

UNIVERSITY OF PRETORIA

FACULTY OF LAW

**Legal Aspects of Security Markets: An analysis of performance of the CEMAC
Stock Exchanges.**

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A research paper submitted in partial fulfillment of the requirement for the master of
law, LLM in International trade and investment in Africa.

Supervisor:

MAY 2012

I, Erick NKWI NDONG TIM, hereby declare that, this work is original and the results of my own research and effort. It has never, on any previous occasion been presented in part or whole to any institution or Board for the award of any degree.

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- ASEA Association of African Stock Exchanges
- AMF Financial Market Authority
- ARP Agence de Regulation Publique
- BEAC Bank of Central African States
- BVMAC Central African Stock Exchange
- BRVM West African Stock Exchange
- CECEI Committee of Credit Establishment and Investment Enterprises
- CEMAC Central African Economic and Monetary Community
- CCJA Common Court of Justice and Arbitration
- CIMA Inter-African Conference of Insurance markets
- COBAC Central African Banking Commission
- COSUMAF Surveillance Committee of the Financial Market of Central Africa
- CMF Financial Market Commission
- CRDV Regional Securities Depot Bank
- DSX Douala Stock Exchange
- ESAP Enhance Structural Adjustment Facilities
- FMO Dutch Development Bank
- FSA Financial Services Authority
- GESp Growth and Employment Strategic Paper
- GofC Government of Cameroon
- IFC International Finance Corporation
- IOSCO International Organization Securities Commission
- IFRS International Financial Reporting Standards

-	IMF	Int
-	IPO	Initial Public Offering
-	LDC	Less Developed Countries
-	MFI	Micro Finance Institution
-	OECD	Organization for Economic Cooperation and Development
-	OHADA	Organization for the Harmonization of Business Law in Africa
-	OPCVM	Organ for the Collective Placement of Securities
-	PER	Regional Economic Program
-	PLC	Public Limited Company
-	PSI	Investment Service Provider
-	REC	Regional Economic Community
-	SAFACAM	Agro-forestry Company
-	SEMC	Cameroon Water Bottling Company (Societe des Eaux Mineral du Cameroun)
-	SOCAPALM	Agro-industrial Company (Societe Cameroonaise des Palmeries)
-	SSA	Sub Sahara Africa
-	UEMOA	West African Economic and Monetary Union
-	UACCEIG	OHADA Uniform Act on Commercial Companies and Economic Interest Groups
-	UEAC	Economic Union of Central Africa
-	UMAC	Monetary Union of Central Africa



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DIRECTORY OF CASES

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- Additional Act N° 03/01-CEMAC-CE-03 of 8 December 2001 creating the Commission of Supervision of the CEMAC stock exchange (COSUMAF)
- Additional Act N° 08/CEMAC-CE-04 of 23 January 2003 fixing the head quarters of COSUMAF at Libreville- Gabon.
- Decision N° 02/002 of 3 December 2002 relating to the General rules of the Financial Market Commission.
- Law N° 99/015 of 22 December 1999, creating and organizing the financial market of Cameroon.
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- Regulation N° 14/07/UEAC-175-CM-15 of 19 March 2007 putting in place a specific Tax Regime applicable to quotation operations of the Financial Market of Central Africa.
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- The General Rules and Regulations of CMF.
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- The Southern Cameroons High Court Law 1955.
- The Uniform Act Relating to Commercial Companies and Economic Interest Groups of 1 January 1998.

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At the end of the 1980s and in the early 1990s, Sub-Saharan African countries were hit by the economic crises caused by a number of factors including weak domestic financial systems, large and persistent fiscal deficits, high level of external debts etc. The crises affected the trade accounts of these countries thereby reducing export and increasing import and consequently reducing substantially the financing available for international transactions. These countries were then forced to solicit loans from the International Monetary Fund (IMF). These loans will be given by the IMF on condition that the government implements policy adjustments and reforms aimed at resolving their balance of payment problems as well as restoring conditions for strong economic growth.

Cameroon like other member states of CEMAC¹ went through this measure under the Enhance Structural Adjustment Facilities (ESAP). ESAP globally needed these states, as part of the process of reform, to privatize state owned corporations. In CEMAC like in most African countries, many of the programs included the establishment of a capital market to support the privatisation of State owned enterprises which widens ownership and increases economic performance and efficiency.² The economic crises therefore provided a good ground for the creation of the Douala Stock Exchange and the CEMAC Stock Exchange in Libreville- Gabon since these Stock Exchanges were designed primarily to facilitate the privatization of state owned enterprises³.

Although the key motivation for opening a stock market is to offload shares of newly privatized companies,⁴ the performance of Central African stock exchanges has been very poor with none of the privatized Companies yet to be listed on these Stock Exchanges. There are a number of constraints affecting the performance of these stock exchanges including the fact that governments in setting up the exchanges and establishing the regulatory framework took the privatization interest supreme over other interests.

In this work, the researcher will examine the various factors hindering the performance of Central African stock exchanges and will make recommendations for improvement.

¹ Central African Economic and Monetary Community.

² Bruce H, Jenifer P. Barriers to the development of small stock markets: A case study of Swaziland and Mozambique, (2010) p 4

³ Kenneth Kaoma Mwenda, The Dynamics of market Integration: Africa stock exchanges in the new millennium, 2000, p 23.

⁴ Todd J. Moss, Adventure Capitalism Globalization and the Political Economy of Stock Markets in Africa, 2003, p. 35.

CHAPTER 1

INTRODUCTION

1.1 Background to the Research

The liberalisation and privatisation process imposed by the Britton-Woods Institutions in the late 80s was a dominant factor in the development strategies in Less Developed Countries (LDCs). Governments had new attitudes towards the role the private sector could play in development. This was in sharp contrast to the purely dominant notion of the entrepreneurial functions of the State.

The key factor in the promotion of economic growth led by the private sector needed vital elements like a healthy growth in the Nation's financial sector. This in turn, was to improve the private sector's access to services such as banks credit, equity capital, and payment and risk management services.⁵

The development of the financial sector has followed a trend beginning with channeling of savings and investments through banks, followed by the development of capital markets as savers for higher returns. Financial markets typically comprise several institutions including banks, insurance companies, mutual and pension funds, and Stock and Bond markets.

Capital markets have been described as, an exciting challenge for international finance and foreign investment. In Africa, they are looked upon as having both promise and peril and have potentials for remarkably high returns, while simultaneously harbouring substantial risks. Their emergence in the last two decades in most countries in Sub Sahara Africa (SSA), have arguably been the most important aspect of foreign investment, finance, and economic development in contemporary Africa.⁶

It has been argued that, global capital flows, have the potential to positively affect development processes by augmenting domestic savings and contributing to investment, growth, financial sector development, technological transfer and poverty reduction. The impact of this source of

⁵ Peter G. Rwelamira, "The Critical Role of the African Stock Exchanges in Mobilising capital for African Private Enterprises, Nairobi 1993 pg 3

⁶ Capital Flow and Development

of African Economies, United Nations Economic Commission For Africa Paper ECA/TFED/013/07 P 3

investment finance in the economic is that; the countries or region where the market(s) are based, will benefit from, long-term loans to help finance projects that have economies of scale; the market(s) provides both an informational mechanism in evaluating the performance of domestic firms, and finally the growth of related financial services sectors e.g. insurance, pension and provident schemes, which nurture the spirit of savings, improvement of access to financing new and smaller companies.

The performance of a stock market i.e. its ability to assert its influence on foreign investors and global financiers, can only be done, if the country is able to address its macroeconomic and political needs⁷. The reality of the global market is that, foreign investor's decisions rest on the following factors; political stability, economic stability, local market access, transparency, legal framework, quality of life among others.

Some Stock markets in SSA have been described as being emerging stock markets based on the criteria above. These markets have seen substantial improvements, in their macro-economic and political sphere to have warranted investors to bring in much needed capital flow⁸.

Within the same decade period, i.e. from the 90s to 2010, SSA have seen an increase in the number of stock markets, some being national and others regional. This is the same period in which the Douala Stock Exchange (DSX) in Cameroon was created (2006) same too was the Central African Regional Stock Exchange(BVMAC) in Libreville, Gabon which was created in 2008.

1.2 Research Problem

The CEMAC sub region currently hosts two stock exchanges. The DSX in Cameroon was created by an Act of Parliament N° 99/015 of the 22-12-1999. It effectively started trading in 2006. The DSX opened in April 2003, offering firms the opportunity to raise capital directly from domestic investors. Three companies have been listed on the DSX as of January 2010: the Water Bottling Company SEMC, an Agro-forestry Company SAFACAM, and an Agro-industrial company SOCAPALM.

The paper wants to examine why Central African stock exchanges are not successful. In other words, why has the DSX from the day of its inception till date listed only three (3) companies⁹ and

⁷ Singh Ajit, Should Africa Promote stock market Capitalisation? Journal of international Development, Vol.11(May-June), pp343

⁸ Kenneth .M .Mwenda, Securities Regulation and Emerging Markets: Legal and Institutional Issues for southern and Eastern Africa. Volume 7,Number1(march 2000) pg

⁹ SAFACAM Plc, SEMC Plc, SOCAPALM Plc, see www.dsx.com

BVMAC no company. This is in contrast with other African National and Regional Stock Exchanges which in the same period from the date they started trading, i.e. 10 years after, had listed more than 10 companies.¹⁰ The countries in the table below, with almost a similar level of economic development like Cameroon and those of the CEMAC zone created Stock Exchanges within the same period. A close examination of the table below shows that, they performed better in terms of number of listed companies in their stock exchanges within a 10 year period mentioned above.

Performance of Some African Stock Exchanges as at 31st December 1997¹¹

Country	Est.	N ^o of Listed Companies	Market Capitalisation (US\$ Billions)	Historical P/E Ratio	Main Index
Botswana	1989	12	0.6	10.5	
UEMOA ¹²	1998	35	1.0	11.6	
Ghana	1990	21	0.3	5.7	
Mauritius	1989	40	1.6	18.0	
Namibia	1992	33	0.7	11	
Zambia	1994	7	0.2	7.2	
Cameroon	2006	3			
BVMAC	2008	0			

Source: Kenneth. K. Mwenda: Securities Regulation and Emerging Markets: the author has added the last two bourses for explanation seek.

The success of a stock market in terms of the number of companies listed may depend on several factors. These may range from, the economic stability of the economy of the region of country, the financial and monetary sector, politics and most importantly, the legal and regulatory framework of the markets. Our research therefore will deal basically on the latter .i.e the legal and regulatory framework creating the DSX and the BVMAC as well as their general rules and regulations governing both markets. On these grounds therefore, focus will be on whether these legal

¹⁰ The West African Stock Exchange (BVRM) of ECOWAS.

¹¹ Kenneth Mwenda, Securities Regulation and Emerging Markets: Legal and Institutional Issues for Southern and Eastern Africa, Pg 3 Volume (March 2000)

¹² Union Monétaire De l'Afrique de l'Ouest UMAC (the West African Regional Stock Exchange)

instruments can make investors list on the Central African Markets. The legal issues here may range from the fact that, certain aspects of the legal and regulatory framework of the markets are not too clear, for example controlling market abuses, the legal powers of the regulator to sanction and enforce decisions, the non-harmonization of certain legislations (fiscal) and last the rule of law on dispute settlement on investments in the market.

Corporate governance on the issuance of shares and bonds under the OHADA Uniform Act is definitely another factor. The Organisation for the Harmonisation of Business laws in Africa (OHADA), Uniform Act on Commercial Companies and Economic Interest Groups, has certain conditions constraining public limited companies in issuing shares in the Stock Exchanges. That will be looked into as well.

Also, the legal framework for accounting and auditing under the OHADA need to be updated to meet with internationally recognised standards of the IFRS¹³. The level of information provided by the OHADA accounting chart is considerably lower than that expected by international investors and lenders.

Lastly, another legal regime may be needed for small and medium size enterprises in both markets. The consideration is that, a large portion of the economies in the CEMAC region is still in the informal sector and raising long term capital from the money market seems impossible. The legal conditions of these markets are too high and stringent for this category of economic operators.

1.3 Research Questions

As explained above, the Central African sub region host two stock exchanges, the DSX and BVMAC. These two stock exchanges have separate regulatory bodies and different rules and regulations applicable to them.

These markets, have instead been more successful in the mobilization of funds through the public calls for the acquisition of treasury bonds for example when the Gabonese Government, raised the sum of 81.5 billion at a rate of 5.5% for a period 2007 to 2013.¹⁴ In its struggle for its maintenance alongside a regional exchange involving six countries, the DSX scored valuable points in December 2009, at the close of the first bond issue made by the International Finance Corporation (IFC) in CEMAC. With an amount of 20billionFCFA (30.5million USD), the

¹³ International Financial Reporting Standards

¹⁴ <http://www.talassa.org/economic/713>., le developpement du marche financier de la Cemac. Consulted on the 15-02-2012

operation has demonstrated an ability to mobilize larger savings in the DSX than in then in BVMAC. On the same light, the successful operation of the World Bank subsidiary in the first bond issue, the Government of Cameroon (GofC) launched a second bond issue of 200 billion for 2012 -2019¹⁵.

If the bond compartment appears to have very good prospects, the compartment dedicated to company listing (class action) is still to take off. Compared to the CEMAC stock exchange in Libreville, which has not yet listed a company, the Douala Stock Exchange at least can boost of 3 listed companies.

Among the objectives of the creation of the DSX was to facilitate the privatization programme and the granting of credit in Cameroon and for the BVMAC, to take fully, the investment potentials of the region.

The region has witnessed an increase in the exploitation of mining fields (bauxite and iron ore in Cameroon and the Republic of Congo) and huge oil reserves have been discovered in Chad and the Equatorial Guinea. The question then is, why have there been no companies listed in the BVMAC in spite of the presence of so many multinational and local companies in the region. And in Cameroon, why in spite of the privatization of more than 16 huge government owned companies¹⁶ none has been listed on the DSX.

Is the regulatory framework put in place by the various competent authorities favourable to companies wishing to get listed in the bourses? What can be done to encourage companies to list on the bourses or in other words, can Parliament or the Central Organ of the CEMAC, pass laws compelling multinational companies to list on these bourse like has been proposed elsewhere¹⁷. Does this therefore mean that, these markets where erected only to be successful in raising revenue for governments? What about its role in raising capital for private investors in terms of company listing?

1.4 Thesis Statement

The Banking sector in the region is still strivings in the issuing of short term loans in spite of the presence of the bourses. This may give reason why companies still depend on the banks for these loans instead of going to the capital markets in Douala and Libreville. Furthermore, the regulatory framework of the Central African stock exchanges is not attractive enough to investors judging

¹⁵ <http://www.afribiz.info/content/Cameroon-laws-and-regulation> consulted on 22-02-2012

¹⁶ Joseph T.Nzomo and Joseph Nzongang., The Process of Privatisation of public and para public enterprise in Cameroon: An Assessment. Journal for sustainable development in Africa(Vol 9,No. 4, 2007)

¹⁷ Mr Oscar Onyema, Chief Executive Officer, Nigerian Stock Exchange on the Nigerian Compass, Sunday, 13 November 2011.

from the fact that a good number of companies in the region are small and medium size and cannot raise the required capital to be listed in the bourses. The regulatory bodies (CMF and COSUMAF) should be more pro active in their approach in educating the public on the aspects of the markets. This is to avoid instances whereby, non actors not registered in the market, may foul the public and investors of possible investment opportunities in the markets which do not exist¹⁸. This is to boost investor confidence which is a crucial ingredient in the capital markets. The CMF, in the communiqué sited below, claimed it did not recognize, the CGF bourse as a Investment Service Provider with the DSX as per Law No 99/015 of the 22 Of December 1999.

The OHADA corporate governance framework applicable to this region does not help matters much. It is enshrined in its Uniform Acts that, only companies operating within the CEMAC zone with capital of 100 million FCFA, are allowed to list their shares on the stock exchanges. It also states that, companies with less than three shareholders will be automatically be unlisted in the stock exchanges. The above piece of legislation also allows for the creation of single shareholder companies. This is a region where these small and medium sized enterprises (SMEs) are sole-proprietorship owned and without a market regime for these SMEs, the number of listed companies in the bourses will be low or almost nonexistent. This statement can only be true because the bigger companies in the region are multinationals. A harmonized fiscal legislation on both markets could be a stepping stone to greater performance of the stock exchanges.

To attract more underwriters and issuers, the GofC, has initiated a number of tax incentives: these include the fact that, there are tax reduction for a company wishing to do business at the DSX. This will go for a period of three years. Issuers may, if necessary benefit from a rate of up to 10% or a substantial reduction compared to the ordinary rate (35%). This provision applies to unlisted companies making a public offering and who agree to exchange shares or debts to the stock exchange.

Lastly, scholars have witnessed some lapses in the application of the OHADA Uniform Act on Commercial Companies and Economic Interest Grouping in relation to the weakness of “qualitative capacities of those working in this field”.¹⁹ Therefore, beyond the updates of the skills of staff of the legal system in relation to legal texts of OHADA, the GofC has undertaken a six

¹⁸ A communiqué from the Financial Markets Commission signed on the 27,January 2012, warning the public and investors in Cameroon of a website publication(www.cgfbourse of the CGF Boures Society,) of which CGF was talking of possible investments in Treasury Bonds worth 40 Billion FCFA over a period 2012 to 2019 with a 5.95% interest rate. Cameroon Tribune, Tuesday January 31, 2012.

¹⁹ Prof. Maurice Kamto, Minister Delegate to the deputy Prime Minister in Charge Of Justice. In a course under the Project of Support to National Governance Program(PAPNG) given to Bailliffs, Judges, notaries and Lawyers

year action plan to strengthen the capacities of judges in resolving business disputes and even making a total reform of justice system to make it faster, more efficient and fair. In same light, an inter-group of Cameroon employers (GICAM) has set up an arbitration tribunal which has proven its worth.

Our theses statement here is can both stock exchanges be merged especially in the bond compartment taking into cognizance that this is the area that both markets seems successful and the other compartment operate separately looking at each countries development agenda²⁰.

1.5 Significance of the Study

The main objective of the research will be, to analyse the existing legal and regulatory framework of the DSX and the BVMAC. This will enable the author to see whether the legal and regulatory frameworks are good enough to entice investors, both foreign and local to trade in these markets. Also, an analysis will be made of the current stock markets' legislative framework to identify their compliance with best practices and objectives of the IOSCO²¹. The researcher will also look at OECD²² core principles on corporate governance and the Uniform Act of OHADA on Commercial Companies and interest Groups. The idea will be to identify legal provisions that may be impeding the performance of the DSX and the BVMAC. This view is to look at the impact a stock market can have on economic development. So much literature in economic development and finance has focused on the direct causality between the establishment of effective financial intermediaries and economic growth. There is strong evidence that the development of robust financial intermediaries and specifically stock markets are causally prior to economic growth and increased GDP.²³

One of the central objectives for the establishment and development of stock markets is to diversify ownership and increase participation by the economically active domestic population and this is particularly important if privatisation programmes are to succeed.²⁴ Encouraging wider

²⁰ The GofC, has developed a long term vision called the Growth and Employment Strategic Paper(GESP) which runs to 2035.its four cardinal points are, reduce poverty to socially acceptable levels, become a middle-class country, become a newly industrialized country and finally strengthening national unity and consolidate the democratic process.

²¹ International Organisation Securities Commission

²² Organisation for Economic Cooperation and Development

²³ Levine R, Zervos S., Stock Market Development and Long-run Growth, World Bank Policy Research Paper, 1582. World Bank, Washington Dc

²⁴ Bruce H, Jenifer P. (n 2 above) p 5

ownership of large former government controlled parastatals by domestic investors and foreign multinational is crucial²⁵ for countries in the CEMAC.

Stock markets actively reduce the cost of capital for listed firms by pooling funds from a widely dispersed base of retail and institutional investors that mobilise savings from households and individuals. In the absence of a stock market, investors are at a disadvantage by being unable to diversify firm specific risk due to lack of information²⁶. By issuing stocks and bonds companies increase the allocation efficiency of savings, which then raises the returns realized. In this light therefore, institutional investors are crucial to African markets especially insurance and pension funds.

1.6 Literature Review

Huge portions of writings on this topic have been taken from scholars who are legal personnel of international financial institutions. Their approach as per the various regional groupings of Africa has inspired the author to look at possible reasons why the CEMAC Stock Exchanges are not viable enough. Kenneth K, Mwenda,²⁷ argues that, imperfect market conditions can affect the capital structure decisions of many corporate investors in emerging markets and says that, these constraints, can affect the contribution of the legal framework for public distribution of securities to the development of a competitive stock exchange. Here he suggests an integration and or creation of a viable regional stock exchange. But the author has noticed that a regional stock exchange in CEMAC has a problem taking off. Secondly, he also proposes a central or unified financial service regulator. This according to him could as well improve on the performance of the entire financial services sector.

Other authors like J.R. Kehl²⁸ follow a similar position like Mwenda, but move further to think that, higher returns for African countries should identify the areas in the markets that are performing well and improve it.

Another survey of existing literature shows that various factors affect the development of stock exchanges in developing countries like Cameroon. Some authors categorize some of the factors as institutional (regulations, information disclosure, transparency rules and trading cost), traditional

²⁵ Bruce H, Jenifer P (n 2 above) p 6

²⁶ Marone H., Small African Stock Markets. The case of the Lusaka Stock Exchange, IMF Working Paper WP/03/06 p 10

²⁷ The securities Regulation and emerging Markets: Legal and Institutional Issues for Southern and Eastern Africa. And in Legal Aspects of Financial Services Regulation and the concept of a unified Regulator,

²⁸ Emerging Markets in Africa, research Paper (2007)

(market capitalisation, amount of capital raised through stock offerings, number of listed companies and turnover), and finally, asset pricing (efficiency with which market prices risk and the degree of integration into world markets).²⁹

Others, emphasis the central role played by governments, first, in facilitating the development of stock exchanges in LDCs by first laying solid legal and institutional foundations, followed by supervising the market to ensure its efficient, fair, and stable operation.³⁰

The author will share these views but will go further to outline that, corporate governance and why the rule of law should be a guiding factor in investor protection.

1.7 Methodology

This is a desk and library based research. It will be based solely on both published and unpublished material. A significant amount of primary and secondary sources of the topic will be taken from the internet. Primary sources will include, World Bank and IMF published materials. Publications from the African Development Bank will also be used. These texts, will examine, legal and regulatory framework on policies and their implementations in the stock markets and the impact on efficiency and performance.

Secondary sources will include information but not limited to relevant journal articles, study reports on the performance of a viable stock exchange. Academic materials and research documents will be used.

1.8 Limitation to the study

The CEMAC region has one of the most structured financial integration systems. That is, it has a single Central Bank and a single currency; it is endowed with, the same legal systems based on the Civil law except for Cameroon with a component of the common law. Five of the six member states are signatories to the OHADA treaty on Business law in Africa. This gives reason for a smooth take off of both stock markets. The table below gives a general view of Cameroon and other CEMAC member states as of 2006

²⁹ Demircuc-Kunt, Asli, and Ross Levine, 1993, "Stock Market Development and Financial Intermediary Growth," World Bank Policy research Working Paper (Washington: World Bank) 56

³⁰ Perdy, Roberts, 1992, "Institutional Reform in Emerging Securities Markets," "World Bank Policy Research Working Paper (Washington): World Bank

	Area	Population		GDP			Doing Business index
	Km ²	Million inhabitants	Population below the poverty limit	US ₪ billion	As % of CEMAC Total	Per Capital (US ₪)	
Cameroon	475,445	16,3	17,1	18,0	34,8	1,020,8	154
CAR	622,584	4	66,6	1,6	3,0	372,8	177
Congo	342,000	4	n. a ⁿ	7,4	14,4	2,140,4	175
Gabon	267,667	1.4		9,8	18,9	6,240,46	144
Equatorial Guinea	28,051	0,65	“	8,5	16,5	13,105,9	165
Chad	1.284.000	9,7	“	6,4	12,4	776,9	173
CEMAC	3,020.144	36,1		51,7	100,0	1,450,0	
Africa	29,797,500	897,5		1,131,9		1,261,0	

Source: Financial Sector Integration in Three Regions of Africa, African Development Bank Group Publication (2010) Page 93³¹

The research will cover the period of time these markets have been existing, that is, from 2006 for the DSX and 2008 for the BVMAC till date.

The research will not attempt to address all the possible factors that account for the low level of performance of the Stock markets in terms of listed companies. As such, the research will be limited to mainly the structural and legal framework of the markets and the non participation of companies in the exchanges.

Another limitation will be the unavailability of investment literature on the Securities Market and performance in the CEMAC region. This makes the author to limit himself on World Bank and IMF papers of financial sector regulations.

Lastly, the research will be limited to the fact that, the West African Stock Exchange (BRVM), for the same period, has performed better in terms of listed companies than the DSX and BVMAC under the same OHADA corporate governance framework. Therefore more research has to be done on a higher level to understand why the Central African markets are performing slowly.

³¹ This information was taken from BEAC(Economic, financial and Monetary Situation, Meeting of the Zone, April 2008, Paris, Banque de France(Annual Report of the Franc Zone in 2006), World Bank-Doing Business 2008

1.9 Outlines of Chapters

It will consist of five chapters including the introduction. Chapter one will essentially be dealing with, the problem statement, research question, thesis statement, justification, literature review, research methodology, overview of chapters and finally bibliography. Chapter Two will dwell on the legal and regulatory framework of the two stock exchanges. It will touch on the legal framework which will constitute the primary legislation, the secondary legislation and the international treaties as base to the establishment of the stock exchanges; then the institutional framework. It will constitute the statute of the regulatory agencies, their structure, and their responsibilities. Chapter three will deal with the protection of investors on both stock exchanges. It will examine how investors are protected through the publication of information concerning market operations, through the institution of a compensation fund to indemnify investors if PSI goes bankrupt, and through the imposition of sanctions on violators of market rules. Chapter four will deal with the role of institutional corporate governance and securities markets. Here, the author will look at how ownership and control, protection of the minority shareholders interest can increase performance of the two stock exchanges (are their rights guaranteed) lastly, the role of institutional investors in the two stock exchanges framework; Chapter five will examine the impact of taxation on Securities Markets; he will globally look at the role fiscal policies can play in directing the course of “doing business” in the securities market. This will give out some legal, institutional and structural aspects to be considered in order to improve on the performance of the DSX and the BVMAC.

CHAPTER 2

REGULATION OF THE FINANCIAL SECTOR IN CAMEROON AND IN CEMAC MEMBER STATES

The financial industry is traditionally grouped into banks, insurance companies and security firms. In the CEMAC zone, the financial sector consists of; the banks, microfinance institutions (MFIs), the non-banking financial sector (NBFIs), the insurance sector and securities markets. CEMAC is one of the most structured regional groupings among RECs in Africa. It is based on two pillars, an Economic Union (UEAC)³² and a Monetary Union (UMAC)³³. The Bank of Central African States (BEAC) is the institution that issues money defines and implements the Monetary Policy of the Union. The Central African Banking Commission (COBAC) ensures the harmonization and control of banking between states of the monetary union. Notwithstanding, the financial system in the CEMAC is still underdeveloped, insufficiently diversified and largely dominated by the banking sector.³⁴ A healthy financial sector benefits capital accumulation, productivity and ultimate economic growth. This it does through affecting a number of functions: (i) provides and administers the payment mechanism, (ii) facilitates financial intermediation between savers and investors, by providing channels for savings mobilization from various sources and directing them to investors;(iii) in the process of financial intermediation, the financial sector effects transfer and distribution of risks and information through financial markets and financial institutions; and (iv) provides policy instruments for stabilizing economic activity.

Regulation is designed to ensure that financial institutions conduct their business in a secure, honest and transparent manner. This is particularly important for institutional investors like pension funds, insurance companies and collective investment schemes, since they are all offering services to and looking after the savings and investments of households and citizens.³⁵ In Africa, the financial sector tends to be fragmented, with several ministries or agencies holding responsibilities for different institutional investors. Regulators have powers to compel the firms under their supervision to come into compliance, and the ultimate power to remove a license altogether.

³² Economic Union of Central Africa

³³ Central African Monetary Union

³⁴ Financial Sector Integration in three regions of Africa, African Development Bank Publication, 2010, 96

³⁵ <http://www.mfw4a.org/capital-market.html>

Internationally accepted standards that apply to different parts of the financial sector are set by international bodies such as the IOSCO for securities and collective schemes, the International Association of Insurance (IAI).

To encourage financial sector development, the legal and regulatory environment should provide a framework that enables the development of sustainable markets, facilitates monitoring and enforcement of rules, and ensures investor protection. Accordingly, a well functioning system combines a repertoire of up- to - date laws and regulations backed by strong institutions with effective monitoring and enforcement mechanisms.³⁶

Finally, accounting and auditing standards are at the core of the financial information infrastructure needed for financial development. They form the basis for reliable and transparent disclosure of information to the relevant stakeholders, thereby facilitating informed financial decisions, effective resource allocation and the effective functioning of markets. Common accounting standards and codes promote sound financial systems by enhancing the transparency and comparability of financial reports, thus increasing the ability of investors to assess potential investments. Two accounting frameworks are commonly used for financial accounting and reporting, namely the Generally Accepted Accounting Principles (GAAP) and the International Financial Reporting Standards (IFRS). In many Francophone African countries, financial statements are prepared in accordance with the OHADA accounting framework.³⁷

2.1 The Banking Sector

The banking sector in the zone is made up of 35 credit institutions³⁸. This sector is dominated by foreign banks, which mobilize approximately 63 percent of the bank's assets³⁹. Two of the banks are present in the five countries and manage approximately one-third of the resources of the CEMAC banking sector.⁴⁰ This sector, dominates the financial market. Investors and entrepreneurs, still go for short term loans to finance investment projects.

³⁶ <http://www.mfw4a.org/capital-market/html>

³⁷ [http\(n 34 above \)](#)

³⁸ As at December 31 2008, the banking system of the CEMAC comprised 38 active banks distributed as follows: Cameroon(12 Banks), The Central African Republic(3 banks), Congo(5 banks), Gabon (7 banks), Equatorial Guinea (4 banks) and Chad (7 banks)

³⁹ Financial Sector integration (n 33 above) 98

⁴⁰ Financial Sector Integration (n 33 above) 98

2.2 Microfinance Institutions

MFIs play a significant and increasing role for low income segments of the population, even though their overall weight in the regional financial system remains low.⁴¹ This sector is particularly well developed in Cameroon and Congo. The total number of MFIs is about 679 for the zone⁴². The early 90s, showed three factors that favored the expansion of this financial sector in the CEMAC zone.

The first was the economic crises in the 80s which had a severe effect on the economy of the sub region and subsequently pushed most governments to reform the financial sector. The classical banks had put in place stringent conditions for people to gain access to loans. This situation somehow kept out a great part of the population, with very low income, to look up to these micro financial institutions; secondly, international, micro financial institutions had started gaining grounds as a means to combat poverty and lastly, in Cameroon, this activity had gained grounds leading to government instituting laws to guarantee their smooth functioning⁴³

2.3 The Non-banking Financial Sector

The NBFIs sector in the CEMAC is embryonic and generally these institutions are subsidiaries of banks. Only three countries out of the six in the region have NBFIs Cameroon (10), Gabon (4), and Congo (1).⁴⁴

2.4 The Insurance Sector

The weight of the insurance sector in CEMAC is marginal. The volume of financial assets managed in insurance companies is 3.3 percent, representing 0.6percent of the regional GDP⁴⁵. Furthermore, as in the case of banks, the insurance sector is dominated by big foreign groups. Of the total number of 36 insurance companies at the end of 2006, 8 representing about 25 percent, are subsidiaries of foreign groups (French and West African), which together control approximately 50% of the market. CEMAC countries are signatories to the Treaty of the

⁴¹ Financial Sector Integration (n 33 above) 98

⁴² Source COBAC (2006). They are shared as follows, Cameroon (453), CAR (14), Congo (54), Gabon (3), Equatorial Guinea (0), and Chad (155).

⁴³ Law No 14 of august 1992

⁴⁴ Financial Sector Integration (n 33 above) 104

⁴⁵ Financial Sector Integration(n 33 above) 104

*Conference Interafricaine des Marches d'Assurance (CIMA)*⁴⁶ and are bound by common laws and regulations.

2.5 The Securities Markets

There are two stock exchanges currently established in CEMAC. Their existence has serious incompatibilities at the regulatory, judicial and financial levels. The BVMAC in Libreville, Gabon was established in 2003. Its regulatory agency, the Central African Financial Market Monitoring Commission (COSUMAF) came into being almost at the same time. In Cameroon, a national stock exchange, the DSX was inaugurated in 2003. Its regulatory body was enacted alongside the Act creating the DSX. The coexistence of the two bourse, has resulted in: (i) legal insecurity related to over lapping of the regulations of the management and supervision organs of the two financial markets; (ii) duplication of operating and capital expenditure of the two financial markets; lastly (iii) the activities of the two stock exchanges is limited and it is not evident that there is a potential market to ensure the viability of both, as underscored by both BEAC and IMF⁴⁷. It will be appropriate to briefly analyses what a stock exchange or capital markets are all about.

2.5.1 A brief analysis of stock Exchanges

A capital market is a market within a financial system that provides a range of investment and financing tolls.⁴⁸ Capital markets can be considered as primary capital markets (for an initial issuance of securities) or secondary capital markets (for the trading of securities preciously issued). Nevertheless, capital markets operate with securities which can either be equity securities (i.e. shares of company, be it by means of an initial issuance or Initial Public Offering (IPO) or by subsequent purchases and sales in the secondary market).

A stock exchange is a formal (regulated) capital market where securities (equity and debt) are issued (primary market) and traded (secondary market). An exchange facilitates information production, its dissemination and compensation amongst traders. To facilitate this interaction, a

⁴⁶ Inter-African Insurance Markets Conference. (The CIMA treaty was signed on July 10, 1992 in Yaoundé, Cameroon, by the governments of the following member states: Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Cote d'Ivoire, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo. It came into effect on February 15, 1995. It provides for membership for any other African state which so desires. Its membership rose from 13 to 14 with the accession of Guinea Bissau.

⁴⁷ Conference on the "Development of the Financial Sector in CEMAC" jointly organised by BEAC and the IMF in Yaoundé (Cameroon) from June 3-4, 2008.

⁴⁸ <http://www.ifblonline.com/docs.IFBL> on the 11-01-2012

stock exchange provides a market place where new shares are issued in companies seeking a listing and where those shares can be traded between investors.⁴⁹ A stock exchange is responsible for setting criteria which a company must meet to obtain a listing and must comply with to retain that listing. An exchange has to ensure that the market place for securities which it operates works efficiently and is as transparent as possible. Finally, a stock exchange regulates direct access to the market place through membership admission and subsequent rules.⁵⁰

The revenue of the exchange are mainly derived from the following sources: (i) trading fees (membership and trading fees); (ii) listing fees (initial and yearly listing fees); (iii) information and price dissemination fees; (iv) settlement fees; and finally, from development and sales of proprietary software.

There are usually two kinds of customers in a stock exchange. They can be direct and indirect customers. Direct customers of exchanges' services list on the exchange and are intermediaries who are admitted to trading as well as information vendors. On the other hand, indirect customers send orders to intermediaries to execute on the exchange. Institutional investors and all other financial intermediaries are not allowed to trade directly as well as single customers either physical or legal entities.⁵¹

An important aspect of a stock exchange is the regulation. Regulation refers to the establishment of rules, to the process of rulemaking and includes legislative acts and statutory instruments issued by the competent authorities nationally and supra-nationally.

2.5.2 Prudential norms in the Securities market

Financial regulation is organized around two poles: the regulation of the market and the regulation of actors. This is very clear in France where before the reforms of 21st January 2010, the prudential regulation of enterprises was done by the Financial Market Authority (AMF), the Minister in-charge of Economy⁵², the Banking Commission,⁵³ and in certain measures by the

⁴⁹ Noia.C.Di, The stock exchange industry: network effects, implicit mergers and corporate governance, P 21

⁵⁰ Noia.C.Di (48 above)

⁵¹ Noia.C.Di (48 above)

⁵² The minister controls service providers who do not fall within the competence of the AMF, he lays down the amount of the required capital taking into consideration services which will be provided by the investment service provider in question (article L.611-3,10, of the Monetary and Financial Code), the organization of common services, the management norms to be respected in view of guaranteeing liquidity, solvency and the equilibrium of the financial sector, the publication of information destined for competent authorities, the rules applicable to accounting organizations, the mechanism of control and security in the domain of computer as well as the internal control procedure (article L.611-3.2° of the Monetary and Financial Code).

⁵³ The Banking Commission was in-charge of ensuring the respect of prudential by the investment service providers. These rules were established by the Minister of the Economy.

Committee of Credit Establishments and Investment Enterprises (CECEI)⁵⁴ There was thus a clear distinction between Financial Market regulations and prudential regulations (regulation of actors). This distinction was even clearer after the reforms of 21st January 2010, since the financial market regulations were conferred to the AMF while the regulation of actors was vested in the ARP. This is not the case in Great Britain where banking, financial and insurance activities are all controlled by one authority; The Financial Services Authority (FSA).

The system of prudential regulation within OHADA is original because it borrows on the one hand from France and on the other hand from Great Britain. Thus it is a combination of two approaches⁵⁵.

2.5.3 The increase of prudential rules applicable to banks and financial actors

Prudential rules can be defined as a body of management norms aimed at ensuring financial stability in a given economic sector. Far from making a separation between prudential rules of actors and prudential rules of the market,⁵⁶ but also far from concentrating the two types of regulation into the hands of a unique financial regulator,⁵⁷ the combination of the two models within OHADA leaves a model which is a cohabitation of the two. Thus while the transversal rules of the Uniform Acts of OHADA applies to actors of the Financial Market and those of the monetary market, these two sectors remain submissive to particular prudential rules. Amount is not limited to issuing companies but equally applies to financial intermediaries which must equally take the form of public limited companies. Where the capital goes below the authorized minimum, the financial intermediary concerned shall lose his authorization and in which case he shall adopt a company form which is incompatible with exercising the activities of the stock exchange. The respect of these rules is ensured by company accountants. It must be noted that public limited companies making a public call for capital must have two principal and two assistant auditors.⁵⁸ Their role is to certify that the financial statements of the company are regular, sincere and gives a true image of operations of the company, its financial and assets

⁵⁴ The CECEI was an organ competent to the access of professionals providing financial services in a situation where exclusive competence was not given to the AMF.

⁵⁵ See Deniel Ebénézer Keuffi (n 128 above) p. 143

⁵⁶ This is the American dualist model which is adopted by many countries amongst whom are France, Finland, Luxemburg, Spain, Italy and Australia. For a justification of why France belongs to this model, see J.P. VALETTE, GUALINO (editor), 2005, p.111

⁵⁷ This is the model of Great Britain which is adopted by countries like Germany, Belgium, New Zealand, Hungary and Japan.

⁵⁸ Art. 702 UACCEIG

situation⁵⁹. Auditors are thus logically required to control the amount of capital since it is an element of the assets of the company.

The rules of the Uniform Act harmonizing accounting are equally aimed at reducing to the minimum the risk which can be incurred by different economic agents.⁶⁰ Although banks, financial establishments and insurance companies are not concerned with the OHADA accounting system, they must respect the principle posed by article 3 of the Uniform Act⁶¹ as well as national laws governing this area.

2.5.4 Specific Prudential Norms

Banks and stock exchanges within CEMAC respect specific rules applicable to them. These prudential rules having different sources depending on whether they are applicable to banks or to stock exchanges are in reality susceptible to applying concurrently to these professionals.

2.5.5 The Partition of competence in the banking and stock exchange sectors

In the Banking sector, the establishment and control of prudential norms is done by separate organs while in the stock exchange sector, the establishment and control of prudential norms is done by one independent regulating authority.

2.5.6 Prudential competence in the banking sector

Within the CEMAC zone, it is COBAC which establishes prudential norms applicable to credit establishments. COBAC defines the prudential norms and elaborates the accounting procedure applicable to credit establishments operating within CEMAC⁶². The prudential norms established by COBAC are the quantitative norms of solvency and liquidity as well as the quantitative norms of risk management.

Originally fixed at 5%, the solvency norms defined by COBAC have been readjusted to 8% with effect from 1st January 2002 in order to match with international standards prescribed by the Bâle

⁵⁹ See Art 710 UACCEIG.

⁶⁰ This Uniform Act is applicable to businesses governed by Commercial Law (whether they are corporate entities or natural persons), public and Semi public companies; cooperatives and more generally any entity manufacturing and producing marketable or non marketable goods and services, if that entity habitually exercises an economic activity (whether for financial gain or otherwise and whether the activity concerned is its main activity or merely accessory to its main activity). However, an express exception excludes from this list entities that are subject to public accounting rules applicable in member states concerned.

⁶¹ Article 3 provides that, companies must comply with the obligation of regularity, accuracy and transparency.

⁶² Article 3 of the Annex of the convention of 16 October 1990 on the creation of the banking commission of central Africa. COBAC eventually establishes (with the opinions of national authorities) the accounting plan and procedure applicable to these establishments as well as the liquidity ratio, the cover and the division of risk.

Committee⁶³. The ratio of risk cover was also modified entirely to meet with international regulations.

From a quantitative view point, COBAC has placed emphasis on internal control which is aimed at giving a sense of responsibility to the management organ of credit establishments in the domain of mastering and preventing risk.

The respect of prudential rules laid down by COBAC is ensured by BEAC on behalf of COBAC which nevertheless is still competent to inflict sanctions on violators⁶⁴.

2.5.7 Prudential competence in the Bourse sector

Prudential rules applicable to issuers, financial intermediaries and market structures within CEMAC are laid down by COSUMAF, and by CMF in the Cameroonian financial market. The regulating authorities of the Central African financial markets occupy a central place as far as the prudential regulation of the market is concerned. Contrary to banking regulators who have only a limited competence, the financial market regulators are charged with the elaboration, control and sanction of prudential rules applicable to financial intermediaries⁶⁵ and to collective organs of security placement⁶⁶. The general competence of these authorities runs from the establishment of prudential rules right to subsequent investigations which are always awaited.

2.5.8 The overlapping of prudential competence between banking and stock exchange authorities

Competence in the domain of prudential rules within OHADA interweave the profession and the activity⁶⁷ since we know that one activity can be common to several professions just like one profession can cover many activities. This is the case with the banking profession within OHADA which can cover credit activities as well as investment activities. Banks within this zone are capable of providing investment services, such as placement, purchase, management, stock and sale of securities or all financial products⁶⁸. Beside, article 266 of the General rules of

⁶³ This ratio of 8% known as the Cook's ratio fixed at the Accord of Bâle I was replaced in 2006/2007 by a new ratio.

⁶⁴ Y. Kalieu, le contrôle bancaire dans la zone de l'Union Economique et Monétaire de l'Afrique centrale, Penant, n° 841, Oct-Dec. 2002, p. 445-472.

⁶⁵ Art 84 of the General Rules of COSUMAF.

⁶⁶ Art 270 of the General Rules of COSUMAF.

⁶⁷ Daniel Ebénézer Keuffi (n 128 above) p.148.

⁶⁸ Art 8(4) of the annex to the convention of 17 January 1992 on the harmonization and regulation of banking within central African states.

COSUMAF expressly authorizes banks to create collective investment schemes (OPCVM)⁶⁹. These organs are required under the control of financial regulators to respect their prudential rules. On the other hand, banking regulators exercise over OPCVMs their role of prudential supervision. In this context, it is evident that banking establishments supply investment services and in a certain measure, the management of OPCVM confuses the nature and importance of different prudential rules because they are issued by different authorities. The solution to this problem is found in the establishment of a platform of corporation between the different prudential regulators. While we still await the creation of a Uniform Act covering this sector, there is an urgent need for the creation of a communication exchange means between the different authorities in charge of prudential regulations. This can take the form of exchange of information, and the initiation of institutional cooperation between the different organs charged with prudential regulations. Having thus discuss the financial sector in the CEMAC region and have seen the partition of competence in the banking sector and the stock exchanges, we will look at the legal and regulatory framework of the DSX and The BVMAC. We will look in depth on the primary and secondary legislation.

⁶⁹ Operation de placement collectif des valeurs mobilières.

CHAPTER 3

THE LEGAL AND REGULATORY FRAMEWORKS OF THE FINANCIAL MARKETS OF CENTRAL AFRICA

CEMAC is composed of six states in Central Africa as seen in the previous chapter. The region with a population of about 35 million inhabitants of which Cameroon alone has more than 55% of this population, host two Stock Exchanges resulting from a fight of leadership between Cameroon and Gabon with regards to the nation which was to host the Regional Stock Exchange⁷⁰. These two Stock Exchanges have separate laws although they belong to one regional block. While the DSX is governed by national laws which may be complemented by OHADA laws, the Regional Stock Exchange situated in Gabon is governed by CEMAC regulations which can be complemented by OHADA and national laws of the Member States. The legal framework of these two exchanges would be discussed below starting with the primary legislations before moving to the secondary legislations.

3.1 The Legal Framework of the Douala Stock Exchange

As we said above we shall start with the primary legislations before moving to the secondary legislations.

3.2 The Primary legislations

The main legislation creating the DSX is Law N° 99/015 of 22 December 1999, creating and organizing the financial market of Cameroon. This text which has 41 Articles is divided into six chapters. Chapter I deals with the General Provisions, chapter II with the provision of Investment services, Chapter III with Public call for Capital, Chapter IV with the Financial Market commission, Chapter V with Stock Exchange and Chapter VI crowns the text with Offences and Sanctions. The 1999 law is supported by other national laws regulating the Douala Stock Exchange such as **Decision N° 02/ 002 of 3 December 2002 relating to the General Rules of the Financial Market Commission.**

⁷⁰ Molinot. X., La CEMAC, victime de la bataille nationaliste entre le Cameroon et le Gabon, marches tropicaux, p. 737.

3.3 The Secondary Legislations

Apart from the national laws seen above, other laws can apply in the domain of the financial market in Cameroon since Cameroon is not only a member of many international treaties and regional laws, but is a country which was colonized by Britain and France which till today still applies the laws of its colonial masters in areas which have not yet had national legislations and also when national legislations have lacunae. The fact that laws of the colonial masters can still apply in Cameroon can be supported by Section 11 of the Southern Cameroon High Court Law 1955 which provides that, the laws which would be applicable in Southern Cameroon will be the common law, the doctrine of equity and the statutes of general application which were applicable in England before the first day of January 1900.

Apart from the laws of the colonial masters, Cameroon has ratified the CEMAC and OHADA treaties permitting their laws to be applicable in Cameroon and even to take precedence over national laws by virtue of section 43 of the constitution of the Republic of Cameroon. Both OHADA and CEMAC have laid down rules and regulations applicable to the Stock Exchange although OHADA has permitted specific rules applicable to Stock Exchanges of member states to remain applicable. What however poses a problem is the fact that Cameroon is a member of the CEMAC financial market, which means that CEMAC laws in this domain are supposed to be applicable in Cameroon but Cameroon has its own set of rules which govern its financial market. There is therefore a likelihood of conflict between these two laws. While some people are advocating for a merger of the two stock exchanges, Alexander Gandou, the chairman of the supervisory board of the financial markets in central Africa has shown his support for separate markets. In an interview published by *les Afrique*, Alexander Gandou had this to say “*I think what we should do is on a harmonization of regulations, so that the same rules applies from stock a stock market to another. We must also work to ensure that regulators are talking. So, we have to create a college of regulators, so that if there is any problem in the market, the regulations speak in one voice*”⁷¹

3.4 The Legal Framework of the CEMAC Stock Exchange (BVMAC)

Just like the case with the DSX, two sets of legislations are applicable to the CEMAC Stock Exchange.

⁷¹ See businessincameroon.com. 20 January 2010.

3.5 The Primary Legislation

The main text governing the CEMAC Stock Exchange is **Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 on the Organization, functioning and supervision of the Financial Market of Central Africa**⁷². This text is divided into eight Titles. Title I deals with the Definition and Organization of the BVMAC. Title II deals with the control and supervisory authority of the Financial Market of Central Africa (COSUMAF), Title III deals with the Market Enterprise of the BVMAC, Title IV covers the rule of security negotiation, Title V governs the execution conditions of Stock operations, Title VI deals with the Compensation fund, Title VII covers illicit practices-sanctions and Prohibitions and Title VIII deals with final provisions. In addition to this text we also have **Additional Act N° 03/01-CEMAC-CE of 8 December 2001 creating the supervisory commission of the Financial Market of Central Africa (COSUMAF), additional Act N°100/00-CEMAC-C-CE-02 OF 14TH December 2000 fixing the head quarters of BVMAC, Regulation N° 14/07-UEAC-175-CM-15 of 19th March 2007 instituting a specific tax regime applicable to quotation operations on the Stock Exchange of Central Africa (BVMAC)**

3.6 The secondary Legislations

The secondary legislations applicable to the BVMAC include OHADA laws since the Members States of CEMAC are also Member States of OHADA and the scope of the Uniform Act on Commercial Companies and Economic Interest Groups covers Public offerings⁷³.

3.7 Regulatory Framework of both Stock Exchanges

A study of the regulatory framework of the BVMAC shall concentrate on the market regulators. This notwithstanding, other actors participate in the central African stock exchanges whose importance will not be neglected.

⁷² Prior to this regulation, the CEMAC legislator adopted Additional Act N° 11/00-CEMAC-C-CE-02 of 14 December 2002 fixing the head quarters of the CEMAC stock exchange at Libreville, Gabon, Additional Act N° 03/01-CEMAC-CE-03 of 8th December 2001 creating the commission of supervision of the Financial Market of central Africa (COSUMAF) and Additional Act N° 08/CEMAC-CE-04 of 23rd January 2003 fixing the head quarters of COSUMAF at Libreville.

⁷³ Art. 81 et seq, Uniform Act Commercial Companies and Economic Interest Groups.

3.8 The Douala Stock Exchange (DSX)

The DSX is a PLC with a Board of Directors and capital of 1.8 billion francs cfa, of which 63.7% of the shares are held by private commercial banks, Credit Foncier of Cameroon and the Dutch bank FMO, 23% by public interests, and 13.3% by private insurance companies.

The DSX is charged with the organizing the trade of transferable securities and other investment products registered in any of its department. To this effect therefore, it takes upon itself the exclusive rights to regulate:

- Access to the market
- Admission to quotation
- Organisation of transactions and markets
- Suspension of negotiations
- Recording and publication of negotiation
- Conclusion of transaction

It has the powers to monitor the legality of the operations carried out by the stockbrokers (Investment Service Providers or PSIs) acting as negotiators-compensators or by any persons acting on their behalf.⁷⁴

The DSX informs the financial Markets Commission of any irregularities, disrespect of market regulations, collusion between two or more participants or any other abnormality likely to negatively affect the integrity of the market. The DSX has the powers of immediate sanction in the case of actions contrary to the interest of the market⁷⁵. This power shall be a protective measure aimed at immediately stopping any action which shall be prejudicial to the market.⁷⁶

3.9 The Regulatory body of the DSX (CMF)

The Financial Markets Commission is the regulatory agency of the DSX. It was created alongside Law N0 99/015 of the 22 December 1999 which created the DSX⁷⁷. Its mission is to protect portfolio investors in the bourse as well as all other investment in the public offering of shares. It is to inform the investor, control the intermediaries of the market (the PSI) as they are known on the DSX and supervise the good functioning of the companies in the bourse.

⁷⁴ Article 7 of the rules and regulations of the Douala Stock Exchange of 03-12-2002

⁷⁵ Article 7 (n 76 above)

⁷⁶ Article 8 (n 76 above)

⁷⁷ Article 14 (n 76 above)

It is headed by an appointee from the President of the Republic. All its eight legible members include: two representatives of the Ministry of Finance, two qualified personalities proposed by the Minister of Justice, one representative of the association of the investment companies in the bourse, one representative of credit institutions and lastly two qualified personalities selected as per their expertise in securities market. They are all appointed by the President of the Republic. The President of the Commission has the final say as per the voting decisions of the commission. For the CMF to function smoothly, it comes out with rules and regulations of the DSX with regards to the way the DSX should function, rules of professional practice, management rules and accounting obligations. It also has the powers to provide rules of good conduct, control, inspection and rules relating to compensation or investment protection. The CMF defines the legal regime of the public offering of shares.

In its mission to control the good functioning of the securities market, the CMF can; instruct the opening of an enquiry during a negotiation between public offerer and a PSI, informs its immediate hierarchy to modify texts on the public offering, the activities of the PSI and finally the companies dealing in the markets.⁷⁸

The CMF receives all disputes from participants in the market and it also has the competence to take decisions on general and individual issues. The CMF is financed partly by dues and commissions from its activities and also from State grants. By this, the CMF, most present an annual balance sheet of its finances.

The functions of the CMF have clearly shown that the success or failure of the Cameroonian financial market lies to a very large extend in the hands of the CMF. If the CMF fails to discharge the duties vested upon it i.e. by putting in place the rules and regulations of the DSX, this market will never be credible. We must note that the credibility of the rules and regulations of the DSX will to a very large extend, depend on the caliber of persons who will be appointed in the CMF

3.10 General rules and regulation of the DSX

The general rules and regulations of the DSX shall determine the rules relating to;

- The organisation of the market;
- The negotiation of transferable securities;
- The acceptance, the listing and delisting of stocks, shares and transferable securities,
- Special operations,

⁷⁸ Article 22 (n 76 above)

- The conclusion of transactions,
- The setting of prices for services.

On a general basis, the Central Depository and the settlement and clearance bank in relation to the activities of custody, circulation of stocks and cash payments shall be subjected to the same approval conditions and procedures as these rules and regulations.

3.11 The regulatory body of BVMAC

The supervisory and control organ of the central African financial market is COSUMAF, an organ which has a legal personality⁷⁹ different from that of its members.

3.12 The Composition of COSUMAF

COSUMAF is composed of nine members chosen by the ministerial committee of UMAC after taking into consideration their recognized expertise in terms of accounting, finance and their legal knowledge. The members of COSUMAF are appointed in the following order:

- Six members representing the Member States and proposed by these states
- A representative of BEAC (Bank of central African states) proposed by its governor,
- A representative of the executive secretary of the executive secretariat of CEMAC under the proposal of the executive secretary,
- A representative of COBAC under the proposal of the secretary general of COBAC⁸⁰.

The conference of Head of States of CEMAC shall under the proposal of the ministerial committee of UMAC and under the presentation of the government of Congo appoint the president of COSUMAF whose term of office is five years renewable⁸¹.

The ministerial committee of UMAC shall appoint the secretary General of COSUMAF, after the opinion of the commission and under the presentation of the government of the Republic of Central Africa. His term of office is five years renewable and can be revoked in the same manner as the members of COSUMAF⁸².

⁷⁹ Art. 6. of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

⁸⁰ Art.14 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

⁸¹ Art. 17 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

⁸² Art 18 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

3.13 The attributes of COSUMAF: Competence, Powers and Privileges

The attributes of COSUMAF are found in Articles 10-13 of regulation N° 06/03-CEMAC-UMAC of 11th November 2003 relating to the organization, functioning and supervision of the central African financial market. From the provisions of Article 10, COSUMAF can legislate by way of regulations, instructions and opinion. In case of failure, its members shall be sanctioned.

Furthermore, COSUMAF shall exercise control and supervision over operations concerning the public call for capital; institutions charged with the good execution of transactions on the regional financial market and notably the Regional Stock Exchange; over physical and moral persons authorized to participate at the regional financial market⁸³. This means that very broad powers have been vested on COSUMAF since it has been given powers to legislate and to control every transaction which takes place at the regional financial market.

Because of the heavy task vested on COSUMAF, its members have been given immunity from prosecution. However, this immunity will not cover fraudulent, negligent and malevolent omissions⁸⁴.

In addition to the market regulators (regulatory bodies) discussed above, there are other actors of the Central African stock exchanges who must not be neglected in a document of this magnitude.

3.14 Other Actors of the Financial Markets of Central Africa

We shall start with an examination of the actors of the Regional Financial Market and thereafter we shall examine the actors of the Cameroonian financial market.

3.15 Actors of the CEMAC Financial Market

There are three actors of the CEMAC Financial Market, the Central African Stock Exchange, The Stock Company, agents of exchange and approved representatives of stock companies and the Regional securities depot bank.

3.16 The Central African Stock Exchange (BVMAC)

It has the exclusive competence to organize, manage and animate the Regional Financial Market. Being a PLC governed by private law, it respects the provisions of the OHADA Uniform Act on

⁸³ Art. 12 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

⁸⁴ Art 13 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

Commercial Companies and Economic Interest Groups. It shall equally be bound to respect the rules of COSUMAF in the discharge of its duties.

Only PLC and Private Limited Companies registered in the Trade and Personal Property Register of a CEMAC member state or an institution approved by COSUMAF can be a shareholder of BVMAC.⁸⁵ This provision strictly limits the number of persons who can be shareholders of the BVMAC since natural persons cannot be shareholders.

3.17 Stock Companies, Agents of exchange and approved representatives of stock companies

These are persons who are allowed to participate either on their own or as intermediaries on the stock market. To perform the functions of a stock company, the company must meet up with the following requirements:

- Be in possession of a valid license;
- Employ at least two agents of exchange;
- Hold at least one share in BVMAC.

These conditions are aimed at eliminating adventurers from the Financial Market.

A stock company is authorized to use the services of one or more approved representatives who would act in his name and on his account to transmit or collect orders of purchase or sale of securities or accomplish any formalities relating to these orders and/or to execute these orders. These agents or representatives can only act with the authorization of COSUMAF. They must not perform any other function apart from the one stated above⁸⁶

3.18 Regional Securities Depot Bank (CRDV)

The community legislator did not give any definition to the CRDV but merely states its functions. From its functions however, we can understand the CRDV to be a bank where securities and charges over securities are conserved. The CRDV shall be a company governed by private law. So it can take one of the forms listed in the introduction as defined by Article 6 of the OHADA Uniform Act on commercial companies and economic interest groups. It shall in addition to respecting the provisions of OHADA, respect the laws regulating the regional financial market.

⁸⁵ Art. 29 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

⁸⁶ Art. 39 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

The CRDV shall perform the following functions:

- Conserve the stocks listed on the regional stock exchange;
- Take account of stocks registered in the register of stocks and its deposit effected by one of its adherents on his account or on the account of his client;
- Be a third-party pledge of stocks which have been pledged;
- Regulate and deliver stocks which have been quoted on the regional Stock Exchange. It shall make a balance between stocks bought and those sold on the regional stock exchange.

Having seen the actors of the regional financial market, we shall now turn to the actors of the DSX.

3.19 Actors of the Cameroonian Financial Market

The financial market of Cameroon has three actors performing different functions but which are all aimed at ensuring the good functioning of the market.

3.20 Investment Service Providers (PSI)

PSI as we saw in the introduction are persons who transmit to the stock exchange orders to buy or the sell shares which are issued by their clients in order that the demand and supply of share and securities can meet.

PSIs are investment enterprises and credit establishments⁸⁷ which are authorized to supply investment services⁸⁸. To be more precise, investment service providers are Public Limited Companies having many shareholders⁸⁹. This simply means that Public Limited Companies having a single shareholder⁹⁰ cannot perform the services of PSI.

PSI shall receive and transmit orders on behalf of the clients, execute orders on behalf of their clients, negotiate shares for their personal accounts, manage the security portfolio on behalf of the clients and perform the function of placing⁹¹. Placing is a situation where the PSI contracts to

⁸⁷ Art 4 of the annex to the convention of 12 January 1992 on the harmonization of the banking regulations in the central African states defined credit establishments as organs which effect habitually the operations of banks.

⁸⁸ Art 6 of Law N°99/015 of 22 December 1999, creating and organizing the financial market of Cameroon.

⁸⁹ Art. 62 Decision N° 02/002 of 3rd December 2002, putting in place the General Regulations of the Financial Market Commission.

⁹⁰ Art 385(2) of the Uniform Act on Commercial Companies and Economic Interest Groups permits a Public Limited Company to be formed by a single person.

⁹¹ Art 5 of Law N°99/015 of 22 December 1999 creating and organizing the financial market of Cameroon

make an effort in passing the securities of an issuer to customers. He is paid for this and if the securities are not bought it is the issuer who loses⁹².

For an PSI to perform one of the functions mentioned in the above paragraph, he must fulfill the following conditions:

- Be registered in Cameroon;
- Have an authorized minimum capital determined by the CMF⁹³;
- Indicate the identity of its shareholders and directors as well as their respective share amounts;
- Present a profile of the directors for approval by the CMF. The company must equally have at least one approved accountant
- The company must be a form which is allowed to perform the services of an PSI i.e. it must be a Public Limited Company having many shareholders;
- The company must equally present a plan of action for each service that it is going to engage in.⁹⁴

Having taken the engagement to perform the services listed above, PSIs are not allowed to exercise any professional activity other than those listed above.

3.21 The Market Enterprise

A market enterprise is a financial establishment which has been given an exclusive concession of the public service. Its partners are the investment service providers. This means that only banking institutions or credit establishments which have been approved by the CMF can perform the services of the Market enterprise

The Market enterprise has as object, the follow-up of the activities of PSI, the management of the Stock Exchange Market and to manage suspensions of negotiations⁹⁵. The objective of the market enterprise should be included in its articles of association

⁹² Kembo Takam G. H., La responsabilité penal des acteurs du marché Financier dan la loi N° 99/015 du 22 Decembre 1999 portant creation d'un marché financier au Cameroon, memoir de DEA, FSJP Université de Dschang, 2003, p. 42.

⁹³ According to Art 68 (a) of Decision N° 02/002 of 3rd December 2002 putting in place the General Regulations of the Financial Market Commission, the amount will be 100 million FCFA for a PSI acting as a negotiator, compensator, conservator, asset manager etc and 150 million FCFA for a PSI who accumulates these activities.

⁹⁴ Art 8 of Law N°99/015 of 22 December 1999 creating and organizing the financial market of Cameroon.

⁹⁵ Art 45 of Decision N° 02/002 of 3rd December 2002 on the general rules and conditions of the Financial Market Commission.

It is the Market enterprise which shall regulate access into the Market, admission of quotations, the organization of transactions on the market, suspension of one or more securities, registration and publication of negotiations and the conservation of securities.

In conclusion therefore, the successes of the stock exchanges will to a large extent depend on the availability of information on the stock market operations and the solvency of market actors. This information, will guide investors and the public on the nature of the risk they intend to bear. Investors will only participate in the stock exchange if their protection is guaranteed. In the next chapter, we shall examine the protection of investors on the DSX and the BVMAC.

CHAPTER 4

STATUTORY PROTECTION OF PERSONS DEALING WITH THE FINANCIAL MARKETS OF CENTRAL AFRICA

Financial markets as we saw in the introduction do provide long term loans to investors which cannot be provided by banks and other financial institutions. These loans will intend facilitate growth and development which is not only yen by Cameroon or CEMAC but by the whole continent of Africa. In order for the public to trade in the financial market, members of the public must be satisfied that the listing companies are solvent. It is only through the information published in the prospectus that the public can measure the risk that they intend to bear. For this reason, the drafters of the rules and regulations applicable to financial markets in central Africa spilled much ink on this area. However, the public will not be protected if the violation of the legal provisions governing financial markets in central Africa is not backed by sanctions.

4.1 The Information Document

This area is not only regulated by the Central African laws but equally by OHADA law. Thus, article 12 of the Cameroonian law N° 99/015 of 22 December 1999 on the creation and organization of the financial market of Cameroon provides that without prejudice to the provisions of other laws applicable in this domain, person making a public call for capital shall publish a document aimed at informing the public. This document must be kept open for verification by the public⁹⁶. Article 13 of the above mentioned law further refers us to the OHADA Uniform Act on Commercial Companies and Economic Interest Groups. This same position was taken by the CEMAC legislator.⁹⁷

OHADA law provides that a company making a public offering must prepare an information memorandum to inform the public, if the total value of the public offering exceeds 50 million FCFA.⁹⁸ The founders of the company must prior to the operation present this document to the control organ of the Stock Exchange for their visa. The information to be published is strictly regulated; articles 86 to 96 of the Uniform Act impose certain conditions relating to the

⁹⁶ Bongwong.L.A, Insider Dealing in the Capital Market, PhD thesis, University of Yaoundé II, 2010 270.

⁹⁷ Art. 8 of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

⁹⁸ Art. 85 Uniform Act on commercial companies and economic interest groups

establishment of this document, its publication and its diffusion. This document must be prepared and distributed in every country where the public offering is to be made.

Under pain of being declared null and void, the information document for a first issue must contain the following⁹⁹:

- a) the name of the company being formed
- b) the form of the company
- c) the registered capital of the company
- d) the company's objective
- e) the address of the registered office
- f) the duration of the company
- g) the number of shares subscribed to, for cash
- h) the face value of the shares to be issued, with a distinction made between each category of shares
- i) summary description of contributions in kind, their total valuation and their mode of remuneration
- j) the special benefits stipulated in the draft Articles of Association in the interest of any person
- k) conditions of admission to shareholders meetings and the exercise of voting rights
- l) clauses relating to the approval or transfer of shares
- m) provisions relating to the sharing of profits, and bonuses after liquidation
- n) names and addresses of notaries or the credentials of a corporation where funds for subscription shall be deposited
- o) time limit for which subscription will be open and the procedure for convening the constituent general meeting

In the event of subsequent issues of shares, shareholders and investors should be informed of the new issues and the conditions thereof either by notice inserted in the prospectus published in the newspaper empowered to publish legal documents in the contracting state of the registered office of the company. This publication must also be done in a contracting state in which the public call on capital is being made¹⁰⁰.

However article 95 of the Uniform Act excludes the establishment of the information document in certain cases as follows:

- where the offer is intended for persons within the framework of their professional activity

⁹⁹ Art. 826 UACCEIG

¹⁰⁰ Art 832 UACCEIG.

- where the global amount of the offer is inferior to 50 million FCFA;
- where the offer concerns shares or stocks of collective bodies investing transferable securities other than closed end ones
- Where the offer is intended as transferable securities in return for contribution made during mergers or as partial contribution of capital; etc.

The information document must contain information necessary to influence the decision of investors, the financial situation of the company, the results and prospects of the company as well as rights attached to the shares offered to the public¹⁰¹.

The information document shall be effectively circulated in certain forms provided by article 93 of the Uniform Act, in the contracting state of the issuer's registered office and in case of absence, in other member states where the call is made¹⁰².

4.2 The Compensation Fund

The compensation fund or call it the guarantee fund¹⁰³ is aimed at compensating any person who is likely to suffer financial injury following the insolvency of a stock company or one of its administrators or personnel, rendering it incapable to pay either a sum of money to the investor or to transfer securities to this person¹⁰⁴. All claims made to this fund falls within the competence of the compensation committee¹⁰⁵.

Before making any compensation to an investor, the stock exchange shall publish a notice inviting all the creditors of the bankrupt service provider to make themselves known. The notice shall state the deadline for the presentation of claims. During this period and in order to prevent the defaulting trader from disappearing with his assets, these assets will be frozen

It will be important for stock exchange investors to note that guarantee fund of the DSX shall for any single claim be limited to 10 million FCFA for cash debts, and 100 million for security debts. However, a maximum of 200 million FCFA can be granted if the debts claimed are higher than the

¹⁰¹ Anoukaha (F.), et al, OHADA, des sociétés commerciales et du groupement d'intérêt économique , collection droit uniform Africain, Bruyant, Brussel, 2002. 108

¹⁰² Anouka et al (n 103 above) 109

¹⁰³ See the General rules and regulations of the Financial Market Commission, Arts. 37 et seq.

¹⁰⁴ Art. 55 of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

¹⁰⁵ The compensation committee is composed of a president and four members all appointed by the ministerial committee of UMAC. The president must be chosen amongst magistrates from a member state seating at the CEMAC Court of Justice. Two members would be chosen by COSUMAF, under the proposal of its president and the remaining two from the board of directors of BVMAC under the proposal of the board president.

assets of the stock broker¹⁰⁶. This provision has not totally limited the amount of compensation which can be given to the investor because it gives the parties the opportunity to insert a clause in their agreement to the effect that compensation will not be limited. Thus the abovementioned amount will only be respected if there is no contrary provision.

This fund shall be funded by contributions and other charges on members, fixed proportional contributions levied on the turn-over of BVMAC and CRDV, and from allowances and other sources of revenue decided by the ministerial committee of UMAC.¹⁰⁷ In addition to the compensation fund required by the CEMAC law, the OHADA legislator puts in place certain procedural guarantees aimed at protecting investors in the financial market. The Uniform Act requires any company making a public call for capital to obtain a performance bond from one or more credit institutions in a country where the public offering is made, if the value of the public offering exceeds 50 million FCFA¹⁰⁸.

Having seen the preventive measures which are aimed at protecting the investing public, we shall then turn to the punitive measures. It will be good for us to discuss first the offences and thereafter the sanctions not forgetting the organs charged with the enforcement of sanctions.

4.3 The Control of Financial Market Regulations

Financial market regulations can only be controlled through the impositions of sanctions for breaches against financial market offences. We shall first of all examine the financial market offences before moving forward to discuss the sanctions.

4.3.1 Financial Market Offences

According to article 60 of the aforementioned Regulation N° 06/03-CEMAC-UMAC, the following acts are considered illicit and punishable:

- Fraudulent practices aimed at distorting the well functioning of the regional financial market and the regional stock exchange in particular
- Those aimed at procuring directly or indirectly to their authors or third parties an unjustified advantage which would not have been obtained in the normal order of things at the regional market;

¹⁰⁶ Art 40 of the General Rules and regulations of CMF.

¹⁰⁷ Art. 57 of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

¹⁰⁸ Art 85 of the Uniform Act on commercial companies and economic interest groups.

- Practices which are aimed at benefiting the issuer and investors in securities who act through the assistance of an intermediary contrary to professional ethics; and
- Practices which undermine the equality of information and the treatment of investors¹⁰⁹. This offence occurs in a situation where a director of a company or any other privileged to acquire price sensitive information publicizes it to certain persons who give him an undue advantage before the information is published to the general public¹¹⁰. It therefore supposes the irregular publication of privileged information¹¹¹

The offences listed above can further be divided into the offences linked to the provision of investment services and those linked to the management of information.

4.3.2 Offences linked to the provision of Investment Services

The provision of investment services is essential for the harmonious functioning of the financial market. A PSI is an intermediary between the company issuing securities and a third party who wants to buy securities. Because of the importance of this function, the legislators gave the PSI a monopoly over the provision of investment services but where they must respect their professional ethics. Thus PSI will be sanctioned if they abuse the monopoly power bestowed on them or where they fail to respect their professional ethics.

4.3.3 The Provision of Investment Services without Authorization

Only PSIs are authorized to provide investment services. Any person who provides investment services to third parties on a regular basis without authorization shall be sanctioned. This appears to mean that none authorized persons who provide investment services to third parties but not on a regular basis shall not incur this sanction. For someone to provide investment services on a regular basis these services must be provided time and again. This notwithstanding, if a person can escape from this arm of the offence by pleading that he has not been supplying investment services on a regular basis, he will still be tracked down by the second arm of the offence where a simple supply of investment services without authorization suffices. Furthermore, any PSI who acts beyond the scope of his authority by providing services other than the ones stated by the law shall equally incur the same punishment.

¹⁰⁹ Art. 32 of Law N°99/015 of 22 December 1999 creating and organizing the financial market of Cameroon

¹¹⁰ Art. 32 of Law N°99/015 of 22 December 1999 creating and organizing the financial market of Cameroon Art 36 and Art. 64(1) of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

¹¹¹ Kembo Takam (n 94 above) p.17.

4.3.4 The abuse of professional ethics by Investment Service Providers

PSIs are not only required to respect rules and regulations enacted by the legislature but must equally respect their professional ethics. In security market operations, seven international professional principles must be respected¹¹². They include the principles of honesty, loyalty, knowledge of client, obligation of means, conflict of interests and the respect of market rules. Article 32(1) of the above mentioned Cameroonian law of 22nd December 1999 provides that any investment service provider who abuses his professional obligations shall be sanctioned without prejudice to criminal sanctions in force. The offence mentioned above engulfs behaviors contrary to the respect of market rules, those contrary to the duty of honesty and, a poor management of the conflicts of interests.

4.3.5 Behaviors contrary to the respect of market rules

The Cameroonian law of 22nd December 1999 punishes all intermediaries who distort the market rules in order to procure an undue advantage from a third party which would not have been the case if the market rules were respected.

4.3.6. Behaviors which are contrary to the duty of honesty and loyalty

These obligations should be respected in all dealings between the PSI and his clients. Thus an intermediary must not profit unjustly from the orders given by his client.

4.3.7. A bad management of a conflict of interests

A conflict of interests arises where an intermediary has to manage divergent interests¹¹³ since his profession allows him to provide many services to different persons. The PSI therefore has an obligation to exercise neutrality in order to protect the interests of all his clients. In this case, he has to respect the chronology in which the orders were given in order not to cheat any of his clients. He must inform the various clients of his different activities and the possibility of a potential conflict of interest. Failure to do so will make him liable for a poor management of a conflict of interests.

¹¹² Kembo Takam (n 94 above) 12.

¹¹³ Hannoun .C., la déontologie des activités finance: contribution aux recherches sur le néo-corporatisme, RTD co 42(3), juillet-septembre, 1989, p 432

4.3.8 Offences linked to the management of information

Information is an essential tool in the functioning of a financial market. There are two offences linked with the management of information in a financial market: the offence of insider dealing and the offence of communication of privileged information.

4.3.9 The offence of insider dealing

Insider dealing involves the use of restricted information about a company by a buyer or seller of its securities to gain an undue advantage¹¹⁴. It can also be defined as “The use of material, nonpublic information in trading the shares of a company by a corporate insider or other person who owes a fiduciary duty to the company.”¹¹⁵ This information can be exploited directly by a director of a commercial company or any other person who has privileged information in the course of performing his functions or by a third party who has been fed with this information by an insider. This offence has two arms: the possession of privileged information and the irregular use of the information on the market.

Notwithstanding the fact that both the Cameroonian and the CEMAC legislations on the financial market did not title any topic as “insider dealing”, the offence of insider dealing is recognized in these markets.

4.3.10 Insider Dealing at the Douala Stock Exchange

The first paragraph of Article 36 of the law of 22 December 1999 is to the effect that any acts of a director of a company or any other persons who by the exercise of their duties have access to privileged information on the issuer of securities which are negotiated in the market and who deal directly or indirectly with this information before it is made public in order to realize a personal benefit will be punished with an imprisonment term of 6 months to 2 years and a fine of 1 to 10 million FCFA.

This prohibition is not limited to directors of companies but extends to other persons who by virtue of their profession or duty have access to privileged information. The use of the words “profession” and “duty” to identify other persons who have access to privileged information undoubtedly cast the net sufficiently wide to catch defaulters¹¹⁶. Those who by virtue of their profession would be expected to have access to privileged information include lawyers, financial

¹¹⁴ Jonathan Fisher QC, et al, *Law of Investor Protection*, 2nd Edition.

¹¹⁵ Bryan A. Garner, *BLACK’S LAW DICTIONARY*, Ninth Edition (2009) 866.

¹¹⁶ Bongwong.L.A, (95 above) p 30

analysts, accountants, consultants and in fact any other person who carries out a duty that is normally restricted to those of a given profession. The next group of persons considered as insiders are those who, in the performance of their duty, get access to privileged information. What constitutes privileged information is our next target.

The 1999 Cameroonian law did not define the notion of privileged information, the concept being new in our context. In the absence of a definition, we can borrow from French law according to which information is said to be privileged if it is precise, confidential and determinant. To be precise, the information must be concrete and not just suggestion or rumors on the situation of the enterprise¹¹⁷. Information is said to be confidential if it is not yet published in a press or a media. Finally information is said to be determinant where it is susceptible of influencing the cost of securities on the financial market.¹¹⁸ Thus information relating to the profit or loss of a company is determinant information since it can result in an increase or decrease of the price of its shares.

4.3.11 Insider dealing at the BVMAC stock exchange

Just like the law of 22 December 1999, the law of November 2003 on the organization, functioning and supervision of the BVMAC stock exchange did not carry any title as insider dealing. However it is discernible from the provisions of Part VII of that law that what is referred to as “Pratiques Illicite-Sanctions-Interdiction” refers to insider dealing. Art 63 of the abovementioned law provides that:

“Without prejudice to penalties which can be pronounced by competent judicial authorities, is liable to a fine whose amount is determined by an instruction from the supervisory commission of the Financial Market, the director of a public limited company making a public call for capital and any other person having, in the exercise of his duties or functions, insider information on the perspectives or situation of an issuer whose securities are negotiated at the Regional Stock Exchange or on the evolution perspectives of a financial instrument admitted in the same market, who carries out ,either directly or through a third party, one or more transactions before the information is publicly release”¹¹⁹.

¹¹⁷ Paris, 30 March 1977, cited by Wilfried JEAN DIDIER, in *Droit Penal des affaires*, Paris, Dalloz, 3rd edition, 1998, 134.

¹¹⁸ Renucci. F., *les frontieres du delit d’initie*, Dalloz Affaires, (1995), edition numérique n° 6.

¹¹⁹ Art. 63 of Regulation N° 06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

The abusive or illegal use of privileged information occurs in a situation where a person exploits this information before it is publicized. The insider can either exploit the information personally or through a third party. The exploitation of inside information consists in buying or selling negotiable shares on the market based on this information and consequently making an undue profit.

4.3.12 The offence of communication of privileged information

From the provisions of article 36(2) of the 1999 Cameroonian law, there is the offence of communication of privileged information where an insider¹²⁰ communicates privileged information to a third party in order to have an undue profit. The communication must be out of the scope of his profession. That is, it must be illegal and aimed at having an undue profit. Any person who is guilty of any or some or all of the offences discussed above will be sanctioned by the financial market regulators.

4.3.13 Sanctions for Financial Market Offences

Any person who has been accused of any or some of the above mentioned offences has a right to defend himself before a law court with the assistance of a counsel if he so wishes. If after hearing he is found guilty, he will be liable to pay a fine whose amount will be determined by COSUMAF.¹²¹ In addition to this, the Cameroonian law N° 99/015 provides that such persons will be warned, reprimanded and suspended from the provision of some or all of the investment services with the exception of those that are against the interest of their clients. This is so because the law is not aimed at punishing the client but the PSI. The suspension must not exceed one year. Persons found guilty can equally have their licenses withdrawn.¹²²

All persons who disturb COSUMAF from carrying an inquiry shall be punished with a fine whose amount will be determined by COSUMAF. These sanctions shall be complemented by national criminal sanctions.¹²³ The mentioned above merits some precision.

¹²⁰ According to s. 52 of the Company Security (insider dealing) Act 1985, an insider is a director, employee or shareholder of an issuer of securities; or a person having access to information by virtue of his employment, office or profession; or a person whose direct or indirect source of information is a person who falls in the mentioned category of persons.

¹²¹ Art. 61 of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market

¹²² Art 32(2) of law N° 99/015 of 22 December 1999 creating and organizing the financial market of Cameroon.

¹²³ Arts. 63 and 64 of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

4.3.14 The merger of criminal and disciplinary sanctions

From the provisions of article 35 of the 1999 law, a fine from 500.000FCFA to 5.000.000 FCFA will be imposed on an PSI who acts without authorization provides a service other than that provided by the law. This fine can be added with a disciplinary measure. Where there is a breach of a financial market regulation, the market authorities do imposed sanctions whose object is either to neutralize the disturbing element on the market or to punish the offender. The sanctions can be criminal or disciplinary. Administrative or disciplinary sanctions are aimed at repairing grave breaches to market transparency while criminal sanctions are aimed at punishing bad behaviors within regulated professions.¹²⁴ Disciplinary sanctions take the forms of warnings, injunction, temporal suspension or withdrawal of authorization, criminal sanctions take the form of fines and imprisonment terms. Regulators of the financial markets of central Africa have merged disciplinary and criminal sanctions.¹²⁵ This merger can create two problems because certain procedural guarantees which must be observed in criminal sanctions such as the presumption of innocent can be ignore. Secondly criminal and disciplinary sanctions are not handled before the same jurisdiction.¹²⁶ These sanctions do not equally have the same implications.

4.3.15 The difficulty of balancing Market Efficiency and Individual Fairness

The sanctions pronounced by the financial market regulators are aimed at promoting market efficiency and deterring offenders from committing further crimes. It is however regrettable that the sanctions levied on offenders are quite often not proportional to the offences committed with more emphasis placed on market efficiency than on individual fairness. It can be observed that only the CEMAC financial market gives criteria for appreciation of proportionality of pecuniary sanctions likely to be pronounced by the financial market regulators. The sanction should be guided by the gravity of the fault committed and the advantages reaped by the offender.¹²⁷

The Cameroonian law is silent on this subject and this silence leaves wide powers to the regulators (CMF) to determine the sanctions. In this case, they can impose the maximum sentence on an offence without any fear of being criticized by a judge for want of proportionality between the

¹²⁴Ducouloux-Favard.C., Quelques consideration sur les pouvoirs de l'AMF, Droit des sociétés, n° 7, juillet 2006, 3

¹²⁵ Arts 113 and 117 of the General Rules of the Financial Market Commission and Art 32 of Law N° 99/015 of 22 December 1999 creating and organizing the financial market of Cameroon

¹²⁶ Daniel Ebénézer Keuffi, la regulation des marché financiers dans l'espace OHADA, theses du Doctoral, Faculté de Droit, de Science politique et de Gestion, Université de Strasbourg, 2010, 309.

¹²⁷ Art. 61, Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market.

fault and the sanction. According to jurisprudence, the presence of a criterion to guide the regulators constitutes a primordial guarantee of fairness.¹²⁸ This sanction is detrimental to persons sanction and no text has forbidden the merger of administrative and criminal sanctions within the financial markets of OHADA¹²⁹ in general and Central Africa in particular.

As a consequence, persons having been judged by the financial market regulators can again be tried by a criminal judge. Thus in addition to the pecuniary sanctions imposed by the regulators, these persons can on the same fault be punished with a fine as well as with the loss of liberty. This merger infringes the rule of *non bis in idem*.¹³⁰ Worse is that where the merger concerns a fine and the loss of liberty, article 38 of the Cameroonian law of 22nd December 1999 gives the competent authority to imposed an amount superior to that provided by the text up to ten times the profit realized from the offence. This provisions according to Daniel Ebénézer KEUFFI, constitutes a real danger to legal security in the sense that it may also influence a criminal judge to follow this logic thereby abandoning the principle of legality of offences and sanctions since the text allows wide powers in the hands of the judge who is only limited by the minimum sanction which should not be less than the profit realized by the offender.¹³¹ Having seen the offences and their sanctions, we shall now turn to the organs which are in charge of enforcing the sanctions.

4.3.16 Organs in charge of enforcing Financial Market Sanctions

The financial markets regulators have an important role to play as far as the enforcement of sanctions are concerned. These organs i.e. COSUMAF and CMF have both powers to investigate and to impose sanctions as we have seen in the preceding paragraphs. However, they are obliged to respect the procedural exigencies necessary for the good functioning of the criminal jurisdiction. This includes the separation of persons in charge with investigating offences from those in charge of sanctions and the respect of fundamental procedural guarantees.

4.3.17 The Separation of Investigators from Prosecutors

In addition to regulatory powers given to the financial market regulators, they have concentrated in their hands the powers to investigate offences and those to levy sanctions. In France, the

¹²⁸ Thus in a decision rendered on the 3rd of November 2004 (Rev. Mensuelle AMF, n° 18, October 2005) la COB imposed pecuniary sanctions of 1 million Euros, one against Mr. Jean-Marie Messier, and the other against société Vivendi Universal. But the court of appeal of Paris said that this was disproportionate and reduced the sanction to 500.000Euros and 300.000 Euros respectively.

¹²⁹ Daniel Ebénézer Keuffi, (n 128 above), 310.

¹³⁰ Not twice for the same thing. That is, a person shall not be twice tried on the same crime.

¹³¹ Daniel Ebénézer Keuffi, (n 128 above) 310.

concentration of powers of investigation and sanctions in the hands of one person is against article 6(1) of the European Convention on the Protection of the Rights of Man and the Citizen. This idea has gradually been incorporated into the financial markets of Central Africa where the General Rules of the CMF provides that for each case submitted before it, the Commission should appoint a person who would carry out the investigation. Having taken part in the investigation, this person shall not take part in the deliberation of sanctions which will only be done by the other members of the commission and the President. Where the investigator must be present at the trial, his role shall only be to present the case and he shall not participate in the deliberation of sanctions.¹³² We must however note that unlike the General Rules of COSUMAF which forbids an investigator from participating in the prosecution, the General Rules of CMF did not forbid him from participating. It is therefore wished that the administrative judge should intervene here in order to decide whether the investigator should participate in the sanctions or not¹³³

4.3.18 The respect of Fundamental procedural Guarantees

The obligation to respect the fundamental procedural guarantees to which the regulators of the Central African Financial Markets found themselves is drawn from two principal legal instruments: the Universal Declaration of Human Rights and the African Charter on the rights of man and the people. These principles have been embedded in the treaty of CEMAC¹³⁴ as well as in the Constitution of Cameroon.¹³⁵ These rights must be respected at the inquiry phase as well as at the prosecution phase.

4.3.19 The respect of fundamental procedural guarantees at the inquiry phase.

At this phase, the fundamental rights are the rights to a defense and the right to information. As far as the right to a defense is concerned, the defender shall have the right to be assisted by a counsel of his choice. This is not expressly provided in the General Rules of COSUMAF but French jurisprudence and doctrine are unanimous on this point. The right to information is also guaranteed during the investigation phase. These results from different provisions of the law which provide that inquiry reports should be communicated to the person or entity investigated.¹³⁶ The information communicated must respect a particular form. Thus article 377 of the General

¹³² Art. 415 of the General Rules of COSUMAF.

¹³³ Daniel Ebénézer Keuffi, (n 128 above) 313.

¹³⁴ See the Preamble of the revised CEMAC Treaty of 25 June 2008.

¹³⁵ See the preamble of the 1996 constitution of Cameroon.

¹³⁶ Art 377 of the General Rules of COSUMAF and Art 107 of the General Rules of CMF.

Rules of COSUMAF requires this communication to be done exclusively by a written letter with acknowledgement of receipt. The same article requires the person or entity controlled to make his observations within 10 days from the date of reception of the information. This exchange between the accused and the prosecutor is very important because it is after this that the financial market regulators will decide whether to place an injunction or to imposed a fine or imprisonment term¹³⁷

4.3.20 The respect of fundamental procedural guarantees during prosecution.

The right to a defense is guaranteed also at the hearing phase. The accused shall be notified of his crime in a formal and precise manner.¹³⁸ The notification document shall inform the accused that he has a right to be assisted by a counsel of his choice. The right of communication is also observed at the hearing stage where the accused is given the right to make his observations within a delay of one month.¹³⁹

The principle of impartiality on its part is observed at the time of pronouncement of the sanction where the financial market regulator is required to justify his decision for a sanction¹⁴⁰ and to take into consideration the proportionality of the amount of sanction and the gravity of the offence.¹⁴¹ Finally the hearing must be conducted in public. These guarantees are aimed at protecting the accused from the arbitrary sanctions of the financial market regulator.

4.3.21 Appeals against decisions of the financial market regulators

In order to truly protect the accused from the arbitrariness of the market regulators, the decisions of the regulators are open to appeal before the judge. “The judge is judged” is the title that Mrs. Pascale IDOUX gave to her commentary on the ‘conseil d’etat” on 25th February 2005.

4.3.22 The determination of the competent authority to handle the appeal

The competent jurisdiction varies depending on whether the appeal is against the decision of COSUMAF or the CMF. Where it is the decision of COSUMAF which is appealed, the competent judge is the public law judge, but where it is the decision of the CMF which is appealed, there will be a dualism of jurisdiction

¹³⁷ Art 378(3) of the General Rules of COSUMAF.

¹³⁸ Art 407 of the General Rules of COSUMAF requires that the notification of the accused of his crime shall be done by way of a recommended letter with acknowledgement of receipt or given directly to the accused by a bailiff.

¹³⁹ Art 408 of the General Rules of COSUMAF.

¹⁴⁰ Art 384 of the General Rules of COSUMAF.

¹⁴¹ Art 384 of the General Rules of COSUMAF.

4.3.23 Appeals against decisions of COSUMAF

As far as appeals against the decisions of the market regulators of BVMAC are concerned, the community judge has a wide and exclusive competence. To this effect, the General Rules of COSUMAF in its 2009 version provides in its article 15 that “the appeal against the decisions rendered by COSUMAF in the exercise of its duties is appeal able before the CEMAC Court of Justice”. This option in favor of the community judge followed in an appeal against the decision rendered by the financial market regulators in respect of articles 61 to 64 of the law of 12 November 2003¹⁴². Article 65 of this law provides that “the examination of appeals against decisions rendered by COSUMAF with regards to the practices listed in articles 61 to 64¹⁴³ belongs to the competence of the community judge. According to Daniel Ebénézer KEUFFI, this centralization of stock exchange litigation to the community judge is fabulous because it is fundamental to the good administration of justice. If exclusive competence is given to the community judge to hear appeals against the decisions of COSUMAF, the approach taken by the Cameroonian authorities is different.

4.3.24 Appeals against the decisions of the CMF

A dualism approach is taken by the Cameroonian legislator since the decisions of the market regulator (CMF) can be appealed both before the administrative judge and the judicial judge. To this effect, article 32(4) of the law of 22 December 1999 provides that “the decisions of the commission can be appealed before the Administrative Bench of the Supreme Court”. Thus, the judicial judge has the competence to handle all other matters which are not expressly reserved to the Administrative Bench of the Supreme Court such as actions against damaging acts of the financial market regulators¹⁴⁴.

In summary, it has been seen that, the publication of information is highly protective to investors because the information document is kept open for verification by the public. The public and investors will therefore have some basic information concerning the company with which they intend to trade with. In the same light, the guarantee fund which is aimed at compensating persons who suffer some prejudice following the bankruptcy of a PSI further strengthens the protection. In addition to this, the use of civil and criminal sanctions against violators of market rules and

¹⁴² These Articles give the market regulators (COSUMAF) the power to investigate and take decisions against crime committed in the market.

¹⁴³ These articles contain sanctions for persons guilty of illicit practices, obstruction of investigations, abuse of privileged information, publication of false information, and the obstruction of the regular functioning of the market.

¹⁴⁴ Daniel Ebénézer Keuffi, (n 128 above) 334.

regulations will deter participants from violating those rules and will thus accord some protection to investors.

From the protection of investors, the next chapter will move forward to examine the impact the OHADA corporate governance rules have on the markets.

CHAPTER 5

OHADA CORPORATE GOVERNANCE RULES AND ITS IMPACT ON THE PERFORMANCE OF CENTRAL AFRICAN STOCK EXCHANGES

The integrity and efficiency of the BVMAC just like all other stock exchanges depends on good corporate governance rules which are aimed at protecting investors and fostering investors' confidence. Good corporate governance rules must be nurtured and encouraged in companies making a public call for capital within Central Africa if it is hoped to be counted one day amongst the regions with fast developing stock exchanges as is the case with South Africa, Nigeria, and Kenya to name these few.

Corporate governance has been defined as the process and structure used to direct and manage business affairs of a company towards enhancing prosperity and corporate accounting with the ultimate objective of realizing shareholders long-term value taking into account the interest of other shareholders.¹⁴⁵

Corporate governance rules are not well covered by the primary legislations applicable to the Financial Markets of Central Africa. We must however admit that the secondary legislations applicable to these markets (OHADA) have modern rules in this domain which are adapted to the realities of Africa. The authorities competent to make corporate governance rules in Central Africa have expressly incorporated within their scope the OHADA legislations on corporate governance.¹⁴⁶ For this reason, corporate governance rules applicable in this chapter are for the most part drawn from the Uniform Act on Commercial Companies and Economic Interest Groups.

5.1 The Management Structure of Listed Companies

Only PLCs having a share capital of at least 100 million FCFA are authorized to make a public call for capital.¹⁴⁷ So, the management structure which will be discussed here will be that of a PLC and especially that which makes a public call for capital. A company making a public call for capital has been subjected to rigorous control measures by OHADA law. This concerns strict

¹⁴⁵ The Kenyan Capital Market Authority Act, corporate Governance Guidelines, 2002.

¹⁴⁶ See Arts 14 and 20 of Law N° 99/015 of 22 December 1999 creating and organizing the financial market of Cameroon, Arts 8(1), 11, 12, and 27 of Regulation N°06/03-CEMAC-UMAC of 11 November 2003 relating to the organization, functioning and supervision of the Central African Financial market, and Art 39 of Decision N° 02/002 of 3rd December 2002 on the general rules and conditions of the Financial Market Commission, etc.

¹⁴⁷ Art 85 UACCEIG.

conditions to information publication and financial guarantee operations¹⁴⁸ as we saw in chapter two. It is a regrettable fact that in Africa where a majority of companies are of small and medium size, OHADA corporate governance rules permit only public limited companies with a capital of at least 100.000.000FCFA to make a public call for capital. This explains why a majority of companies within the OHADA zone are not listed on stock exchanges. Be that as it may, three organs participate in the administration of a company making a public call for capital: - the management organ, the deliberation organ and the control organ.

5.1.1 The management organ

A Public limited company has a right to choose between two management forms: management through the board of directors, or management through a managing director. In reality however only a PLC which has more than three shareholders can make use of this option.¹⁴⁹ This option given to other PLCs does not apply to companies making a public call for capital which must have a board of directors as an obligation¹⁵⁰.

5.1.2 A public limited Company with a Board of Directors

The board of directors is a body elected or appointed persons who jointly oversee the activities of a company or organization. Any PLC which has at least three shareholders is required to have a board of directors.¹⁵¹ The number of board members must be at least 3 and at most 12. Because more rigorous conditions are attached to companies making a public call for capital, the board members must be at least 3 and at most 15.¹⁵² Not all of them are required to hold shares in the company but at least 2/3 of the members must be shareholders. The reason for permitting 1/3 of the board to be non executive directors is to ensure that no individual or group should dominate the decision making process of the board of directors.¹⁵³ In case of a merger between two companies making a public call for capital, the number of board members can exceed 15 but should not be more than 20.¹⁵⁴ The reason for this may simply be that the OHADA legislator did

¹⁴⁸ Anoukaha F., et al (n 103 above) 103.

¹⁴⁹ Anoukaha F., et al, (n 103 above) 416. See also Martor B. et al Business Law in africa OHADA and the Harmonisation Process 2nd edition (2007) 79.

¹⁵⁰ Art 828 UACCEIG.

¹⁵¹ Art 416 UACCEIG.

¹⁵² Art 495 UACCEIG.

¹⁵³ Wambui Kibuthu Grace., Capital Markets in Emerging Economies a case study of the Nairobi Stock Exchange, a Masters thesis, The Fletcher School Tufts University, 2005.

¹⁵⁴ Art 829 UACCEIG.

not want to eliminate some board members from their posts because of a merger.¹⁵⁵ However, within the period that the number exceeds 15, new members will no longer be voted in case of incapacity, resignation, dismissal or death of a member of the board until the number reduces back to 15.

Where a company making a public call for capital is struck off from the list of companies trading on the stock exchange, it shall endeavor to reduce the number of its directors to 12 as fast as possible.¹⁵⁶ This is because PLCs not making a public call for capital must have a maximum of 12 members on their boards. In this case therefore, board members who are impeded from performing their duties will not be replaced. Where none of them is impeded, other ways will be used to reduce the number.

5.1.3 The Powers of the Board of Directors

The Uniform Act has vested on directors very wide powers to act in all circumstances on behalf of the company. This applies generally to all PLCs as provided by article 435 of the Uniform Act. The powers of directors of quoted companies have not been defined by the Uniform Act and in their absence; the general provisions governing all PLCs will remain applicable. Although wide powers have been conferred on directors, they must be exercised within the limits of the object of the company and in respect of those expressly conferred on shareholders.¹⁵⁷

The statutory limits on the powers of directors are not applicable to third parties who acted in good faith. Thus with regards to ultra-vires acts of directors, the company remains liable to third parties who acted in good faith. This position is similar to the “indoor management rule” of the Common Law derived from the case of *Royal British Bank v. Turquand*.¹⁵⁸ This will encourage investors to buy and sell shares to the company since they are protected from the ultra-vires acts of directors. This provision can equally play negatively on the company because the company will be forced to accept detrimental acts with regards to third parties. A typical example can occur where price sensitive information is published by a director to a third party who acts in good faith and take the advantage. The company will not be able to refuse this act since the third party was not supposed to inquire whether the information was already published in the prospectus. In spite of article 435 the Uniform Act expressly enumerates an in exhaustive list of the powers of the board of directors. It

¹⁵⁵ Anoukaha F., et al, (n 103 above) 417.

¹⁵⁶ Art 829 UACCEIG.

¹⁵⁷ Art. 435 UACCEIG.

¹⁵⁸ (1856) 6E&B 327.

provides that the board of directors shall in particular, defined the company's objectives and guidelines for its administration, control on a permanent basis the management or the chairman of the board of directors and adopt the accounts of each fiscal year. The board shall equally oversee the daily administration of the company.

5.1.4 The daily administration of a Public Limited Company making a public call for capital

The day- to- day administration of a quoted company can be done by the chairman of the board directors who will in this case be known as the chairman and managing director or by a General Manager different from the chairman of the board of directors.

5.1.5 The chairman and managing director (P.G.D)

He is appointed by the board of directors amongst its members. He cannot be a moral person but must be a natural person.¹⁵⁹ The reason for this is that a moral person has but an artificial personality and so cannot run the day-to-day administration of a company. Because he is a member of the board of directors, his term of office as chairman and managing director should not exceed his term of office as a director.¹⁶⁰ So, if his mandate as a member of the board of directors ends on the 1st of January 2012 for instance, his mandate as chairman and managing director must not exceed the 1st of January 2012.

To protect the interest of the company, the chairman and managing director is prohibited from holding simultaneously more than three offices as the chairman and managing director within the territory of OHADA. The chairman and managing director exercises at the same time, two sets of functions: Firstly his functions as the chairman of the board of directors and secondly his functions as the managing director. As the board chairman, he exercises the following functions:

- He convenes and presides over board meetings;
- He controls the daily administration of the company; and lastly
- He operates at any time of the year, verifications that he deems necessary.

As a managing director of the company, the chairman and managing director performs the following functions:

- Presides over the general meetings of shareholders;
- Ensures the general management of the company; and

¹⁵⁹ Art. 462 UACCEIG.

¹⁶⁰ Art. 463 UACCEIG.

- Represents the company in its relations with third parties.

From these two sets of functions, one will be tempted to think that the company will not be well managed if one person performs these functions.

5.2. The deliberation organ

The deliberation organ in a company is the General Assembly (meeting). The main assemblies recognized by OHADA are the assemblies of shareholders and those of bondholders.

5.2.1 The General Assemblies of shareholders

The General meeting is the one occasion where members usually have the opportunity of meeting the directors and questioning them on their accounts, reports and the company's financial situation and prospects.¹⁶¹ The General meeting is convened by the president of the board of directors. However, a situation may arise where for diverse reasons; he is not willing to convene the general meeting of shareholders. In such a situation, the Uniform Act provides that the auditors, an agent appointed by a competent court or a liquidator can convene the meeting.¹⁶² Because the General meeting is the supreme organ of the company, it will be necessary to mention the persons who can participate at the general meeting. According to Article 537 of the Uniform Act, the shareholders are given a pride of place. These persons have a natural right to participate at the general assembly either in person or through representation. What however remains a worry is whether shareholders do exercise this right conferred on them by the law.

5.2.2 Types and Functions of Shareholders Meetings

There are generally two types of shareholders meetings: The Ordinary General Meeting and the Extraordinary General Meeting. These meetings have different functions.

5.2.3 The Ordinary General Meeting

This meeting holds at least once a year within a period of six months following the close of the fiscal year.¹⁶³ This deadline can be extended by a decision of the court. The meeting is open to all

¹⁶¹ Mokom Penn K., The protection of the principle of legal personality against management abuse: a comparative study of the common law and OHADA law, Masters Thesis, Faculty of law and political science, University of Dschang-Cameroon, 2011 12.

¹⁶² Art 516 UACCEIG. See also Anoukaha F., et al, OHADA, sociétés commerciales et du groupement d'intérêt économique, collection droit uniforme Africain, Bruyant, Brussel, 2002, p.433.

¹⁶³ Art 548 UACCEIG.

shareholders but the articles of association may require a minimum number of shareholders who are entitled to attend. This number must not be more than ten shareholders. This requirement is not aimed at depriving shareholders with less than the required minimum from attending ordinary general meetings since they can combine their shares to reach the required minimum and appoint one person to represent them.¹⁶⁴

Concerning the functions of the ordinary general assembly, the Uniform Act provides that it can take all decisions except those reserved for the extraordinary general assembly or special assemblies of shareholders¹⁶⁵ to which we can add those reserved to the board of directors. In particular, the ordinary general meeting has the powers to do the following:

- Adjudicate on summary financial statements of the fiscal year
- Decide on the allocation of income;
- Appoint members of the board of directors or the managing directors as well as auditors
- Approve or disapprove agreements concluded between the company and its directors
- Issue bonds; and
- Approve the auditor's reports.

5.2.4 The extraordinary general meeting

This meeting is very important in the life of a company because it is called to take decisions which may be very grave. Thus, it is only the extraordinary meeting of shareholders which has the powers to:

- amend all the provisions of the articles of association
- authorize mergers, scissions, transformation and partial contribution of assets;
- transfer the registered office of the company to any other town from the contracting state where it is located or to the territory of another contracting state;
- Wind up the company prematurely or extend its duration.

Before attending the extraordinary general assembly, shareholders have the right to examine texts of resolutions proposed; the reports of directors and where necessary the reports of auditors or liquidators.¹⁶⁶ Contrary to ordinary general meetings, any shareholder may attend extraordinary meetings without limitation of votes. Apart from these two meetings of

¹⁶⁴Anoukaha F., et al, OHADA, (n 103 above) 438.

¹⁶⁵ Art 546 UACCEIG.

¹⁶⁶ Art 525 UACCEIG.

shareholders, there is a third meeting which is very important to shareholders known as the special meeting.

5.2.5 Special meetings

This meeting brings together holders of a particular category of shares such as ordinary shareholders, preference shareholders, and debenture holders etc to approve or disapprove of decisions of the company modifying their rights. The decision of the general assembly modifying the rights of a particular category of shares only becomes final after their approval.¹⁶⁷ This means that if the special meeting refuses to approve this decision, it shall not be binding on them. The special meeting therefore prevents the general assembly from infringing the rights of a certain category of shareholders because of their minority. It's a good protection to the minority. In addition to these three categories of shareholders meetings, we have the meetings of bondholders.

5.2.6 The Assembly of bondholders

The Uniform Act has authorized the creation of other types of securities in addition to shares. These securities give their holders rights different from those of shareholders. Amongst these securities are bondholders. Bonds represent rights over the company in consideration for a loan.¹⁶⁸ They are issued to raise funds by way of a loan by public limited companies on condition that the company has been existing for at least two years and has drawn up two balance-sheets duly approved by the shareholders¹⁶⁹. Holders of bonds issued at the same time shall as of right be grouped into a "masse"¹⁷⁰ which has a legal personality.¹⁷¹ The group shall be represented by one to three representatives depending on the choice of bondholders¹⁷².

The statutory requirement that a company must have been in existence for at least two years before issuing bonds can negatively affect the performance of stock exchanges within the OHADA zone. As a matter of fact, any company which has not been in existence for two years and/or which has drawn up two balance-sheets duly approved by the shareholders cannot issue bonds.

¹⁶⁷ Art. 555 UACCEIG.

¹⁶⁸ Martor B., et al (n 172 above) 93

¹⁶⁹ Art 780 UACCEIG.

¹⁷⁰ Art 10 of the French decree of 13 January 1938 on the application in French colonies, protectorates and mandated territories of the decree of 30 October 1935 on the protection of bondholders, leaves bondholders only the possibility of forming a group.

¹⁷¹ Art 785 UACCEIG.

¹⁷² Art 786 UACCEIG.

The essential role of the bondholder's assembly is to approve or disapprove the decisions of the company touching on the interest of bondholders. Thus, where it approves the decision of the decisions of the company, they will be binding on bondholders but where it disapproves of it, the Uniform Act provides for two alternatives depending on whether the disapproval concerns the decision of the company to change its form and object, or the decision of the company on its scission or split.

5.3. The Control organ

On a general note, the OHADA legislators have generally reinforced control in commercial companies as a whole, and Public Limited Companies in particular¹⁷³.

There are several ways through which management activities can be controlled. This can be through the intervention of shareholders through their participation at general meetings as we saw above, or through the intervention of auditors.

5.3.1. The control of management activities by auditors

In order to prevent the abuse of the company by the management, the OHADA legislators made it obligatory for limited liability companies and especially Public Limited Company to appoint one or more auditors to audit the accounts of the management¹⁷⁴. These auditors must be convened to the General meetings.

5.3.2 Persons who can be appointed as auditors

To ensure transparency and accountability in the company, not every person is allowed to perform the services of an auditor. Only experts whose impartiality cannot be doubted are allowed to perform the services of an auditor in a limited liability company. Hence, the Uniform Act expressly provides that where there is an association of chartered accountants in the contracting state of the registered office of the company, only chartered accountants approved by this association should perform the services of an auditor. Where this association does not exist, chartered accountants entered on a list drawn up by a committee found at the Appeal Court in the

¹⁷³ Anoukaha F., et al, (n 103 above) 449

¹⁷⁴ Art. 702 of the Uniform Act provides that Public Limited Companies which do not launch a public issue shall be bound to appoint an auditor and an alternate auditor while public limited companies which launch a public issue shall be bound to appoint at least two auditors and two alternate auditors. A private limited company on the other hand is required to appoint an auditor where its registered capital exceeds 10 million francs CFA, or where its annual turnover exceeds 250 million francs CFA or where its permanent staff exceeds 50 persons. (Art. 376).

contracting state of the registered office of the company should perform the services of an auditor¹⁷⁵.

Be that as it may, the activities of an auditor are incompatible with any activity or act of a nature to compromise his independence; any paid job unless it concerns the giving of instructions relating to the exercise of his profession; and any commercial activity which is exercised by him directly or by a third party.¹⁷⁶

Articles 698-700 of the Uniform Act further prohibit certain persons from performing the services of an auditor in a company. These persons include: the founders, contributors, beneficiaries of special benefits, managers of the company or its subsidiaries as well as their spouses. The relatives and connected persons to the fourth degree of the persons mentioned above are equally prohibited. Again, managers of companies holding one-tenth of the company's capital or in which the latter holds one-tenth of the capital, as well as their spouses cannot be appointed as auditors.

Articles 699 of the Uniform Act further provides that an auditor may not be appointed as a manager/director of a company which he audited unless he has made at least five years after he ceased to be an auditor. In the same manner, persons who have been managers/directors may not be appointed as auditors unless they have made at least five years after they ceased from occupying management positions in that company. Having known who can be appointed as an auditor, our next target is his mission.

5.3.3 The mission of an auditor

An auditor plays a very important role in the company since he is that person who ensures that the management should present accurate information to the shareholders. Without an auditor, the management can manipulate their accounting figures and conceal some financial information which is beneficial to the company. It must be noted that he is not a manager but a person who controls the management.¹⁷⁷ It is for this reason that big companies such as public limited companies are required to have at least one auditor and two auditors for companies making a public call for capital.

¹⁷⁵ Arts. 695 and 696 UACCEIG. In the Member States of UDEAC (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon) chartered accountants shall be approved by a decision of the committee of direction of this institution. See Act n° 4/70 UDEAC 133 of 27 November 1970.

¹⁷⁶ Art. 697 UACCEIG.

¹⁷⁷ Pougoué P.G., L'impact de l'Acte Uniforme de l'OHADA relative au droit des sociétés commerciales et du GIE sur le contrôle et le développement des entreprises locales, in *Juridis périodique* N° 66, 2006, p. 112

The OHADA legislators have clearly defined the mission of an auditor. Hence, an auditor has as mission the control of the accounting documents of the company. It is in order to achieve this mission that he shall at any time of the year carry out any verifications and audits which he deems appropriate and he may order the management to place before him, all documents which he considers relevant for the performance of his task and in particular all contracts, books, accounting documents and minute registers. He can even solicit information from third parties who have been assigned to carry out transactions on behalf of the company such as notaries, bailiffs and other experts.¹⁷⁸ In exercising his mission, the auditor may under his responsibility enlist the assistance or representation of an expert of his choice and shall make him known to the company that he is auditing.¹⁷⁹

5.3.4 The effects of verification

After verifying the financial documents of the company, it is incumbent on an auditor to keep the shareholders abreast and to equally question the management where he thinks that the interest of the company is in jeopardy.

5.3.5 The duty of information and report of offences

If the essential mission of an auditor is that of control, it is not his unique mission since allied to this is his obligation of information and the report of any crime discovered in the course of his verification.

His duty of information consist in bringing to the notice of the Board of Directors or the Managing Director (in Public Limited Companies) or to the General Manager (in Private Limited Companies) and to the shareholders the facts which he has discovered in the course of his verification. The auditor shall report to the next General Meeting, the irregularities and inaccuracies discovered in the course of his investigation. As if this is not enough, the OHADA legislators have added on an auditor, the duty of reporting to the public prosecutor, any offences discovered in the course of performance of his mission.

¹⁷⁸ Pougoué (n 193 above) 112.

¹⁷⁹ Art 718 et seq. UACCEIG.

5.4 The Influence of Institutional Investors on OHADA Corporate Governance Rules

In many European countries today, the level of share ownership by individuals has decreased while ownership by institutional investors has increased. Institutional investors are defined as specialized financial institutions which manage savings collectively on behalf of small investors, towards a specific objective in terms of acceptable risk, return maximisation and maturity claims¹⁸⁰. They can also be defined as financial institutions engaged in long term investing. They mainly comprise Insurance companies, investment funds, pension funds¹⁸¹ investment banks and endowment funds. While these investors have been prominent in Anglo-Saxon countries for a long time, their importance in continental Europe has increased dramatically since the second half of the 90s.

Institutional investors both domestic and foreign have not gained grounds within Central African companies the same position they have gained in Europe. In Central Africa, shareholdings in companies are still dominated by individual shareholders unlike in Europe where individual shareholding is on a steady decline. Below is a summary of main categories of share ownership in the U.K between 1963 and 2004.

In spite of the important role that institutional investors can play in enforcing good corporate governance rules, companies within Central Africa do not enjoy this privilege since their shareholding is still dominated by small individuals who cannot exert meaningful influence on the management.

From the above detail examination of the OHADA corporate governance rules we can see for ourselves that a lot has been done by the legislators to ensure that companies governed by OHADA law are well managed. This notwithstanding, we shall in the below paragraphs examine the impact of these rules of the performance of stock exchanges within Central Africa.

5.4.1 The impact of OHADA Corporate Rules on Performance in Central African Stock Exchanges

It is difficult to know the impact of OHADA corporate governance rules on the performance of BVMAC because the financial markets of Central Africa are less developed with only three companies listed on the DSX and no company listed on the CEMAC stock exchange. This poor performance should not be attributed to poor corporate governance rules because a neighbouring

¹⁸⁰ E. Davis, The role of institutional investors in the evolution of financial structures and behaviour. 1996

¹⁸¹ K. Rybinski, "Globalisation and Financial Markets" www.nbp.pl/publikacje/wyklady/rybinski, 2004. 3

stock exchange i.e. the BRVM which applies the same corporate governance rules has already listed more than ten companies as we saw in the introduction. Therefore, the poor performance of the BVMAC should be attributed for the most part to other factors such as the lack of awareness by investors, lack of institutional investor involvement, lack of foreign participation, mutualisation etc.

This notwithstanding, the poor performance of BVMAC can to an extent be attributed to OHADA corporate governance rules. This can be illustrated by the fact that OHADA allows only Public Limited Companies having at least a capital of 100.000.000FCFA to list their shares on the stock exchange.¹⁸² Furthermore, a public limited company having a single shareholder¹⁸³ cannot be listed on the stock exchange since it has not got a board of directors composed of at least 3 and at most 15 members. Finally, OHADA corporate governance rules can be accountable for the poor performance of central African stock exchanges in that, it allows only the bonds of a public limited company which has been in existence for at least two years to be sold on the stock exchange.¹⁸⁴ In spite of this, it is hoped that when the Central African public would finally be aware of the importance of the financial market, the corporate governance rules discussed above will have a vital role to play in the protection of investors.

5.5 The impact of a special tax regime on the security markets of Central Africa

Over the years, many stock exchanges have emerged in Africa with the purpose of providing long term loans to investors which could not be gotten from banks and other financial establishments. Amongst the emergent stock exchanges are found the CEMAC stock exchange (BVMAC) created on the 22nd of December 1999 but which effectively went operational on the 13th of August 2008 and the Douala Stock Exchange (DSX) which effectively took off on the 30th of June 2006.¹⁸⁵ These stock exchanges have been very slow in performance with the DSX having three listed companies and the BVMAC still to list even one company. The poor performance of the emergent stock exchanges is blamed on a poor economic environment characterised by a bad legal

¹⁸² Art. 85 UACCEIG.

¹⁸³ This is an innovation in OHADA law where article 385 provides that a single person can create a Public Limited Company.

¹⁸⁴ Art. 870 UACCEIG.

¹⁸⁵ The day that the DSX opened its doors for trading . See business Cameroon .com of Tuesday 24 August 2010.

framework which is plagued with legal uncertainty, inadaptable financial market regulations, poor enforcement measures, corruption to name these few.¹⁸⁶

This poor performance prompted the leaders of the six member states of CEMAC during a conference held in Bangui on the 10th of January 2010 to propose a number of resolutions which can improve on the performance of stock markets. Amongst the proposed resolutions was the use of fiscal measures to improve on the performance of stock markets. Even before that conference, Cameroonian authorities have since 2007 thought of the use of tax incentives to encourage companies to list on the DSX.¹⁸⁷

In spite of these measures, there is no improvement yet on the performance of the BVMAC. This has made this researcher to think that the solution to the poor performance of BVMAC lies beyond mere tax incentives.

5.5.1 The Use of Tax Incentives to Encourage Investment in Central African Stock Exchanges

A country's fiscal policy can have a serious consequence on its level of investment. Aware of the essential role that fiscal policies can play on investment, the leaders of the six member states of CEMAC and the Cameroonian authorities have decided to use tax incentives to improve on the performance of the Central African financial markets. The Cameroonian government started using this measure since 2007 when it included a special regime applicable to companies trading on the DSX in the finance law of 2007. A detail analysis of the tax incentives as well as the persons targeted will be discussed below.

5.5.2 Person liable to the Stock Exchange Tax

The aim of the stock exchange tax is to improve performance on the financial market in other words; it is aimed at encouraging both issuers of securities and investors in securities to trade on the financial market. To this effect, companies as well as physical persons can benefit from the incentives of the stock exchange tax.

¹⁸⁶ Andrew T. Guzman, Capital Market Regulation in Developing Countries: A Proposal, *Virginal Journal of International Law*, 1999 p.611.

¹⁸⁷ These incentives were included in the Finance law of 2007.

5.5.3 Companies

Before the coming into force of the special tax regime applicable to companies trading on the stock exchange, companies were liable to company tax¹⁸⁸ whose rate is 35% of the profit realised by companies. With the introduction of a special regime applicable to companies trading on the stock exchange, this amount has reduced from 35% to 25% for companies trading on the CEMAC stock exchange for five years following its introduction on the stock exchange. For companies trading on the Douala Stock Exchange shall benefit from the following tax reductions:

- 20% within 3 years, for the increase of capital representing at least 20% of the company's capital;
- 25% within 3 years for the transfer of shares representing at least 20% of the company's capital;
- 28% within 3 years from the date of admission on the stock exchange for the increase or transfer of less than 20% of the company's capital¹⁸⁹. Companies which list their securities on the bond market of the DSX shall have their company tax reduced from 35% to 30%. A company will only benefit from any of these reductions if it is listed on the Douala within a delay of 3 years running for the 1st of January 2008. In other words a company will only benefit if it is registered on the DSX on or before the 31st of December 2010.

Any company delisted on the DSX within 4 years following its admission will not only lose these benefits but will pay back all the amounts which have been previously deducted plus penalties¹⁹⁰.

The purpose of this provision is to deter companies from quitting from the stock exchange.

One remarkable advantage of the special tax on stock exchange operations is that not only listed companies within the sense of the OHADA Uniform Act on Commercial Companies and Economic Interest groups will be liable under this tax regime. Even unlisted companies which have consented to exchange all or part of their securities on the stock exchange will benefit from this reduction. Furthermore, companies benefiting from this special regime shall not be prevented from taking other advantages found in the investment code. Companies benefiting from the regime of the investment code have their taxes reduce by 50%. Thus, if a company benefiting from the

¹⁸⁸ Not all companies are liable to company tax because some companies can opt to be liable under a different regime while some can totally be exempted from taxation. Only Joint Stock companies (S.A), Limited liability companies (SCA), Private limited companies (SARL) and cooperatives societies and their unions are obligatorily liable by virtue of their form while Public establishments, state bodies with financial autonomy, any corporate body carrying out one or more gainful activities and companies carrying out commercial, industrial, non industrial or agricultural activities shall be liable obligatorily to company tax by virtue of their form. See Art. 3 of the General Tax Code.

¹⁸⁹ Art. 108 of the General Tax Code.

¹⁹⁰ Art. 109 of the General Tax Code.

regime of the investment code is trading on the DSX, the tax rates will be 15%, 14%, 12.5% or 10% respectively for companies whose rate under the stock exchange regime is 30%, 28%, 25% and 20%.

Finally, companies which applied for admission on the DSX before the 31st of December 2010 were to benefit from the tax advantage though their securities were not yet listed on the stock exchange. These measures are highly incentive to trading on the DSX since both listed and potential listed companies can benefit from the stock exchange regime. It is however regrettable that in spite of this, performance on the central African stock exchanges remains poor.

5.5.4 Physical Persons

Physical persons are active participants of the stock exchange since they buy, sell or transfer securities on the stock exchange. Physical persons are normally liable to personal income tax which is the tax levied on profits made by individuals from various sources. One of the sources through which an individual gets income is through investment in shares or other securities. The following shall be deemed to be income from securities:

- Proceeds from stocks and shares;
- Income from bonds;
- Income from financial assets, deposits, guarantees and current accounts; and
- Interests on cash vouchers.

In order to encourage physical persons to invest in companies trading on the stock exchange, special reductions are made on their tax rates. Hence, taxes levied on the interests, value added and other remunerations realised by a physical person in a company trading on the stock exchange will be reduced by 10%. This means that if prior to this tax regime an individual was paying 100.000.FCFA as tax for income realised on securities, that individual will henceforth pay 90.000FCFA if those securities are traded on a stock exchange. This will encourage investors to transfer their securities from companies which are not listed on the stock exchange to those listed on the stock exchange in order to benefit from this reduction

Furthermore, the net value added realised by physical persons from the transfer of securities on the stock exchange will be exempted from taxes. This will encourage shareholders to sell their shares on the stock market rather than transfer them to other shareholders or third parties since the value added realised on the share from a transfer other than that done on the stock exchange is taxed.

Again, investors will be encouraged to buy shares only in companies listed on the stock exchange since they can be easily traded on the stock market.

Notice must equally be taken of the fact that all contracts or acts relating to the transfer of securities quoted on the DSX shall be exempted from registration fees¹⁹¹.

These incentives were attractive enough to encourage companies to list on the stock exchanges of central Africa, and especially that of Douala. The deadline for companies to benefit from the stock exchange tax which was the 31st of December 2010 is already passed with no improvement on the performance of the BVMAC. This has made us to think that the solution to this problem was not simply the imposition of a special tax regime but something else which is yet to be done. In the following topic we shall discuss some possible solutions to the problem of poor performance of the BVMAC.

¹⁹¹ See Art. 112 of the General Tax Code.

FINAL CONCLUSION

1. Summary of findings

The creation of Stock Exchanges in the Central African Zone is more recent and without any doubt, apart from the time that was used in carrying out feasibility studies and when the final legal texts were signed, these Stock Exchanges face real challenges. They include the fact that, in the same REC, two stock exchanges co-exist side by side in a small economy

The legal and regulatory frameworks put in place has not been favourable to investors, there are two rivalry Stock Exchanges within the Central African Sub-region having laws which differ from one stock exchange to the other. There is legal uncertainty coupled with the absence of institutional arbitration thus making investors to have their disputes settled before an incompetent and corrupt jurisdiction. In spite of this drawback, we have discussed the mechanisms which have been put in place to ensure the protection of dealers in the BVMAC. Through the use of the information document, all information useful to the investor in the market is disclosed. There is the presence of a compensation fund to indemnify the victims of PSI who have run into bankruptcy. There are equally sanctions meted on violators of market rules and regulations such as insider dealing and the wrongful publication of privileged information.

In this work, the researcher equally examined the impact of OHADA Corporate governance rules on the performance of the BVMAC. It has been realised that OHADA permits only Public Limited Companies with a capital of at least 100.000.000 FCFA to make a public call for capital. We discovered that this may be one of the factors which have hindered some companies from listing their securities on the stock exchange owing to the fact that many companies in this area are of Small and Medium Size and cannot afford the huge capital of 100.000.000FCFA. We have recommended that a department for Small and Medium Size Enterprises should be created in these stock exchanges to enable a majority of companies within Central Africa participate in the financial market. Alternatively, the minimum capital requirement should be reduced so that companies having less than 100.000.000 FCFA can still list on the stock exchanges. This notwithstanding this researcher cannot say with certainty that the poor performance of BVMAC is caused by strict OHADA Corporate Governance rules because the BRVM which applies the same corporate governance rules as Central Africa is not poor in performance.

This work is crowned with an examination of the impact of a special tax regime on the performance of BVMAC. In 2007, Regulation N° 14/07-UEAC-175-CM-15 of 19 March 2007

relating to a special tax regime applicable to quotation operations on the Stock Exchange of Central Africa was passed. This regime has tax incentives for companies and persons trading on the Stock Exchange. In spite of this, it is regrettable that the performance of the stock exchanges of Central Africa is yet to improve.

2. Conclusion

We have dwelled detailly on the primary and secondary legal and regulatory framework of the stock exchange and have witness that by themselves, the primary legislation of both markets have definitely draw their source from existing legal framework that have succeeded. We have also witness what the supervising authorities and even the governments have done to get companies listed in the Stock Exchanges. These measures by themselves are not enough because we notice that, the OHADA Treaty on Commercial Companies has its own weight to bear on the companies and economic interest groups that will be interested in getting listed in the stock exchanges.

These markets have different compartments: those that deal with issuance of Treasury bond, which has done well so far in raising funds for some governments and another compartment dealing with the trading in shares and debts, which has performed poorly since the inception of both markets.

The question stands, should both institutions be merged especially in the Treasury bond compartment: and keep their individual shares and debts compartment or should there be a total merger of both institutions. Our recommendation goes for a total merger (see reasons below). Other recommendations follow for a better performance of both markets.

3. Recommendation

Pre-requisite Conditions for the Success of Central African Stock Exchanges

The creation of a performing financial market in Central Africa has been a cherished but illusory goal. In fact, the CEMAC member states saw the necessity of having a financial market but the success which was targeted has not been realised¹⁹². However the beginning is not always easy, so the non performing stock exchanges of Central Africa today may be transformed into performing stock exchanges of tomorrow if the following suggestions are implemented.

¹⁹² Yvette KALIEU and Daniel Ebénézer KEUFFI, l'urgence des marchés financier dans "espace OHADA, <http://www.afrilex.u-bordeaux4.fr>, p. 45.

Coordination in the Domains of Financial Information and Professional Ethics

In the domains of financial information and professional ethics, varying rules are not admissible. It will be good for the investors whether found in Gabon or in Douala to be governed by the same set of rules. Countries of the European Union have for a very long time perceived the necessity for this coordination. It is then by way of directives, acceptance of the same code of conduct and mimicry of more performing stock exchanges, that European Stock Exchanges has been constructed slowly but surely.¹⁹³ Thus to succeed, African Stock Exchanges in general and CEMAC stock exchanges in particular should strive for a harmonisation of its rules. The Association of African Stock Exchanges (ASEA) has already taken steps towards this direction but it still has to go further. In the same light, the leaders of the CEMAC member states during their conference held on the 10th of January 2010 at Bangui resolved that the harmonisation of the financial market regulations of the two stock exchanges of Central Africa should be done but no measures were put in place to follow up its implementation. It is believed that when this is done, foreign investors will be encouraged to invest on these stock exchanges.

The Creation of a Department for Small and Medium Size Enterprises in the Central African Stock Exchanges

Neither the BVMAC nor DSX has a department for Small nor Medium Size enterprises since these two stock exchanges have borrowed OHADA laws governing companies admitted on the stock exchange. It is a matter of common knowledge that a majority of companies found within this zone are of small and medium sizes mostly manned family members and friends thus operating as sole proprietorships or partnerships. These small and medium size enterprises cannot raise the capital of 100.000.000FCFA which is a visa to trade on the BVMAC and are thus eliminated. A department of Small and Medium Size Enterprise will be of utmost importance since it will allow a majority of enterprises in Central Africa to trade on the stock exchanges. The Central African Head of States during their 2010 conference in Bangui resolved on the creation of this department but till date, it has not yet been created.

¹⁹³See Yvette KALIEU and Daniel Ebénézer KEUFFI, (n 217 above) 47.

The Dissemination of Information about Stock Exchange Operations on the Press and the Media

One serious problem plaguing the performance of BVMAC is the lack of awareness of the presence of stock markets in Central Africa; talk less of stock market operations. Many citizens of CEMAC are not aware that there is a stock exchange existing in Gabon or in Douala. Information concerning stock market operations is not published on news papers or on radio and television. In order to improve on the performance of stock exchange markets in central Africa, the member states should include a daily slot on the press and media strictly concern with the publication of stock market operations.

A Harmonization of conditions of access into the different markets

The vitality of a market lies on its competitiveness and the richness of the products offered on that market¹⁹⁴. Thus a wide range of products should be traded on the Central African stock exchanges. This can only be achieved if a wide range of products coming from other markets can be traded competitively on the Central African stock exchanges. This is not the case with financial markets of OHADA¹⁹⁵ in general and financial markets of Central Africa in particular. It is thought that if the same conditions of access are accorded both to the foreigners and the nationals, these emerging markets will not only benefit from the experience that foreign companies will bring from other stock exchanges but will encourage local companies to list on the stock exchanges¹⁹⁶

OHADA should be given exclusive competence to legislate on stock exchanges within OHADA

According to Professor Paul Gérard POUGOUE, the CCJA¹⁹⁷ should be given the competence to regulate, orientate and unify the interpretation and application of stock exchange legislations. To him, since the scopes of OHADA covers the harmonisation of all legal disciplines of a nature to facilitate the activities of enterprises, encourage investment and promote regional and international trade, OHADA should be given exclusive competence in the stock exchange domain¹⁹⁸ since the

¹⁹⁴ Yvette KALIEU and Daniel Ebénézer KEUFFI (n 217 above) 45.

¹⁹⁵ There are three financial markets within the OHADA zone. They are: The West African Stock Exchange in Abidjan (BRVM), The CEMAC stock exchange in Libreville- Gabon (BVMAC), and The Douala Stock Exchange in Cameroon (DSX)

¹⁹⁶ Yvette KALIEU and Daniel Ebénézer KEUFFI (n 217 above) 45.

¹⁹⁷ The CCJA is the OHADA common court of justice and arbitration located in Abidjan.

¹⁹⁸ Paul Gérard POUGOUE, *Presentation générale et procédure en OHADA*, P.U.A, Yaounde, 1998, p.12.

Uniform Act on Commercial Companies and Economic Interest Groups touches on some financial market aspects.

Involvement of banks and insurance companies on the stock exchanges

In other African stock exchanges, banks and insurance companies are always the first to list on the stock exchanges. This is because they are already familiar with the financial rules and regulations. Again the safest place they can save money for their own security is at the stock exchanges. This is not the case in the Central Africa where banks and insurance companies are not willing to join the stock exchanges. However, following the global financial crisis and its effects, a consensus has been reached stipulating that banks must have a certain minimum capital which is adequate to cover the risk of the loan granted. Within the CEMAC zone, COBAC which is the banking regulatory authority has increased the minimum capital of banks to 10 billion FCFA starting from 2014. With this, it is wished that these banks will turn to the financial market either to issue bonds or to issue new shares.

Diversification of Financial Market Products

Many more products should be introduced on the financial market in order to attract investors. An improvement of products traded on the market can be done through an improvement of the volume or through the improvement of the output. To improve on the volume, the privatization process should be accelerated. Again, the minimum capital of commercial state enterprises should be added so that they should offer shares on the stock exchange.

An efficient financial regulatory mechanism should be put in place

For the financial market to act as a catalyst to the economic development of Central Africa there must be an improvement of the financial system of the CEMAC zone. For this to be done, the financial market must be endowed with an appropriate financial regulation. It is therefore incumbent on the regulatory authorities to integrate quality measures in the process of the elaboration and adoption of rules in order to attract compliance on the part of the actors and efficiency in the application of the rules.

If these recommendations are taken into consideration and the financial market of Central Africa functions well, it will be an important instrument in solving the financial needs of each of the Central African states.