tried should be given adequate notice of the charge, and an adequate hearing<sup>80</sup>. In other words, the procedural rights of the person should be respected. The rationale behind this is that procedural rights play an instrumental role in the sense of helping to attain an accurate decision<sup>81</sup>. Another argument for the guarantee of procedural rights is that formal justice and the rule of law are enhanced, in that it helps to guarantee objectivity<sup>82</sup> and impartiality<sup>83</sup>. According to article 21 of the 2014 Regulation, disciplinary sanctions are pronounced by COBAC after having enjoined the subjected person to transmit their observations in writing, or to present them orally during the disciplinary session. This position is in line with the famous maxim of Lord Hewart according to which, "justice should not only be done but should manifestly be seen to be done".<sup>84</sup> As such, all the elements which constitute the rights of defense can be raised by such a person in establishing his case. When the Banking Commission decides to hold a disciplinary session, the president of the Commission summons the controlling officers of the institution, and if need be, any other person the Commission decides to hear. The summons must reach the convened person at least fifteen days before the day fixed for his appearance before the Commission. This is to help the person have enough time to prepare his defense. It must contain an explanation of all the facts warranting his convocation<sup>85</sup>. The summoned persons may obtain the assistance of a member of their professional association when appearing before the Commission.<sup>86</sup> Judicial precedence from the CEMAC Court of Justice is to the effect that a properly summoned person who fails to appear and defend himself against a COBAC disciplinary hearing, and is finally sanctioned in default, has been validly sanctioned<sup>87</sup>. Thus, the requirement to inform the sanctioned person is an imperative, both for the bank and its corporate officers<sup>88</sup>.

In the case of Tasha Loweh Lawrence c/ Decision COBAC D-2000/22 et Amity Bank Cameroon PLC, Sanda Oumarou et Anomah Ngu Victor, the plaintiff argued before the CEMAC Court of Justice that his dismissal as board chair and director general of the above bank did not respect the principle in "audi alteram partem". But the court threw out his claims on the ground that he had been summoned to tender explanations regarding the COBAC control report, both before the head of the control team in Douala, and at the COBAC secretariat. The court concluded that he had been regularly summoned, and his failure to appear was in no way a violation of the rights of defense as enshrined in the principle in audi alteram partem.

#### 4.2. *The Possibility of Appeals*

It is a widely accepted reality that "the holder of power is generally inclined to abuse it"<sup>89</sup>, hence the necessity for power to control power. COBAC being the main organ to sanction shortcomings in the exercise of the banking profession within CEMAC, it is necessary for its sanctions to be reviewed by a superior organ. COBAC is thus, a controlled regulator<sup>90</sup>. This is done through appealing against any unacceptable sanction. As such, disciplinary decisions of COBAC can only become final, when all rights of appeal have been exercised, or after an expiration of the deadline for appeals<sup>91</sup>. Appeals against decisions

<sup>79</sup> The other component of natural justice under English law is designated by the latin maxim "nemo iudex in causa sua" meaning the adjudicator should be unbiased.

<sup>80</sup> Craig P.P. (2003), "Administrative law", 5<sup>th</sup> edition, London, Sweet & Maxwell, p.407. See the case of Cooper v Wandsworth board of works, 1863, 14 C.B. (N.S.) 180. In this case, it was held that demolition powers vested upon the defendant board were to be subject to notice and hearing requirements.

<sup>81</sup> Resnick J. (1997), Due process and procedural justice, London, Thomson, p.217.

<sup>82</sup> Craig P.P., op.cit, p.409.

<sup>83</sup> Which if not respected may cause the decision to be reviewed on appeal. In France for instance, decisions of the disciplinary commission of the AMF (the control organ) have been reversed for impartiality, see C.E 30 Mai 2007 Ste Europe Finance et Industrie c/ AMF, D.2007, ADJA 2007.1670.p.30; see also the obita dictum in Vivendi Universal c/ AMF, Bull. Joly Bourse 2005, p.592; Relmy J-P (2010), "Impartialité et autorité des marchés financiers: de l'impartialité personnelle à la partialité structurelle?", RTDCom, Janvier-Mars, No 1, p.29 et seq.

<sup>84</sup> Rex v Sussex justices, ex p Mc carthy [1824] KB256 at 259.

<sup>85</sup> Article 2 of Regulation R-93/14 relating to the conditions of convocation and hearing of leading officers of credit establishments.

<sup>86</sup> This is to be found in article 1 of COBAC Regulation R-93/14, modifying the provision of article 3 of COBAC Regulation R-92/01 of 22 December 1992, relating to the procedure of convocation and hearing of controlling officers of credit establishments. This revision may be considered as a backward movement in the protection of the rights of defense since it limits the persons who may represent the defendant before the disciplinary commission to representatives of his professional association. In the old provision, it could be any person of the defendants choice.

<sup>87</sup> Kalieu, Y.R. (2006), note sous CJ CEMAC, Arrêt n° 003/CJ/CEMAC/CJ/02, du 16 Mai 2002, COBAC c/ TashaLoweh Lawrence, Pennant, n° 854, p.130.

<sup>88</sup> Kalieu, Y.R., « Le contrôle bancaire dans la zone de l'Union Monétaire de l'Afrique Centrale », op.cit., p.453.

<sup>89</sup> Montesquieu, L'esprit des lois, Livre II, chapitre 6, cited by Kegne Fotso (F.), op.cit, p.115.

<sup>90</sup> Njoya Nkamga B., « La COBAC, dans le système bancaire de la CEMAC », op.cit., p.94.

<sup>91</sup> Tchami Leuwat A., op.cit. p.71.



handed by COBAC, are made before the CEMAC Court of Justice. This is especially so as case law from the court has confirmed the jurisdictional role of COBAC in disciplinary matters<sup>92</sup>. These appeals are provided for by article 20<sup>93</sup> of the revised version of the annex to the Convention of 1990, article 25 of the 2014 Regulation<sup>94</sup> and article 4 of the Convention governing the CEMAC Court of Justice<sup>95</sup>. Subjected natural and juristic persons may be represented before the court by their counsels<sup>96</sup>.

In the course of the appeal, appellants can equally benefit from speedy proceedings which go a long way to consolidate their rights. All disciplinary sanctions are executed once pronounced, even when the sanctioned persons go on appeal. This poses a serious problem, in the event the disciplinary sanction is reversed by the CEMAC Court of Justice. This is because the execution of the sanction coupled with the publicity that goes with it may irretrievably jeopardise the reputation of the bank or its corporate officers. With the intention to remedy such a case, the law gives possibility for the appellant to apply for the stay of execution of the sanction, pending a final judgment to be reached on its legality<sup>97</sup>. It is based on the existence of an irreparable prejudice. This procedure appears as a further protection, of the rights of subjected persons by the court against COBAC in particular. A good example is afforded by the case of société PRICE WATER HOUSE, in which following the withdrawal of the authorization of the plaintiff as a licensed auditor by COBAC, the company seized the court of justice, praying it, first to annul of the decision of license withdrawal, and secondly for a stay of execution of the COBAC decision, pending final judgment from the court. In support of its plea, PRICE WATER HOUSE submitted that the contested decision was likely going to have grave and irreversible consequences upon it, and that it was urgent to suspend the execution of the decision. The appellant argued that the execution of the decision will seriously damage its image and reputation that had been painstakingly built for long years of hard work, the negative consequences likely to weigh on the enterprise, its employees and their families, due to the decrease in activity and loss of earnings. The judge in response, granted the prayer of the plaintiff, with regards to the request for a stay of execution<sup>98</sup>, and acknowledged that there was urgency that warranted a stay of execution of the COBAC decision under attack. He further opined that the threat to the credibility of the plaintiff was a serious one if the decision were to be executed.

## 5. Conclusion

This paper has attempted to establish the pertinence of disciplinary control as an instrument of bank regulation, in particular, how it restrains and chastises the misconduct of corporate governance participants in a banking enterprise. After vividly painting the roles of these corporate participants and the avenues open for misconduct in the governance of a bank, the paper has zeroed in on how failure to comply with legal and regulatory standards laid out in applicable legal enactments, can set the disciplinary apparatus of the bank regulator (COBAC) in motion. While the CEMAC legislator has made a comprehensive attempt to bring all corporate governance participants under the ambit of disciplinary action, it has fallen short on several instances to direct certain disciplinary sanctions against a particular group of participants. This does not embrace the principle of accountability, which should allow responsibilities to be clearly apportioned and corrective action taken to remedy any misconduct in the future. Be that as it may, banks have their own role to play in the promotion of regulatory compliance in its operations. The exercise of disciplinary powers by the regulator can have particularly harsh outcomes on the bank and its governance participants. It is, therefore, normal that disciplinary powers be strictly regulated, hence, the subjection of the procedure to the principle of a fair hearing, epitomized in the latinism "*audi alteram partem*". This notwithstanding, the regulator is not exempted from making mistakes or acting in bad faith, the sanctioned persons must, therefore, have an avenue to appeal against decisions they contest. For this reason, appeals against COBAC decisions lie exclusively before the CEMAC Court of Justice, before which complainants can equally benefit from speedy proceedings when their rights are particularly threatened by the decision. The full benefits of regulatory compliance can only accrue when the bank takes decisive action by galvanizing its stakeholders in that direction and the banking regulator remains firm but humane in the face of the slightest evidence of noncompliance.

## 6. References

- i. Agrawal A., Knoeber C. (1996), "Firm performance and mechanisms to control agency problems between managers and shareholders", *Journal of financial and quantitative analysis*, Vol.31, No 3.
- ii. Agrawal A., Mendelker G. (1990), "Large shareholders and monitoring of managers: the case of anti-takeover charter amendments", *Journal of Financial and Quantitative Analysis*, Vol.25, No 2.

<sup>92</sup> Kalieu Y.R., Notes sous Cours de Justice de la CEMAC, arrêt n° 003 du 16 Mai 2002 et n° 003 du 3 Juillet 2003, COBAC c/ Tasha L. Lawrence, *Revue Trimestrielle de Droit Africain*, Pennant, n° 854, Janvier-Mars 2006, pp.125-126.

<sup>93</sup> Article 18 of the original version.

<sup>94</sup> Which provides that "decisions of disciplinary sanctions are susceptible to appeal before the CEMAC Court of Justice, which has the exclusive jurisdiction to hear them in last resort".

<sup>95</sup> This provision is to the effect that the court is "judge in first and last resort in appeals opposing COBAC against Credit establishments".

<sup>96</sup> The judges are not parties to the litigation, see arrêt n° 003/ADD/CJ/CEMAC/CJ/02, du 16 Mai 2002, justifying COBAC as a non litigant in the case Tasha Loweh Lawrence c/ Decision COBAC D-2000.

<sup>97</sup> Keutcha Tchappnga C. (1999), *Le régime juridique de sursis à exécution dans la jurisprudence administrative camerounaise*, *Juridis Périodique* n° 38, Avril-Mai-Juin 1999, p.38.

<sup>98</sup> This in pursuance of article 57 of Additional Act N° 4/00/CEMAC-041-CCE-CJ-02 on the rules of procedure of the Judicial Bench of the CEMAC Court of Justice, according to which "appeals filed before the bench do not have a suspensive effect, however, the bench may order a stay of execution for acts contested before it".

- iii. Ayemele Z. (2012), Le principe de double degré de juridiction en droit CEMAC : Contribution a l'étude du contentieux Communautaire CEMAC, Masters thesis, University of Dschang.
- iv. Basu, S. (2003), "Why do banks fail?", International Review of Applied Economics, Vol.17, No.3.
- v. Bequin J.M. and Arnaud B. (2008), L'essentiel des Techniques Bancaires, Editions d'Organisation Groupe Eyrolles, Paris.
- vi. Bequin, J.M. and Arnaud, B. (2008), L'essentiel des Techniques Bancaires, Editions d'Organisation Groupe Eyrolles, Paris.
- vii. Bonneau, V.T. (2005), Droit bancaire, 6<sup>e</sup> édition, Paris, Monchrestien.
- viii. Butsch J.L. (1996), « Le rôle des autorités de tutelle », Colloque de Deauville organisé les 8 et 9 Juin 1996, par l'Association Droit et Commerce, Revue de jurisprudence Commerciale, numéro spéciale.
- ix. Campbell, H.B. (2014) Black's Law Dictionary, 8<sup>th</sup> Edition, Dallas.
- x. Chareaux G. (1997), « Le gouvernement des entreprises, corporate governance : Théories et faits », Paris, Economica, 1997.
- xi. Chevalier, V.J. (2001), "La régulation juridique en question", Droit et Société, No 49.
- xii. Craig P.P. (2003), Administrative law, 5<sup>th</sup> edition, London, Sweet & Maxwell, 2003.
- xiii. Didier Martin R. et Skynet H. (2012), « Droit bancaire », Panorama, Recueil Dalloz, n° 29.
- xiv. Hupkes, E. (2003), "Insolvency-Why a special regime for banks", Current Developments in Monetary and Financial Law, Vol.3, Washington.
- xv. Kalieu Y.R. (2002), Notes sous Cours de Justice de la CEMAC, arrêt n° 003 du 16 Mai 2002 et n° 003 du 3 Juillet 2003, COBAC c/ Tasha L. Lawrence, Revue Trimestrielle de Droit Africain, Pennant, n° 854, Janvier-Mars 2006.
- xvi. Keutcha Tchapnga C. (1999), Le régime juridique de sursis a exécution dans la jurisprudence administrative camerounaise, Juridis Périodique n° 38.
- xvii. Le Cana P. (2002), Droit de sociétés, Paris, Monchrestien.
- xviii. Mokom K.P. (2009), The protection of the principle of legal personality against management abuse: a comparative study of the common law and OHADA law, Master's Thesis, University of Dschang.
- xix. Ngomo A-F. (2014), « Le commissaire aux comptes coincé entre les obligations de faire et de pas faire pénalement sanctionné dans l'espace OHADA » African Journal of Law, No.2.
- xx. Nji, K.N. (2011), The role of COBAC in the Banking Profession within the CEMAC sub region, DEA Dissertation, University of Yaoundé II-Soa.
- xxi. Pasqualini F. and Marain G. (2014), Refus de certification et responsabilité du commissaire aux comptes, note sous cour de Cassation (com.), 18 Février 2014 Ste Hainaut Immobilier c/ Schotte, Revue des Sociétés.
- xxii. Pougue P.G. et al., (2009), Traite et actes uniformes commentés et annotés, p.375, cited by Kalieu (Y.R.) in notes sous TPI de Bafang Ordonnance de référé n° 27/ORD/CIV/TPI/2007, Affaire sieur Noubicier Leon c/ Sieur Ngamako Michel, Juridis Périodique n° 78 Avril-Mai-Juin.
- xxiii. Relmy J-P. (2010), "Impartialité et autorité des marchés financiers: de l'impartialité personnelle a la partialité structurelle?", RTDCom, No1.
- xxiv. Resnick, J. (1997) Due process and procedural justice, London, Thomson.
- xxv. Shelagh, H. (2005), Modern banking, London, John Wiley & Sons Ltd.
- xxvi. Sunkam Kamdem, A. (2014), « Réflexion sur le système de régulation institutionnelle de l'activité bancaire dans la CEMAC », Revue libre de Droit.
- xxvii. Tientcheu N. (2013), « La responsabilité du banquier pour crédit abusif : une étude de la jurisprudence camerounaise et française », Cahiers Juridiques et Politiques, Université de Ngaoundéré.